


MEMORANDUM

December 7, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 32-12, Personnel – Regulations – Persons with Disabilities
– Noncompetitive Appointment

Bill 32-12, Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment, sponsored by Councilmember Andrews, Council Vice-President Rice, Council President Navarro, Councilmembers Leventhal, Ervin, Floreen, Elrich, Berliner, and Riemer, was introduced on November 13, 2012. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 17.

Bill 32-12 would require the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position. On November 6, 2012, the voters approved an amendment to Section 401 of the County Charter to allow the County to operate a program within the merit system to recruit and select qualified individuals with severe physical and mental disabilities on a noncompetitive basis. This Bill would implement the Council's authority under this new amendment to Section 401 of the County Charter.

The Bill would authorize a program that is similar to the noncompetitive appointment of a person with a disability to a merit position in the Federal Civil Service under Schedule A. Under Schedule A, a Federal agency may hire a qualified person with a disability directly without advertising the position and without competition. Although the person would be hired in the excepted service, the person may be converted to permanent competitive status after successfully completing the probationary period. An EEOC fact sheet on Schedule A for Human Resources professionals is at ©7-10. Schedule A hiring is for the initial appointment to a Federal position. Once the person is hired, the person is expected to meet the same standards as other Federal employees and must compete for promotions on his or her performance and merit. See the email from Donna R. Walton, Ed.D, Disability Program Manager for the EEOC at ©11.

Bill 46-09, enacted on February 2, 2010, created a preference for a qualified person with a disability who applies for a County merit position under the normal competitive process. Bill 46-09 was enacted to help reduce the high unemployment and underemployment rate for persons with a disability in the County. Bill 32-12 would create additional opportunities for a person with a severe disability to secure an initial appointment to County employment through a noncompetitive process.

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Bill No. 32-12
Concerning: Personnel – Regulations –
Persons with Disabilities –
Noncompetitive Appointment
Revised: November 9, 2012 Draft No. 5
Introduced: November 13, 2012
Expires: May 13, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council Vice-President Rice, Council President Navarro,
Councilmembers Leventhal, Ervin, Floreen, Elrich, Berliner, and Riemer

AN ACT to:

- (1) establish a program, as authorized by the County Charter, permitting the noncompetitive appointment of certain qualified persons with severe disabilities who apply for a County merit position;
- (2) require the Executive to adopt regulations permitting the noncompetitive appointment of certain qualified persons with severe disabilities who apply for a County merit position; and
- (3) generally amend the merit system law concerning hiring persons with disabilities.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-7

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:

1 **Sec. 1. Short Title.**

2 This Act may be cited as the “Expanded Hiring of Persons with Disabilities Act.”

3 **Sec. 2. Section 33-7 is amended as follows:**

4 **33-7. County executive and merit system protection board responsibilities.**

5 * * *

6 (d) [*Hiring preference*] Special hiring rules for persons with disabilities.

7 (1) Findings.

8 (A) Persons with disabilities are a largely untapped resource
9 for outstanding candidates for County employment.

10 (B) There are many County residents with severe disabilities,
11 including Wounded Warriors treated in the County at the
12 Walter Reed National Military Medical Center.

13 [(B)] (C) Persons with disabilities suffer from a high
14 unemployment and underemployment rate in the County
15 due in part to unfounded myths, fears and stereotypes
16 associated with many disabilities.

17 [(C)] (D) [A] Special hiring [preference] rules for persons
18 with disabilities [is] are necessary to remedy past
19 discrimination resulting from these unfounded myths,
20 fears, and stereotypes and to enable the County to be a
21 model employer of qualified persons with severe
22 disabilities.

23 (E) Special hiring rules for qualified persons with severe
24 disabilities would permit the County to hire highly
25 productive interns with severe disabilities into merit
26 system positions.

27 (F) The Charter permits the County to operate a program
 28 within the merit system to recruit and select qualified
 29 individuals with severe physical and mental disabilities
 30 on a noncompetitive basis.

31 (2) The Executive must adopt by personnel regulation, under
 32 Method (1), standards for establishing and maintaining [a
 33 preference] special rules for the initial appointment of a
 34 qualified person with a disability into a merit system position.
 35 These standards must:

36 (A) define a person with a disability eligible for [the] a
 37 competitive appointment with a preference as:

38 (i) a person with medical proof of a developmental
 39 disability, a severe physical disability, or a
 40 psychiatric disability; or

41 (ii) a veteran rated by the Department of Veterans
 42 Affairs with a compensable service-connected
 43 disability of 30 percent or more;

44 (B) define a person with a severe disability eligible for
 45 noncompetitive appointment as a person with medical
 46 proof of a severe developmental, physical, or psychiatric
 47 disability; and

48 (C) require medical certification of a qualifying disability[;].

49 (3) Competitive appointment.

50 (A) The regulation must establish and maintain a preference
 51 for the initial appointment of a qualified person with a
 52 disability into a merit system position under the
 53 following order of preference;

- 54 (i) an employee who is unable to perform the
 55 employee's job because of a disability or injury
 56 under the ADA;
- 57 (ii) an employee subject to reduction-in-force;
- 58 (iii) an employee who was granted a temporary
 59 disability retirement under the Employees
 60 Retirement System or an initial or temporary
 61 disability benefit of any type under the Retirement
 62 Savings Plan or the Guaranteed Retirement Income
 63 Plan but is no longer eligible for such a temporary
 64 disability retirement or benefit;
- 65 (iv) a veteran with a disability;
- 66 (v) an equal preference for a veteran without a
 67 disability and a non- veteran with a disability[;
 68 and] .

69 [(D)] (B) The regulation must only apply the preference to a
 70 person who is among the highest rating category in a
 71 normal competitive process.

72 (4) Noncompetitive appointment. The regulation must establish
 73 and maintain standards for the noncompetitive appointment of a
 74 qualified person with a severe disability to a position in the
 75 merit system. The standards must:

76 (A) permit the noncompetitive appointment of a qualified
 77 person with a severe disability without advertising the
 78 position;

79 (B) require medical certification of disability;

- 80 (C) apply only to the initial appointment of a qualified person
- 81 with a severe disability to a merit system position; and
- 82 (D) require the person to successfully complete the
- 83 appropriate probationary period for the position.

84 * * *

85
86 *Approved:*

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Nancy Navarro, President, County Council Date

88 *Approved:*

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Isiah Leggett, County Executive Date

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

91

Linda M. Lauer, Clerk of the Council Date

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LEGISLATIVE REQUEST REPORT

Bill 32-12

Personnel – Regulations – Persons with Disabilities – Noncompetitive Appointment

DESCRIPTION: Bill 32-12 would require the County Executive to adopt regulations permitting the noncompetitive appointment of a qualified person with a severe developmental, physical, or psychological disability to a County merit position. The Bill would implement the Council's authority under a new amendment to Section 401 of the County Charter.

PROBLEM: Persons with a disability suffer from a high rate of unemployment and underemployment.

GOALS AND OBJECTIVES: To increase opportunities for persons with a disability to secure County employment.

COORDINATION: Human Resources, County Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: The Bill would create a hiring program similar to the Federal government's Schedule A program.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney, 240-777-7895

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Not applicable.

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The ABCs of SCHEDULE A For the Human Resources Professional How to Hire Using the Schedule A Appointing Authority

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INTRODUCTION

Human Resources / Human Capital (HR) professionals know first hand how lengthy and somewhat tedious the federal hiring process can be. Diligent efforts by HR to assist a 'customer' – whether that customer is a federal manager with a vacancy or an applicant looking for a position – are not always enough to get things done quickly. As noted by the Merit Systems Protection Board in its report entitled *Reforming Federal Hiring – Beyond Faster and Cheaper* (September 2006), it takes an average of 102 days to complete all of the steps in the competitive hiring process, from making the request to making the appointment. No one delights in the prospect of spending three plus months trying to fill a position. Further, HR professionals know that plenty of promising candidates are lost because they can not wait months for a hiring decision.

Over the years, the Office of Personnel Management (OPM) has introduced different hiring authorities to assist in streamlining the hiring process. One such hiring authority is Schedule A. Schedule A is an Excepted Service appointing authority which may be used to hire individuals with disabilities.

Schedule A hiring can be quick and efficient, as long as all parties know what is required. This quick reference guide seeks to provide HR professionals with the tools needed to process Schedule A appointments. Using the Schedule A appointing authority, found at 5 CFR § 213.3102(u), qualified candidates who meet OPM's guidelines can be hired non-competitively –

- without the typical recruitment headaches;
- without posting and publicizing the position; and
- without going through the certificate process.

How? By following the Easy How-To Steps detailed in the next section.

EASY HOW TO STEPS

1. Typically, once a prospective candidate has been identified, HR will be approached by a hiring manager, a Selective Placement Coordinator (SPC), or a Disability Program Manager (DPM), for help in getting the candidate on board. The SPC/DPM and hiring manager should have already worked together to identify the essential functions of the position in question. Doing so ensures that prospective candidates have the requisite knowledge, skills and abilities to successfully perform in the position. HR professionals should inquire as to whether this step has occurred. Occasionally HR will initially be approached by an applicant directly. Prospective employees might, for example, identify a desired position within the agency from a vacancy announcement. Where this occurs, HR personnel should put the applicant in touch with the DPM and/or SPC. In either situation, you, as the HR professional, should verify the determination that the proposed candidate has the requisite knowledge, skills and abilities to perform the essential functions of the position in question.

2. Next, HR professionals will consult with the manager and/or the SPC/DPM to decide what type of appointment is to be offered. The types of appointments available under Schedule A include:
 - a. temporary appointments (Refer to 5 CFR § 213.104 for the definition and restrictions on temporary appointments in the excepted service);¹
 - b. time-limited appointments (Refer to 5 CFR § 213.104 for the definition of time-limited appointment), when the duties of the position do not require it to be filled on a permanent basis; and
 - c. permanent appointments.

Although the appointment will be in the excepted service, the intent underlying Schedule A is to permit individuals with disabilities to obtain competitive status in the civil service. This is obtained through conversion to the competitive service rather than remaining in the excepted service.

3. Once an appointment type is determined, a conditional offer of employment should be extended to the candidate. Agencies should make clear that the offer is contingent upon receipt of Schedule A qualifying documentation from the candidate, *i.e.*, proof of disability.² Often, the SPC/DPM will have already collected this documentation, so as to speed the process along. **Importantly, the hiring manager should not be involved in the disability documentation process, as medical documentation must be kept strictly confidential.**
4. At this point in the process, the SPC/DPM should already be engaged in discussions with the candidate about possible reasonable accommodations that might be needed on the job. (Further information on the role of the SPC/DPM is covered in a separate quick-reference guide.) Nonetheless, once an offer has been accepted, and prior to the entry-on-duty date being finalized, HR should contact the selectee to verify whether accommodation needs have been addressed. Where the need has not been addressed, you should follow your agency's approved policy for handling reasonable accommodation requests. Further, you should work with the SPC/DPM and the new employee's manager, where necessary, to ensure that the accommodation is in place when the new employee comes on board.
5. In coding the Standard Form 52, Request for Personnel Action, and/or the Standard Form 50, Notification of Personnel Action, review Chapter 11 of the Guide to Processing Personnel Actions. In most situations, you will utilize Nature of Action Codes 170, 171, 190, 570, 571, or 590. For additional information, the Guide is available online at <http://www.opm.gov/feddata/gppa/gppa.asp>.

That's it!

Seem easy? It is! No more three, six, or nine month wait! And Schedule A is always an option, even when the competitive process has already begun / been used first. HR professionals are constantly called on to provide advice and hiring options to managers. So, when a manager is not pleased with the candidates on a certificate they receive, recommend Schedule A as an alternative option. Provide the hiring manager with resumes, *etc.*, of Schedule A candidates received from your agency's SPC/DPM or other resource (including those that come in with other applicants under a current vacancy announcement). When utilized properly, Schedule A offers federal agencies maximum flexibility and efficiency in meeting critical hiring needs. Moreover, hiring talented applicants with disabilities helps your agency, and the federal government overall, to meet the requirements of the Rehabilitation Act to hire and advance people with disabilities.

The Federal Government – Opportunities for All!

FREQUENTLY ASKED QUESTIONS

Q. What is Schedule A?

A. Schedule A is an appointing authority, or hiring authority. It is an Excepted Service appointment for persons with disabilities. The regulations guiding the Excepted Service – Appointment of Persons with Disabilities, Career, and Career-Conditional Appointments – are found in the Code of Federal Regulations (CFR). The citation is 5 CFR § 213.3102(u).

Q. Why should agencies consider using this hiring authority?

A. Agencies should use this hiring authority for a number of good reasons:

- Individuals with disabilities are an untapped source of excellent applicants;
- No public notice is required. In fact, many of the usual HR-related stumbling blocks are avoided, which could result in significantly reducing the time necessary to hire a well-qualified candidate;
- Doing so can support an agency's Career Patterns initiative. Technological advances and growing emphasis on tele-work may dovetail with the needs of many applicants with disabilities; and
- Agencies don't have to clear 'surplus employee' lists prior to using Schedule A.

Q. What about accommodations? Aren't they expensive and a hassle?

A. No! More often than not, providing accommodations is simple and usually free! Moreover, agencies are not alone in trying to work through accommodation requests. There are several resources available, some of which are listed herein – just check the Resources page! And remember, just as we all need assistance at some point in the work place, accommodations may be needed by an individual with a disability. You want all employees to be at their best at work, and accommodations play a role in reaching that goal. Providing accommodations does not have to be a difficult, expensive or time consuming process.

Q. Is this appointment to a permanent position?

A. It can be. Agencies may self-determine what type of placement to make, based on the needs of the position, as well as the qualification level of the candidate. Under the Schedule A appointing authority, a hiring agency may make a temporary appointment, a time-limited appointment when the duties of the position do not require it to be filled on a permanent basis, or a permanent appointment. Agencies are strongly encouraged to make permanent appointments unless there is a compelling reason to do otherwise.

Q. What about a probationary period?

A. Depending on the type of appointment, probationary periods typically last up to two years. Schedule A candidates should be held to the same performance standards as all other employees. Once the employee's accommodation needs, if any, have been met, then you should expect no more or less from a Schedule A employee than you would from any other employee. Once the probationary period has been successfully completed, employees should be converted to permanent competitive status.

RESOURCES

RECRUITMENT / HIRING

EARN – The Employer Assistance & Recruiting Network (EARN) is a free service that connects employers looking for quality employees with skilled job candidates. EARN provides recruiting services, as well as employer success stories. Moreover, if you need to make the business case for hiring people with disabilities, EARN can provide you with the information you need! Further information can be found at <http://earnworks.com/>.

WRP – The Workforce Recruitment Program (WRP) is a recruitment and referral program that connects federal sector employers nationwide with highly motivated postsecondary students and recent graduates with disabilities who are eager to prove their abilities in the workplace through summer or permanent jobs. Students represent all majors, and range from college freshmen to graduate students and law students. A searchable database is available through the WRP website. WRP is ready to help you fill your summer or permanent hiring needs! Further information can be found at <http://wrp.gov>.

For Veterans with Disabilities – There are numerous organizations and agencies that exist to assist veterans with disabilities find and maintain employment. The following is a sample of useful resources to keep handy:

- The Department of Labor's (DOL) Veterans Employment & Training Service <http://www.dol.gov/vets/welcome.html>
- Hire Heroes <http://www.hireheroesusa.org/>
- Wounded Warriors Project <http://www.woundedwarriorproject.org>

Advocacy Groups – There are several different advocacy groups that also serve as excellent resources for recruiting and hiring individuals with disabilities. The following is a sampling of those resources:

- American Association of People with Disabilities <http://www.aapd-dc.org/>
- National Council on Independent Living <http://www.ncil.org/>
- Council of State Administrators of Vocational Rehabilitation <http://www.rehabnetwork.org/>
- Deaf and Hard of Hearing in Government <http://dhhig.org/>
- American Council of the Blind <http://www.acb.org/>

Federal Resources – There are numerous federal programs designed to meet the needs of people with disabilities in finding employment. The following is a non-exhaustive list of programs/resources:

- The Office of Personnel Management's "Disability Site" <http://www.opm.gov/disability/>
- DOL's Office of Disability Employment Policy <http://www.dol.gov/odep/>
- Also check out the federal government's one-stop web site for people with disabilities, their families, employers, veterans and service members, workforce professionals and many others. www.DisabilityInfo.gov

ACCOMMODATIONS

CAP – Within the federal government there is a wonderful program housed within the Department of Defense. The Computer/Electronic Accommodations Program (CAP) provides assistive technology and services to people with disabilities throughout the federal government FREE OF CHARGE! That means you can tap this resource

for help in accommodating an employee with a disability. CAP will do the needs assessment, buy the needed technology, train the employee on how to use it, and follow up with updates. All you have to do is ask! (Note: Before contacting CAP directly, check with the RAC, as they may already have a relationship with CAP.) Further information can be found at <http://www.tricare.mil/cap/>.

JAN – The Job Accommodation Network (JAN) represents the most comprehensive resource for job accommodations available, and is a terrific and easy-to-use resource. This free consulting service is designed to increase the employability of people with disabilities. JAN provides individualized worksite accommodation solutions, as well as information on job accommodations and related subjects for employers and people with disabilities. Additional information can be found at <http://www.jan.wvu.edu/>.

U.S. Equal Employment Opportunity Commission
1-800-669-4000 / TTY 1-800-669-6820
www.eeoc.gov

Under the new 5 CFR § 213.3102(u) appointing authority, a hiring agency may, in addition to the temporary appointments identified in the question above, make:

- 1) A time-limited appointment of an individual who provides proof of disability and certification of job readiness, when the duties of the position do not require it to be filled on a permanent basis.
- 2) A permanent appointment of an individual who provides proof of disability and certification of job readiness.

Proof of a disability(ies) is required for appointments under 5 CFR § 213.3102(u). Proof of disability is the term used to define any number of documents which attest to the fact that the candidate does indeed have a disability. The documentation can take many acceptable forms, so agencies should be flexible. Agencies may accept as proof of disability simple documentation from a licensed medical professional (*e.g.*, a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (*i.e.*, State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits. Documentation need only certify that the applicant has a disability which is long-term and/or permanent in nature.

Drummer, Bob

From: DONNA WALTON [DONNA.WALTON@EEOC.GOV]

Sent: Wednesday, November 07, 2012 5:25 PM

To: Drummer, Bob

Subject: Re: Schedule A hiring

Mr. Drummer,

Schedule A is a hiring authority. The regulations guiding the Excepted Service Appointment of Persons with Disabilities and Career and Career Conditional Appointment are found in the Code of Federal Regulations (CFR). The citation is 5 CFR §213.3102(u). Essentially, once the probationary period has been successfully completed employees should be converted to permanent competitive status, and employees should be promoted on their performance and merit, not simply because they are a Schedule A hire.

I hope this addresses your question.

Dr. Walton

Donna R. Walton, Ed.D
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Equal Opportunity Employment
Commission
Office of Human Resources
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"Excellence must be the result of caring more than what other people think is wise; risking more than what other people think is safe; dreaming more than what other people think is practical, but moreover is expecting more than what other people think is possible."

- V. Lombardi

>>> "Drummer, Bob" <Bob.Drummer@montgomerycountymd.gov> 11/7/2012 4:57 PM >>>
Ms. Walton,

Thank you for speaking with me this afternoon. As I explained in our telephone conversation, the Montgomery County Council is considering legislation that would create a noncompetitive hiring authority for persons with a disability into a County merit position. I am trying to find out if Schedule A hiring applies only to a person's initial hiring into the Federal Civil Service or if it is also used to promote a person with a disability who was originally hired under Schedule A into a higher vacant position later on in his or her career.

Although you told me that you understand Schedule A to be only for initial hiring into the Federal government, you told me that you would confirm your understanding and get back to me. Thanks again for your assistance.

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