

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Introduction:** Bill 37-09, Contracts and Procurement – Equal Benefits

Bill 37-09, Contracts and Procurement – Equal Benefits, sponsored by Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice President Berliner, and Council President Andrews, is scheduled to be introduced on November 3. A public hearing is scheduled for December 1 at 1:30 p.m.

The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, extended equal benefits to a same sex domestic partner of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.

The Bill would require County contractors and subcontractors to provide equal benefits for a domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement. The Bill would cover benefits such as bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, and retirement benefits.

The Bill would not extend equal benefits to a domestic partner in a heterosexual relationship who chooses not to get married. The Bill would limit coverage to an employee of a contractor or subcontractor who performs work under a covered contract.

<u>This packet contains:</u>	<u>Circle #</u>
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Bill No. 37-09
Concerning: Contracts and Procurement
- Equal Benefits
Revised: October 30, 2009 Draft No. 4
Introduced: November 3, 2009
Expires: May 3, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice
President Berliner, and Council President Andrews

AN ACT to:

- (1) require County contractors and subcontractors to provide equal benefits for employees working on certain County contracts; and
- (2) generally regulate the benefits provided to employees of contractors and subcontractors on certain County contracts.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-33D, Equal Benefits

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. Section 11B-33D is added as follows:**

2 **11B-33D. Equal Benefits.**

3 (a) Definitions. In this Section, the following words have the meanings
4 indicated:

5 Benefit means a plan, program, or policy provided or offered by a
6 contractor or subcontractor to some or all employees as part of the
7 employer's total compensation package. This may include:

- 8 (1) bereavement leave;
9 (2) family medical leave;
10 (3) sick leave;
11 (4) health benefits;
12 (5) dental benefits;
13 (6) disability insurance;
14 (7) life insurance; and
15 (8) retirement benefits.

16 Cash equivalent means the actual cost to the employer for insurance
17 benefits to the spouse of a married employee, which are not provided to
18 a domestic partner, if:

- 19 (1) the benefit would be provided to a domestic partner of an
20 employee if that person were a spouse of the employee; and

21 (2) the employer is unable to provide the benefit to a domestic
22 partner of an employee after making a reasonable effort to do so.

23 Contract means a contract for services subject to Section 11B-33A or a
24 contract for construction services subject to Section 11B-33C.

25 Domestic partnership means:

26 (1) a relationship between two individuals of the same sex that has
27 been licensed as a civil union or marriage in a jurisdiction where
28 such a civil union or marriage is permitted; or

29 (2) an unlicensed relationship between two individuals of the same
30 sex who:

31 (A) share a close personal relationship and are responsible for
32 each other's welfare;

33 (B) have shared the same legal residence for at least 12
34 months;

35 (C) are at least 18 years old;

36 (D) have voluntarily consented to the relationship, without
37 fraud or duress;

38 (E) are not married to, or in a domestic partnership with, any
39 other person;

- 40 (F) are not related by blood or affinity in a way that would
 41 disqualify them from marriage under State law if the
 42 employee and partner were opposite sexes;
- 43 (G) are each legally competent to contract;
- 44 (H) share financial and legal obligations; and
- 45 (I) legally register the domestic partnership if a domestic
 46 partnership registration system exists in the jurisdiction
 47 where the employee resides.

48 Employee means a person who performs work on a contract in an
 49 employment relationship with the contractor or a subcontractor.

50 (b) Equal benefits requirement. A contractor or subcontractor must provide
 51 the same benefits to an employee with a domestic partner as provided to
 52 an employee with a spouse. If a benefit cannot reasonably be provided
 53 to a domestic partner, the contractor or subcontractor must pay the
 54 employee the cash equivalent.

55 (c) Contract requirements. Each contract covered by this Section must:

- 56 (1) require the contractor and all subcontractors to comply with this
 57 Section; and
- 58 (2) specify that an aggrieved employee, as a third-party beneficiary,
 59 may by civil action recover the cash equivalent of any benefit
 60 denied in violation of this Section or other compensable damages.

61 (d) Enforcement.

62 (1) The Director or a designee may perform random or regular audits
63 and investigate any complaint of a violation of this Section. If
64 the Director determines that this Section has been violated, the
65 Director must issue a written decision, including appropriate
66 sanctions, and may withhold from payment due the contractor,
67 pending a final decision, an amount sufficient to:

68 (i) pay each employee of the contractor or
69 subcontractor the cash equivalent of the benefits
70 denied; and

71 (ii) satisfy a liability of a contractor for liquidated
72 damages as provide in this Section.

73 (2) A contractor or subcontractor must not discharge or otherwise
74 retaliate against an employee for asserting any right under this
75 Section or for filing a complaint of a violation.

76 (3) The sanctions of Section 11B-33(b) which apply to
77 noncompliance with nondiscrimination requirements apply with
78 equal force and scope to noncompliance with this Section.

79 (4) Each contract subject to this Section may specify the payment of
80 liquidated damages to the County by the contractor for any
81 noncompliance with this Section.

LEGISLATIVE REQUEST REPORT

Bill 37-09, Contracts and Procurement – Equal Benefits

DESCRIPTION: The Bill would require County contractors and subcontractors to provide equal benefits for a domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement.

PROBLEM: The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, provided equal benefits for a same sex domestic partner of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.

GOALS AND OBJECTIVES: To prevent unequal treatment of employees of County contractors based solely on whether an employee's partner is legally recognized as a spouse.

COORDINATION: Department of General Services; County Attorney's Office

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable

PENALTIES: Contract remedies.