

[[Expedited]] Bill No. 37-08
 Concerning: Personnel — Disability
Retirement - Amendments
 Revised: May 12, 2009 Draft No. 11
 Introduced: December 9, 2008
 Enacted: May 12, 2009
 Executive: May 20, 2009
 Effective: August 19, 2009
 Sunset Date: None
 Ch. 11, Laws of Mont. Co. 2009

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Andrews and Councilmember Trachtenberg

AN [[EXPEDITED]] ACT to:

- (1) make disability retirement procedures consistent for all employees;
- (2) [[create a partial incapacity disability retirement benefit;
- (3) create a total incapacity disability retirement benefit;
- (4) create a Medical Review Panel;
- (5) create a Disability Review Board;]]
- [[((6))] prohibit certain applications for service connected disability retirement due to an accident filed more than a certain time after separation from County service [[or the date of the accident]] or after the date of the accident;
- [[((7))] [[prohibit]] [[limit the amount of the service connected disability pension for an employee who commits certain offenses [[from retiring on a service connected disability]];
- (8)]] (3) require an independent medical examination for a disability retirement;
- [[((9))] (4) require an independent medical examination or a medical certificate for certain retirees; and [[modify the appeal procedures for disability retirement; and
- (10)]] (5) generally amend the law regarding disability retirement.

By amending

Montgomery County Code
 Chapter 33, Personnel and Human Resources
 Sections 33-38A, 33-43, 33-51, 33-128, 33-129, 33-135, and 33-138

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:

Clerk's Note:

Line 115, "(2) The" are an existing law. Removed underlining.

Line 161, Removed underlining on the period.

Line 172, Moved the period after the word section and put it at the end of Line 176.

Line 455, Added double brackets before the colon.

Line 456, Added double brackets after Roman Numeral (i).

Line 461, Removed the underlining on the period.

Lines 498-506, Added back existing law that was mistakenly omitted in error.

1 **Sec. 1. Sections 33-38A, 33-43, 33-51, 33-128, 33-129, and 33-135 are**
 2 **amended as follows:**

3 **33-38A. Deferred Retirement Option Plans.**

4 The Chief Administrative Officer must establish Deferred Retirement
 5 Option Plans, or DROP plans, that allow any employee who is a member of a
 6 specified membership group or bargaining unit and who meets the eligibility
 7 requirements to elect to retire but continue to work. Pension payments must not be
 8 paid to the member while the member participates in the DROP Plan. When the
 9 member's participation in the DROP Plan ends, the member must stop working for
 10 the County, draw a pension benefit based on the member's credited service and
 11 earnings as of the date that the member began to participate in the DROP Plan, and
 12 receive the value of the DROP Plan payoff.

13 (a) *DROP Plan for Group F members.* "Discontinued Retirement Service
 14 Program" or "DRSP" means the DROP program for Group F
 15 members.

16 * * *

17 (7) *Disability retirement.* An employee may apply for disability
 18 retirement prior to the termination of the employee's
 19 participation in the program. [[An employee who receives a]]

20 (A) A DRSP participant who is eligible for a service-
 21 connected disability retirement [[will receive the balance
 22 in the DRSP account less an amount equal to the full
 23 actuarial value of the credited service which the
 24 employee would have received if the employee had not
 25 participated in the program. If an employee's
 26 participation in the program ends before a final decision
 27 is made on the disability retirement application, the

28 balance of the DRSP account will not be distributed until
 29 a final decision is made.]] must choose either:

30 (i) the retirement benefit under the DRSP and the
 31 DRSP account balance; or

32 (ii) the service-connected disability retirement benefit
 33 that the employee would have received if the
 34 employee had continued as an active employee and
 35 had not elected to participate in the DRSP, and no
 36 DRSP account balance.

37 (B) A DRSP participant who is eligible for a non-service-
 38 connected disability retirement benefit must receive the
 39 non-service-connected disability retirement benefit under
 40 Section 33-43(h), with the benefit calculated as of the
 41 member's DRSP exit date, plus the DRSP account
 42 balance.

43 * * *

44 **33-43 Disability retirement.**

45 (a) *Applicability.* This Section applies to[[:(1)]] an application for
 46 disability benefits filed [[on or after March 1, 2000, by a member who
 47 is also a member of the Police Bargaining Unit; (2) an application for
 48 disability benefits after May 18, 1995,]] by any [[other]] member[[;]]
 49 or [[(3)]] a medical reevaluation of a disability retiree under
 50 subsection (g) [[, regardless of when an application for disability
 51 benefits was filed]].

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

54 [[(1)]] *Applicant* means any member [[defined in subsection (a)]] who
 55 has filed an application for disability retirement under subsection
 56 (d)(1).

57 [[(2)]] *Certified representative* means an employee organization
 58 certified under Section 33-79, 33-106, or 33-151 to represent a
 59 bargaining unit.

60 [[(3)]] *Disability Arbitration Board* or *Board* means one of the 3
 61 panels designated under subsection (m)(1) to review an appeal of the
 62 Chief Administrative Officer's final decision regarding an application
 63 for disability benefits filed by any member except a member of the
 64 Police Bargaining Unit.

65 [[(4)]] *Disability Review Panel* or *Panel* means the [[3]] 4 medical
 66 doctors appointed as Panel members by the Chief Administrative
 67 Officer [[in accordance with]] under subsection (c).

68 [[(5)]] *Medical doctor* means a doctor of medicine or osteopathy who
 69 [has] graduated from a medical school accredited by the American
 70 Medical Association and [[who]] is licensed to practice medicine in
 71 [[the State of]] Maryland.

72 [[(6)]] *Medical specialty* means a field of medicine, such as
 73 orthopedic surgery or neurology, which requires specialized training
 74 and certification.

75 *Occupational medicine* means a medical specialty which focuses on
 76 the health of workers, including the ability to perform work; the
 77 physical, chemical, biological, and social environments of the
 78 workplace; and the health outcomes of environmental exposures.
 79 Practitioners of occupational medicine address the promotion of

80 health in the work place and the prevention and management of
 81 occupational and environmental injury, illness, and disability.

82 ~~[[(7)]]~~ *Police Disability Arbitration Board* or *Police Board* means the
 83 3 persons designated under subsection (m)(1) to review an appeal of a
 84 decision by the Chief Administrative Officer affecting a member of
 85 the Police Bargaining Unit's right to disability benefits.

86 ~~[[(8)]]~~ *Residual functional capacity* means what the individual can
 87 still do, despite the individual's impairment. The County must give
 88 the term residual functional capacity the same meaning as the term is
 89 given by the U.S. Social Security Administration.

90 ~~[[(9)]]~~ *Substantial gainful activity* means ~~[[the ability to perform a~~
 91 ~~substantial level of paid work that exists in significant numbers in the~~
 92 ~~national economy]]~~ a level of productive work that requires
 93 significant physical or mental duties, or a combination of both,
 94 performed for pay or profit on a full-time or part-time basis. An
 95 individual is able to perform a substantial level of work if the
 96 individual is able to earn more than the U.S. Social Security
 97 Administration's current monthly earnings limit ~~[[that applies to the~~
 98 ~~individual's impairment]]~~ for a disabled person. The County must
 99 give the term substantial gainful activity the same meaning as the term
 100 is given by the U.S. Social Security Administration.

101 (c) *Selection of the Disability Review Panel.*

102 (1) The Chief Administrative Officer must appoint ~~[[the 3]]~~ 4
 103 members of the Disability Review Panel from a list of at least
 104 10 impartial, unbiased medical doctors willing and able to serve
 105 ~~[[agreed upon by the certified representatives and the County]]~~
 106 provided by one or more impartial medical organizations

107 retained by the Chief Administrative Officer. If the list of
 108 doctors provided by the impartial medical organization is not
 109 agreed to by the certified representatives and the County, the
 110 certified representatives [[may collectively]] must strike 3
 111 names from the list and the County [[may]] must strike 3 names
 112 from the list by alternating strikes. The Chief Administrative
 113 Officer must appoint a member from the remaining 4 names on
 114 the list.

115 (2) The Chief Administrative Officer must [[ensure that no 2
 116 members of the Panel practice in the same medical specialty]]
 117 appoint members who are either:

118 (A) certified by the American Board of Preventive Medicine
 119 (or a successor organization) as a specialist in
 120 occupational medicine; or

121 (B) certified in a different medical specialty and have at least
 122 10 years of experience practicing occupational medicine.

123 (3) (A) The Chief Administrative Officer must appoint members
 124 under subsection (c)(1) for staggered 3-year terms. To
 125 implement the staggered terms, the Chief Administrative
 126 Officer must appoint the first member to a 3-year term,
 127 the second member to a one-year term, and the third and
 128 fourth [[member]] members to a 2-year term. After these
 129 initial appointments, the Chief Administrative Officer
 130 must appoint all members to 3-year terms, except for any
 131 member appointed under subsection (c)(6) to fill a
 132 vacancy [[created by a Panel member’s death, disability,
 133 resignation, non-performance of duty or other cause]].

- 134 (B) After the Chief Administrative Officer appoints or
135 reappoints a Panel member, the Chief Administrative
136 Officer must promptly ~~[[provide]]~~ send each certified
137 representative ~~[[with]]~~ a copy of the document
138 confirming the appointment.
- 139 (4) ~~[[At the expiration of]]~~ When a Panel member's term expires,
140 the Panel member ~~[[is eligible for reappointment]]~~ may be
141 reappointed to a new 3-year term unless, at any time within 30
142 days to 60 days prior to the expiration of the term, a certified
143 representative notifies the County and the other certified
144 representatives or the County notifies the certified
145 representatives that it objects to the reappointment of the Panel
146 member. If there is no objection, the Panel member is eligible
147 to serve an additional term or terms.
- 148 (5) ~~[[In the event]]~~ If a Panel member declines to be reappointed to
149 the Panel, ~~[[a new medical doctor must be appointed by]]~~ the
150 Chief Administrative Officer must appoint a new Panel member
151 from a list of ~~[[5]]~~ at least 10 medical doctors ~~[[agreed upon by~~
152 ~~the certified representatives and the County]]~~ as provided for in
153 subsection (c)(1).
- 154 (6) If a vacancy on the Panel is created by a Panel member's death,
155 disability, resignation, non-performance of duty, or other cause,
156 the Chief Administrative Officer must appoint a medical doctor
157 to complete the Panel member's term~~[[. The Chief~~
158 ~~Administrative Officer must appoint the Panel member]]~~ from a
159 list of ~~[[5]]~~ at least 10 medical doctors ~~[[agreed upon by the~~

160 certified representatives and the County]] as provided for in
161 subsection (c)(1).

162 (7) The County must pay the impartial medical organization
163 retained by the County and each Panel member reasonable
164 compensation, as determined by the Chief Administrative
165 Officer, for [[his or her]] services rendered.

166 (d) *Disability retirement procedures.*

167 * * *

168 (6) The Panel must meet [[as a body]] in person and review and
169 consider all evidence submitted to it no later than 60
170 [[calendar]] days after the application is filed. A majority vote
171 [[on a decision]] of 3 members is required to take any action
172 [[in accordance with the provisions of]] under this Section [will
173 prevail. [[If only 2 Panel members participate in the decision-
174 making process, the vote on a decision to take any action must
175 be unanimous. No action may be taken upon a decision made
176 by one Panel member]].

177 * * *

178 (8) (A) [[If]] Before making its recommendation, the Panel [[is
179 unable to make a determination based on the evidence
180 presented to it, the Panel may]] must:

181 (i) direct the applicant to undergo [[a]] an
182 independent medical examination (including all
183 relevant medical tests) by a medical doctor who is
184 not a member of the Disability Review Panel,
185 unless the Panel finds that a medical examination

- 186 is unnecessary because of the nature and severity
 187 of the injury or illness; and
- 188 (ii) if required for the Panel to make a
 189 recommendation [[under Section 33-43(i)(2)]] as
 190 to residual functional capacity or substantial
 191 gainful capacity, request an independent vocational
 192 assessment.
- 193 (B) The County must pay the cost of the examination and
 194 assessment. The results of the examination, including
 195 findings, conclusions, medical opinions and diagnoses,
 196 must be given to the applicant or the applicant's
 197 representative immediately after the County or the Panel
 198 receives it.
- 199 (C) The Panel must issue its written recommendation within
 200 30 [[calendar]] days after the Panel receives the later of:
 201 (i) the full report from the medical doctor who
 202 conducted the examination; or
 203 (ii) the full report of the results of the independent
 204 vocational assessment.
- 205 * * *
- 206 (11) For a Group F or Group G member, the amount of any lump
 207 sum retroactive disability retirement benefit must be reduced by
 208 the total amount of any temporary total disability, temporary
 209 partial disability, or permanent partial disability payments that
 210 the County [[made]] paid to the employee under the Workers
 211 Compensation laws after [[the effective date of]] the disability
 212 retirement took effect.

213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239

* * *

(f) *Service-connected disability retirement.*

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

* * *

(E) For an accidental injury that does not cause mental impairment, the member:

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

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

(F) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the member is unable to report because of incapacitating injuries.

(G) For an accidental injury that occurs after July 1, 2009, the member must apply for disability benefits:

(i) within one year after separation from County service or before July 1, 2010, whichever is later; and

(ii) if the applicant is a member of Group F, within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later, unless the member is in a chronic incapacity duty assignment.

240 (2) A Group F member who otherwise satisfies the requirements of
 241 subsection (f)(1) must not be denied a disability retirement
 242 because the member is able to perform a chronic incapacity
 243 duty assignment.

244 ~~[(2)]~~ (3) * * *

245 ~~[(3)]~~ (4) * * *

246 ~~[(4)]~~ (5) * * *

247 (g) *Medical reexamination of disability retiree.* The Chief Administrative
 248 Officer ~~[[may]]~~ must require a member receiving disability pension
 249 payments to undergo either a yearly physical examination or to submit
 250 a medical doctor's certificate verifying continuation of the disability
 251 during the ~~[[5-year period following]]~~ 5 years after retirement, and
 252 once in every ~~[[3-year period]]~~ 3 years thereafter, until age 55 ~~[[if]]~~
 253 for a member of group B, E, F, or G, or age 60 ~~[[if]]~~ for a member of
 254 group A or H, unless the Chief Administrative Officer finds that a
 255 physical examination is unnecessary because of the nature and
 256 severity of the injury or illness. The Chief Administrative Officer
 257 must review the findings of the physical examination and take
 258 appropriate action, which may include submitting the results of the
 259 evaluation to the Disability Review Panel for a redetermination ~~[[as~~
 260 ~~to]]~~ whether the individual qualifies for disability benefits in
 261 accordance with subsection (d). If a member ~~[[refuses to]]~~ does not
 262 submit to the examination, the Chief Administrative Officer may
 263 reduce or discontinue any disability pension payments which the
 264 member receives. The Disability Review Panel may require the
 265 member to submit to an additional independent medical examination.

266 A member may appeal a decision to reduce or discontinue disability
 267 pension payments to the appropriate Disability Arbitration Board.

268 * * *

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

270 * * *

271 (2) (A) The Chief Administrative Officer may reduce the amount
 272 of the disability pension payments of a member who:

- 273 (i) has not reached the normal retirement date; and
- 274 (ii) is engaged in, or is able to engage in, an
 275 occupation that pays more than the difference
 276 between [[the amount of]] the disability pension
 277 payments and the current maximum earnings of
 278 the occupational classification from which the
 279 [[employee]] member was disabled.

280 (B) [[For]] If a member other than a Group F member
 281 [[who]] meets the criteria in subparagraph (A), the Chief
 282 Administrative Officer may reduce the member's
 283 disability [[person]] pension payments until [[the amount
 284 of]] the disability pension payments plus the amount that
 285 the employee earned or is able to earn equals the
 286 maximum earnings of the occupational class from which
 287 the member was disabled.

288 (C) [[For]] If a Group F member [[who]] receives a non-
 289 service connected disability pension and [[who]] meets
 290 the criteria in subparagraph (A), the Chief Administrative
 291 Officer may reduce the member's disability pension
 292 payments until [[the amount of]] the disability pension

293 payments plus the amount the employee earned or is able
 294 to earn equals 120 percent of the maximum earnings of
 295 the occupational class from which the employee was
 296 disabled.

297 (D) If a member receives a disability retirement pension,
 298 except for a Social Security disability benefit, from
 299 another employer for the same impairment, the Chief
 300 Administrative Officer must reduce the member's
 301 disability pension payments by the amount of the other
 302 disability retirement pension.

303 * * *

304 (6) For [[those employees]] any employee, except as provided
 305 below, who enrolled or re-enrolled in the retirement system on
 306 or after July 1, 1978, the member's disability retirement benefit
 307 for any month must be integrated with the primary disability
 308 benefits received from Social Security, and the total benefits
 309 from both sources must not exceed 100% of the member's
 310 average final earnings, [[of the member; provided, however,
 311 that this limitation]] This limit does not apply to [[the]] cost-of-
 312 living adjustments [[issued pursuant to]] made under Section
 313 33-44(c). The benefit for a [[Group F]] member who received a
 314 disability retirement benefit on or after [[July 1, 2002]] January
 315 1, 2000, must not be integrated with the primary disability
 316 benefits received from Social Security, and the total benefits
 317 from both sources may exceed 100% of the member's average
 318 final earning.

319 (7) The Chief Administrative Officer must not reduce the service-
 320 connected disability pension payments of a Group F or G
 321 member by earned income received from [[sources]] any source
 322 [[other than]] except:

- 323 (A) County Government employment; or
- 324 (B) for a Group F member, employment as a sworn law
 325 enforcement officer with full powers of arrest and
 326 authority to carry a firearm in connection with that
 327 employment.

328 * * *

329 **33-51. Reports and audits.**

330 (a) *Annual and quarterly reports.*

331 * * *

332 (5) By March 31 of each year, the Chief Administrative Officer
 333 must submit to the Council and the Executive an annual report
 334 on the disability retirement system for the preceding calendar
 335 year that includes the number of disability retirement
 336 applications, awards, appeals, and re-examinations of retirees
 337 for each retirement group. The Council may request the Chief
 338 Administrative Officer to provide additional information in the
 339 annual report or in additional reports. The Chief Administrative
 340 Officer must provide the additional information.

341 * * *

342 **33-128. Definitions.**

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

344 ~~[(a)]~~ *Administrator* means either the Chief Administrative Officer or the
 345 entity that contracts with the County to administer this disability plan.

346 ~~[(b)]~~ *Applicant* means an employee who has filed an application for
 347 benefits under Division 2 of Article VIII, or for whom the Chief
 348 Administrative Officer has filed an application.

349 ~~[(c)]~~ *Certified representative* means an employee organization certified
 350 under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

351 ~~[(d)]~~ *Continued non-service-connected disability* means a condition of the
 352 employee that:

- 353 (1) continues after ~~[(the close of)]~~ the period of initial non-service-
 354 connected disability closes;
- 355 (2) makes the employee unable to engage in any available
 356 employment commensurate with the employee's training or
 357 retraining, education, and experience ~~[(of the employee)]~~; and
- 358 (3) is likely to be permanent.

359 ~~[(e)]~~ *Continued service-connected disability for a non-public safety*
 360 *employee* means a condition of a non-public safety employee that:

- 361 (1) continues after ~~[(the close of)]~~ the period of initial service-
 362 connected disability closes;
- 363 (2) makes the employee unable to engage in available employment
 364 commensurate with the employee's training or retraining,
 365 education, and experience ~~[(of the employee)]~~; and
- 366 (3) is likely to be permanent.

367 ~~[(f)]~~ *Continued service-connected disability for a public safety employee*
 368 means a condition of a public safety employee that:

- 369 (1) continues after ~~[(the close of)]~~ the period of initial service-
 370 connected disability closes;

- 371 (2) makes the employee unable to:
- 372 (A) engage in available employment commensurate with the
- 373 employee's training or retraining, education, and
- 374 experience ~~[[of the employee]]~~; and
- 375 (B) earn substantially similar final earnings; and
- 376 (3) is likely to be permanent.

377 ~~[[g)]]~~ *County* means Montgomery County Government and, when

378 applicable, any agency that adopts this plan under an adoption agreement

379 approved by the Chief Administrative Officer.

380 ~~[[h)]]~~ *Disability Arbitration Board or Board* means the 3 persons designated

381 under Section ~~[[33-43A(m)]]~~ 33-43(m) to review an appeal of the final

382 decision of the Administrator regarding an application for disability benefits.

383 ~~[[i)]]~~ *Disability Review Panel or Panel* means the ~~[[3]]~~ 4 medical doctors

384 appointed as Panel members by the Chief Administrative Officer under

385 ~~[[Section 33-43A(c)]]~~ Section 33-43(c).

386 ~~[[j)]]~~ *Employee* means ~~[[an]]~~ a County employee ~~[[of the County]]~~ who:

- 387 (1) participates in the retirement savings plan under this Article;
- 388 and
- 389 (2) is regularly scheduled to work 20 hours or more per week.

390 ~~[[k)]]~~ *Final earnings* means the annual average of the regular salary of an

391 employee less any shift pay differential for the 18-month period immediately

392 before the disability or any period of 18 consecutive months, whichever is

393 greater.

394 ~~[[l)]]~~ *Initial non-service-connected disability* means a condition of an

395 employee that:

- 396 (1) is the natural and proximate result of an accident, illness, or
- 397 injury;

- 398 (2) is not due to the employee's willful misconduct or willful
 399 negligence ~~[[of the employee]]~~;
- 400 (3) makes the employee incapable of performing the job that the
 401 employee performed immediately before the accident, illness,
 402 or injury; and
- 403 (4) is not an initial service-connected disability.

404 ~~[[m)]]~~ *Initial service-connected disability* means a condition of an
 405 employee that:

- 406 (1) is the natural and proximate result of an accident, illness, or
 407 injury occurring, an occupational disease incurred, or a
 408 condition aggravated while in the performance of duty as an
 409 employee;
- 410 (2) is not due to the employee's willful misconduct or willful
 411 negligence ~~[[of the employee]]~~; and
- 412 (3) makes the employee incapable of performing the job that the
 413 employee performed immediately before the accident, illness,
 414 or injury.

415 ~~[[n)]]~~ *Medical doctor* means a doctor of medicine or osteopathy who ~~[[has]]~~
 416 graduated from a medical school accredited by the American Medical
 417 Association and ~~[[who]]~~ is licensed to practice medicine in ~~[[the State of]]~~
 418 Maryland.

419 ~~[[o)]]~~ *Non-public safety employee* means any employee who is not a public
 420 safety employee.

421 ~~[[p)]]~~ *Plan* means the disability benefits plan established under this
 422 Division.

423 ~~[[q)]]~~ *Public safety employee* means any employee who is a:

- 424 (1) sworn, ranking officer of the [[Montgomery County]] Police
 425 Department;
- 426 (2) paid firefighter, paid fire officer, or paid rescue service
 427 employee of the [[Montgomery County Department of]] Fire
 428 and Rescue [[Services]] Service;
- 429 (3) sworn deputy sheriff;
- 430 (4) [[Montgomery County]] correctional officer; or
- 431 (5) correctional staff member, if designated as a public safety
 432 employee by the Chief Administrative Officer.

433 **33-129. Disability benefits.**

434 * * *

435 (d) *Initial service-connected disability benefits.* [[If the administrator
 436 determines that an employee has incurred an initial service-connected
 437 disability, the]] An employee [[is entitled to]] may receive disability
 438 benefits for a period of 36 consecutive months, subject to this plan, if
 439 the administrator finds that:

440 (A) the employee has incurred an initial service-connected
 441 disability; and

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

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

448 (ii) submits a claim for Workers' Compensation
 449 benefits for the accidental injury that is not
 450 dismissed as untimely.

478 medical tests, by a medical doctor who is not a member of the
479 Disability Review Panel, unless the Panel finds that a medical
480 examination is unnecessary because of the nature and severity
481 of the injury or illness. The County must pay the cost of the
482 examination. The results of the examination must be given to
483 the applicant or the applicant's representative immediately after
484 the County or the Panel receives it. The Panel must issue its
485 written recommendation within 30 days after the medical doctor
486 reports to the Panel.

487 * * *

488 **33-135. Medical examination.**

489 (a) The Administrator ~~[[may]]~~ must require any employee receiving
490 continued disability payments to undergo annual or less frequent
491 medical examinations, or to submit a medical doctor's certificate
492 verifying the continuation of the disability, unless the Administrator
493 finds that a physical examination in a specific case is unnecessary
494 because of the nature and severity of the injury or illness. The
495 Administrator must submit the findings of ~~[[the]]~~ any medical
496 examination to the Disability Review Panel. The Disability Review
497 Panel may require the employee to submit to an additional
498 independent medical examination. The Panel must consider the
499 findings of the physical examination and any other information
500 submitted by the employee or the County and recommend in writing
501 to the Administrator whether the employee still qualifies for disability
502 benefits. The Administrator must issue a final decision within 20 days
503 after receiving the Panel's recommendation. An employee may
504 appeal the Administrator's decision to reduce or discontinue disability

505 pension payments to the appropriate Disability Arbitration Board
506 under Section 33-138.

507 **Sec. 2. Transition.** A member of the Disability Review Panel when this Act
508 takes effect may continue to serve until the expiration of the Panel member's term.
509 All appointments to the Panel made after this Act takes effect, including the re-
510 appointment of a qualified existing Panel member, must be made pursuant to this
511 Act.

512 [[**Sec. 3. Partial Disability.** It is the policy of Montgomery County that
513 public safety employees should have a two-tiered disability system which includes
514 a separate service-connected disability benefit for an injury or illness that prevents
515 the employee from continuing as a public safety employee, but does not prevent
516 the employee from engaging in other substantial gainful employment. It is also the
517 policy of the County that disability benefits are a mandatory subject of collective
518 bargaining with the appropriate certified employee representative. The Executive
519 must negotiate the terms of an appropriate two-tiered disability system with the
520 certified employee representative of police officers no later than the collective
521 bargaining agreement that takes effect on July 1, 2010. If the parties are unable to
522 reach agreement on an appropriate two-tiered system, the parties must submit this
523 issue for resolution through the applicable impasse procedures under the County's
524 police collective bargaining law. The Executive must then submit the results of
525 collective bargaining over this issue to the Council for legislative action.]]

