

Bill No. 37-09
Concerning: Contracts and Procurement
- Equal Benefits
Revised: January 27, 2010 Draft No. 5
Introduced: November 3, 2009
Enacted: February 2, 2010
Executive: February 16, 2010
Effective: January 1, 2011
Sunset Date: None
Ch. 1, Laws of Mont. Co. 2010

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.

82 (5) Each contractor is jointly and severally liable for noncompliance
83 with this Section by a subcontractor.

84 (6) A contractor may appeal a written decision of the Director that
85 the contractor violated this Section to the Chief Administrative
86 Officer within 10 working days after receiving a copy of the
87 decision. The Chief Administrative Officer must designate a
88 hearing officer to conduct a hearing under Chapter 2A after
89 receiving a timely appeal. If the contractor does not appeal a
90 written decision within 10 working days after receipt, the
91 decision of the Director becomes final and binding.

92 (e) Report. The Chief Administrative Officer must report annually to the
93 Council and Executive on the operation of and compliance with this
94 Section.

95 **Sec. 2. Effective Date.** This Act applies to any contract awarded on or after
96 January 1, 2011, but does not apply to any renewal or extension of a contract that was
97 originally awarded before January 1, 2011.

98 *Approved:*

99 *Nancy Floreen* *February 3, 2010*
Nancy Floreen, President, County Council Date

100 *Approved:*

101 *Isiah Leggett* *Feb 16, 2010*
Isiah Leggett, County Executive Date

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

103 *Linda M. Lauer* *Feb. 16, 2010*
Linda M. Lauer, Clerk of the Council Date