

MEMORANDUM

October 24, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 51-14, Discriminatory Employment Practices – Retaliation for Wage Disclosure – Prohibited

Bill 51-14, Discriminatory Employment Practices – Retaliation for Wage Disclosure - Prohibited, sponsored by Council Vice President Leventhal and Councilmember Navarro, is scheduled to be introduced on October 28, 2014. A public hearing is tentatively scheduled for December 2 at 1:30 p.m.

Background

Women continue to earn less pay than men for similar work in the workplace. Although, equal pay for equal work is mandated by Federal, State, and County law, an employee's ability to assert a right to equal pay may be impeded by lack of information. In certain circumstances, an employee may suffer retaliation by an employer for discussing the employee's salary or the salary of another employee. Bill 51-14 would prohibit an employer from retaliating against an employee for disclosing the wages of the employee or another employee. It would also establish certain exceptions to the prohibition against retaliation for wage disclosures.

This packet contains:

Bill 51-14

Legislative Request Report

Circle #

1

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Bill No. 51-14
Concerning: Discriminatory Employment Practices - Retaliation for Wage Disclosure - Prohibited
Revised: October 21, 2014 Draft No. 2
Introduced: October 28, 2014
Expires: April 28, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Vice President Leventhal and Councilmember Navarro

AN ACT to:

- (1) prohibit an employer from retaliating against an employee for certain disclosures of wages of the employee or another employee;
- (2) establishing certain exceptions to the prohibition against retaliation for wage disclosures; and
- (3) generally amending the law concerning discriminatory employment practices.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-19

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 27-19 is amended as follows:**

2 **27-19. Discriminatory employment practices.**

3 (a) A person must not because of the race, color, religious creed, ancestry,
4 national origin, age, sex, marital status, sexual orientation, gender
5 identity, family responsibilities, or genetic status of any individual or
6 disability of a qualified individual, or because of any reason that would
7 not have been asserted but for the race, color, religious creed, ancestry,
8 national origin, age, sex, marital status, disability, sexual orientation,
9 gender identity, family responsibilities, or genetic status:

10 (1) For an employer:

11 (A) fail or refuse to hire, fail to accept the services of,
12 discharge any individual, or otherwise discriminate against
13 any individual with respect to compensation, terms,
14 conditions, or privileges of employment; or

15 (B) limit, segregate, or classify employees in any way that
16 would deprive or tend to affect adversely any individual's
17 employment opportunities or status as an employee;

18 (2) For an employment agency: fail or refuse to refer for
19 employment, assign job classifications to, classify or refer for
20 employment, or otherwise discriminate against, any individual;

21 (3) For a labor organization:

22 (A) exclude or expel from its membership, or otherwise
23 discriminate against any individual;

24 (B) limit, segregate, or classify its membership or classify, or
25 fail or refuse to refer for employment, any individual in
26 any way that would deprive or tend to deprive any
27 individual of equal employment opportunities, or affect

28 adversely the individual's employment opportunities or
 29 status as an employee or as an applicant for employment;
 30 or

31 (C) cause or attempt to cause an employer to discriminate
 32 against an individual in violation of this section; or

33 (4) For an employer, labor organization, or joint labor-management
 34 committee controlling apprenticeship or other training programs:
 35 discriminate against any individual in admission to, or
 36 employment in, any program established to provide
 37 apprenticeship or other training.

38 (b) The term "discriminate" in subsection (a) includes excluding, or
 39 otherwise denying, equal job opportunity or benefits to, a qualified
 40 individual because of the known disability of an individual with whom
 41 the qualified individual is known to have a relationship or association.

42 (c) A person must not:

43 (1) retaliate against any person for:

44 (A) lawfully opposing any discriminatory practice prohibited
 45 under this division; or

46 (B) filing a complaint, testifying, assisting, or participating in
 47 any manner in an investigation, proceeding, or hearing
 48 under this division;

49 (2) assist in, compel, or coerce any discriminatory practice prohibited
 50 under this division;

51 (3) obstruct or prevent enforcement or compliance with this division;
 52 or

53 (4) attempt directly or indirectly to commit any discriminatory
 54 practice prohibited under this division.

- 55 (d) (1) Except as provided in paragraph 2, a person must not print,
56 publish, or cause to be printed or published, any notice or
57 advertisement indicating any preference, limitation, or
58 specification based on race, color, religious creed, ancestry,
59 national origin, age, sex, marital status, disability, sexual
60 orientation, gender identity, family responsibilities, or genetic
61 status relating to:
- 62 (A) employment by an employer;
 - 63 (B) membership in or any classification or referral for
64 employment by a labor organization; or
 - 65 (C) any classification or referral for employment by an
66 employment agency.
- 67 (2) This subsection does not prohibit a notice or advertisement from
68 indicating a preference, limitation, or specification that is a bona
69 fide occupational qualification for employment reasonably
70 necessary to the normal operation of the particular business or
71 enterprise.
- 72 (e) Notwithstanding any other provision of this division, it is not an
73 unlawful employment practice:
- 74 (1) for an employer to hire and employ employees, for an
75 employment agency to classify or refer for employment any
76 individual, for a labor organization to classify its membership or
77 to classify or refer for employment any individual, or for an
78 employer, labor organization or joint labor-management
79 committee controlling apprenticeship or other training or
80 retraining programs, to admit or employ any individual in any
81 program, on the basis of race, color, religious creed, age, sex,

82 marital status, national origin, ancestry, disability, sexual
 83 orientation, gender identity, family responsibilities, or genetic
 84 status based on a bona fide occupational qualification reasonably
 85 necessary to the normal operation of that particular business or
 86 enterprise;

87 (2) for a religious corporation, association, or society to hire and
 88 employ employees of a particular religion; or

89 (3) for an employer to deny employment on the basis of religious
 90 creed if the observance, practice, or belief cannot be reasonably
 91 accommodated by an employer without causing undue hardship
 92 on the conduct of the employer's business.

93 (f) Notwithstanding any other provision of this division, it is not unlawful
 94 for any employer to observe the terms of a bona fide seniority system or
 95 any bona fide employee benefit plan, such as a retirement, pension, or
 96 insurance plan, that is not a subterfuge to evade the provisions and
 97 purposes of this division, except that an employee benefit plan must not
 98 excuse an employer's failure to hire any qualified person.

99 (g) (1) [Reserved] Except as provided in paragraph (2), an employer
 100 must not discharge or in any other manner discriminate or
 101 retaliate against an employee because the employee:

102 (A) has inquired about, discussed, or disclosed the wages of
 103 the employee or another employee; or

104 (B) asserts any right under this subsection.

105 (2) The prohibition against retaliation for wage disclosure under
 106 paragraph (1) does not apply to an employee who has access to
 107 wage information of other employees or applicants as part of
 108 the employee's essential job functions and discloses the wages

109 of other employees or applicants to individuals who do not
 110 otherwise have access to the information, unless the disclosure
 111 is in response to:

- 112 (A) a formal complaint or charge;
- 113 (B) in furtherance of an investigation, proceeding, hearing, or
 114 action, including an investigation conducted by the
 115 contractor; or
- 116 (C) is consistent with the contractor's legal duty to furnish
 117 information.

118 (h) Notwithstanding any other provision of this division, a physician or
 119 other licensed medical professional may use genetic information about,
 120 and consider the genetic status of, an employee to evaluate whether a
 121 disease, medical condition, or disability that is currently manifest is
 122 preventing the employee from performing the essential functions of the
 123 position if:

- 124 (1) the genetic information is provided to the employee in writing as
 125 soon as the information is available;
- 126 (2) the genetic information is not disclosed to any other person
 127 (including the employer) without the employee's voluntary,
 128 written consent;
- 129 (3) the genetic information is maintained as a medical record
 130 separate from the employee's employment records; and
- 131 (4) no other law prohibits:
 - 132 (A) the medical professional from collecting or using the
 133 genetic information, or
 - 134 (B) the employer from considering the disease or disability, or
 135 the employee's genetic status.

- 136 (i) This division does not prohibit genetic monitoring of biological effects
137 of toxic substances in the workplace if:
- 138 (1) the employee has provided prior voluntary, informed consent in
139 writing to participate in the monitoring;
 - 140 (2) the employee receives the results of the monitoring, including
141 both aggregate information and any information regarding the
142 specific employee, as soon as results are available;
 - 143 (3) the monitoring complies with all other laws, such as regulations
144 protecting human subjects in research; and
 - 145 (4) the employer (other than a licensed medical professional involved
146 in the genetic monitoring) receives results of the monitoring only
147 in aggregate terms that do not disclose the identity of any specific
148 employee.
- 149 (j) An employer must not require an employee to obtain or reveal any
150 genetic information that the employer is prohibited from considering
151 under this division.
- 152 (k) An employer may require an employee to adhere to reasonable
153 workplace appearance, grooming, and dress standards that are
154 nondiscriminatory and not precluded by any provision of state or federal
155 law. However, an employer must allow an employee to appear, groom,
156 and dress consistent with the employer's gender identity.

157 *Approved:*

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Craig L. Rice, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 51-14

Discriminatory Employment Practices – Retaliation for Wage Disclosure - Prohibited

- DESCRIPTION:** Bill 51-14 would prohibit an employer from retaliating against an employee for certain disclosures of wages of the employee or another employee. It would also establish certain exceptions to the prohibition against retaliation for wage disclosures.
- PROBLEM:** Women continue to earn less pay than men for similar work. Although, equal pay for equal work is mandated by Federal, State, and County law, an employee's ability to assert a right to equal pay may be impeded by lack of information. In certain circumstances, an employee may suffer retaliation by an employer for discussing the employee's salary or the salary of another employee.
- GOALS AND OBJECTIVES:** The goal of this Bill is to promote equal pay for equal work.
- COORDINATION:** County Attorney, Human Rights 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, Senior Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Compensatory damages and equitable relief.