

Bill No. 17-16
Concerning: Contracts and
Procurement – Equal Benefits for
Domestic Partner - Repeal
Revised: April 19, 2016 Draft No. 2
Introduced: April 19, 2016
Enacted: June 28, 2016
Executive: July 7, 2016
Effective: October 6, 2016
Sunset Date: None
Ch. 22, Laws of Mont. Co. 2016

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Leventhal

AN ACT to:

- (1) repeal the law requiring the County contractors to provide domestic partner benefits for certain employees; and
- (2) generally amend the procurement law regarding benefits for domestic partners.

By amending

Montgomery County Code
Chapter ~~[[33, Personnel and Human Resources]]~~ 11B, Contracts and Procurement
Sections ~~[[33-22]]~~ 11B-33D

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 amended as follows:**

2 **11B-33D. [Equal Benefits] Reserved.**

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
18 to 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
 51 provide the same benefits to an employee with a domestic partner as
 52 provided to an employee with a spouse. If a benefit cannot reasonably

53 be provided to a domestic partner, the contractor or subcontractor must
54 pay the employee the cash equivalent.]

55 [(c) *Contract requirement.* 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
61 damages.]

62 [(d) *Enforcement.*

- 63 (1) The Director or a designee may perform random or regular audits
64 and investigate any complaint of a violation of this Section. If
65 the Director determines that this Section has been violated, the
66 Director must issue a written decision, including appropriate
67 sanctions, and may withhold from payment due the contractor,
68 pending a final decision, an amount sufficient to:
69 (i) pay each employee of the contractor or subcontractor the
70 cash equivalent of the benefits denied; and
71 (ii) satisfy a liability of a contractor for liquidated damages as
72 provided 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. Transition.**

96 The amendments to Section 11B-33D made in Section 1 apply to any contract
 97 awarded after the date this Act takes effect.

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100 *Approved:*

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Nancy Floreen *June 29, 2016*

Nancy Floreen, President, County Council Date

103 *Approved:*

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Isiah Leggett *July 7, 2016*

Isiah Leggett, County Executive Date

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

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Linda M. Lauer *July 8, 2016*

Linda M. Lauer, Clerk of the Council Date

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