



Committee: GO
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #SeveringSeverance

AGENDA ITEM 16C
September 29, 2020
Introduction

SUBJECT

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited
Lead Sponsor: Councilmember Friedson
Co-Sponsor: Councilmember Rice and Council President Katz

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Bill 43-20 would prohibit severance pay for a County employee unless authorized by law and prohibit severance pay for certain employees who violate the Ethics Law.

SUMMARY OF KEY DISCUSSION POINTS

- Should severance pay be regulated and disclosed.

This report contains:

| | |
|-----------------------------------|----|
| Bill 43-20 | ©1 |
| Legislative Request Report | ©4 |
| Councilmember Friedson Memorandum | ©5 |

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M E M O R A N D U M

September 24, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited

PURPOSE: Introduction – no Council votes required

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors Councilmember Rice and Council President Katz, is scheduled to be introduced on September 29, 2020. A public hearing is tentatively scheduled for October 20 at 1:30 p.m.¹

Bill 43-20 would prohibit severance pay for a County employee unless authorized by law. The general limitation in Bill 43-20 would expressly exclude:

- (1) the payout of unused leave at termination of employment;
- (2) a discontinued retirement pension authorized under Section 33-45(d); or
- (3) severance pay under Sections 33-139 and 33-140.

Bill 43-20 would also prohibit all severance pay for an employee who admits to or is found to have violated the Ethics Law in the 12 months prior to separation from County employment.

In past years, some employees received severance payments as they left County employment under an unregulated and undisclosed manner. Bill 43-20 is intended to end this process and require any severance payments to be made in an open and equitable manner. Lead Sponsor Councilmember Friedson explained his reasons for introducing Bill 43-20 at ©5.

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|-----------------------------------|-----------------|
| This packet contains: | <u>Circle #</u> |
| Bill 43-20 | 1 |
| Legislative Request Report | 4 |
| Councilmember Friedson Memorandum | 5 |

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¹#SeveringSeverance

Bill No. 43-20
Concerning: Non-merit Employees –
Merit System Employees – Severance
Pay - Limited
Revised: 9-15-20 Draft No. 1
Introduced: September 29, 2020
Expires: March 29, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Friedson
Co-Sponsors: Councilmember Rice and Council President Katz

AN ACT to:

- (1) prohibit severance pay for a County employee unless authorized by law;
- (2) prohibit severance pay for certain employees who violate the Ethics Law;
- (3) provide for certain exceptions; and
- (4) generally amend the law governing severance pay for County employees.

By amending

Montgomery County Code
Chapter 1A, Structure of County Government
Section 1A-104

Chapter 33, Personnel and Human Resources
Section 33-140

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-26

| | |
|------------------------------|--|
| 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. Sections 1A-104 and 33-140 are amended and Section 33-26 is added**
 2 **as follows:**

3 **1A-104. Heads of departments and principal offices; other positions designated**
 4 **as non-merit.**

5 * * *

6 (e) *Salaries.* The Executive must design a compensation system to attract
 7 and retain highly competent senior leaders as heads of departments and
 8 principal offices, and other non-merit employees in the Executive
 9 Branch. Each of these employees must be paid a salary within a salary
 10 schedule proposed by the Executive and approved by the Council in the
 11 Operating Budget of the Montgomery County Government. The salary
 12 schedule may contain a provision permitting the Executive to exceed the
 13 salary schedule established for a position for an individual employee,
 14 subject to Council approval, if the Executive finds that it is necessary to
 15 attract or retain a senior leader for a specific position. The Council must
 16 establish a salary schedule for non-merit positions in the Legislative
 17 Branch as part of the Operating Budget of the Montgomery County
 18 Government.

19 (f) *Severance pay.* The Executive or a Councilmember must not authorize
 20 any payment of money or paid administrative leave to a non-merit
 21 employee in the Executive Branch or in the Legislative Branch upon
 22 separation from County employment unless the payment is expressly
 23 authorized by law. The Executive or a Councilmember must not enter
 24 into an employment agreement with a non-merit employee that provides
 25 for any type of severance pay for an employee who is terminated with or
 26 without cause. This subsection must not be interpreted to prohibit:

27 (1) the payout of unused leave at termination of employment:

28 (2) a discontinued retirement pension authorized under Section 33-
29 45(d); or

30 (3) severance pay under Sections 33-139 and 33-140.

31 **33-140. Plan administration.**

32 (a) The County Executive must establish a severance pay plan in Executive
33 Regulations under method (2). The plan must:

34 (1) prohibit severance pay for an employee who admits to or is found
35 to have violated the Ethics Law in the 12 months prior to separation
36 from County employment; and

37 (2) qualify as a severance pay plan under Section 457 of the Internal
38 Revenue Code.

39 * * *

40 **33-26. Severance pay limits.**

41 The Executive must not authorize any payment of money or paid administrative
42 leave to a merit employee upon separation from County employment unless the
43 payment is expressly authorized by law. This Section must not be interpreted
44 to prohibit:

45 (a) the payout of unused leave at termination of employment;

46 (b) a discontinued retirement pension authorized under Section 33-45(d); or

47 (c) severance pay under Sections 33-139 and 33-140.

48 **Sec. 2. Transition.**

49 The amendments in Section 1 must apply to any County employee who
50 separates from County employment on or after the date this Act takes effect.

LEGISLATIVE REQUEST REPORT

Bill 43-20

Non-merit Employees – Merit System Employees – Severance Pay – Limited

| | |
|---|---|
| DESCRIPTION: | Bill 43-20 would prohibit severance pay for a County employee unless authorized by law, prohibit severance pay for an employee who violates the Ethics Law. Bill 43-20 would expressly exclude: <ol style="list-style-type: none">(1) the payout of unused leave at termination of employment;(2) a discontinued retirement pension authorized under Section 33-45(d); or(3) severance pay under Sections 33-139 and 33-140. The Bill would also prohibit severance pay for an employee who admits to or is found to have violated the Ethics Law in the 12 months prior to separation from County employment. |
| PROBLEM: | In the past, some employees have received severance pay under an unregulated and undisclosed system. |
| GOALS AND OBJECTIVES: | Improve transparency in employee compensation. |
| COORDINATION: | Human Resources, County Attorney, Retirement |
| FISCAL IMPACT: | Office of Management and Budget |
| ECONOMIC IMPACT: | OLO |
| EVALUATION: | To be determined. |
| EXPERIENCE ELSEWHERE: | To be researched. |
| SOURCE OF INFORMATION: | Robert H. Drummer, Senior Legislative Attorney |
| APPLICATION WITHIN MUNICIPALITIES: | Not applicable. |
| PENALTIES: | None. |



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

September 22, 2020

FROM: Councilmember Andrew Friedson *Andrew Friedson*
TO: Council colleagues
SUBJECT: Bill 42-20, Public Accountability and County Transparency (PACT) Act
Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited

Dear colleagues,

Our only currency in public life is public trust. The residents we're so fortunate to represent deserve and expect County officials to follow the highest ethical standards. The work of local government depends on it. On September 29, I will introduce two bills to strengthen trust, accountability, and transparency in County government by improving the County's Ethics Law, requiring the disclosure of all compensation for County leaders, and ending the practice of discretionary severance pay for public employees.

Bill 42-20, the Public Accountability and County Transparency (PACT) Act, would more effectively guard against County employees using their positions of public service for private gain. The Bill would:

- Define the sale or promotion of intellectual property such as books, videos, and artwork as other employment in County Ethics Law, requiring financial disclosure;
- Prohibit the Chief Administrative Officer from other employment;
- Prohibit a County employee who in the previous year was compensated by a company seeking to do business with the County from participating in any way in that procurement process;
- Require a County employee involved in the procurement process who before the previous year was compensated by a company seeking to do business with the County to disclose that prior relationship to the procurement supervisor;
- Require non-merit employees and elected officials to include in financial disclosures sources of fees of more than \$1,000 in other employment;
- Require the disclosure of proposed contracts for appointed non-merit positions to Council at time of appointment; and
- Require the disclosure of contracts for current non-merit employees in Council-confirmed positions.

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited, would end the practice of using taxpayer dollars to compensate public employees in an unregulated and often undisclosed fashion. The bill would prohibit discretionary severance pay for all County employees and prohibit separation pay for an employee who admits to violating or was found to have violated the Ethics Law in the year prior to separation.

I would welcome your co-sponsorship of this legislation and any questions you may have. Thank you for your consideration and commitment to government accountability and transparency.

STELLA B. WERNER OFFICE BUILDING • 100 MARYLAND AVENUE, 6TH FLOOR, ROCKVILLE, MARYLAND 20850
240-777-7828 OR 240-777-7900, TTY 240-777-7914, FAX 240-777-7989
WWW.MONTGOMERYCOUNTYMD.GOV