


**MEMORANDUM**

September 27, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount

Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount, sponsored by Councilmember Elrich, is scheduled to be introduced on October 1. A public hearing is tentatively scheduled for October 24 at 7:30 p.m.

Bill 27-13 would:

- require certain private sector employers in the County to pay a minimum wage to employees working in the County;
- provide a credit for an employer who provides health insurance to employees working in the County;
- provide enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award relief for violations; and
- generally regulate the minimum wage paid to a private sector employee working in the County.

**Background**

Maryland's minimum wage is only \$7.25 per hour, or \$15,000 a year for a full-time, year round worker, and leaves a full-time earner and their families below the federal poverty line. Nineteen states have raised their minimum wages above Maryland's rate, including Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Montana, New Mexico, Nevada, Ohio, Oregon, Rhode Island, Vermont, and Washington, as well as the District of Columbia.

In addition, the minimum standard of living in Montgomery County is higher than the minimum standard of living in many other counties in Maryland. Poverty level wages increases the need for the County to spend public money for the relief of these low wage earners and their families.

Bill 27-13 would establish a County minimum wage for private sector employees working in the County unless the State or federal minimum wage is higher. The County minimum wage would be phased in over several years. The rate would be \$8.25 per hour on July 1, 2014, \$9.75 per hour on July 1, 2015, and \$12.00 per hour on July 1, 2016. During the phase-in period between July 1, 2014 and July 1, 2016, an employer would be able to pay the prior year rate for an employee's first 90 days on the job. Beginning on July 1, 2017, the \$12.00 rate would be raised by any increase in the Consumer Price Index on an annual basis. The County minimum wage would not apply to a worker who is not covered by the State minimum wage, a tipped employee, or a worker subject to an opportunity wage under the State or federal law.

Bill 27-13 would also encourage employers to provide health insurance by giving an employer a credit for the cost of the employer's share of the health insurance premium per employee. The County Office of Human Rights would be responsible for enforcement of the law. A worker would be able to file a complaint with the Office of Human Rights and obtain an adjudicatory hearing before the Human Rights Commission.

### **Legal Authority**

Montgomery County can pass its own minimum wage law even though the State of Maryland has a minimum wage law. In *City of Baltimore v. Sitnick*, 254 Md. 303 (1969), the Maryland Court of Appeals upheld a city ordinance establishing a minimum wage standard that was higher than the State standard. In that case, the plaintiffs argued that State law had preempted the field of minimum wage. In rejecting that argument, the Court held that the City of Baltimore could pass its own minimum wage law based on the city's exercise of concurrent power because the city law did not conflict with the State law.

This packet contains:

Bill 27-13

Legislative Request Report

Circle #

1

8

Bill No. 27-13  
Concerning: Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount  
Revised: September 17, 2013 Draft No. 5  
Introduced: October 1, 2013  
Expires: April 1, 2015  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: July 1, 2014  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Elrich

**AN ACT** to:

- (1) require certain employers in the County to pay a minimum wage to certain employees working in the County;
- (2) provide a credit for certain employers who provide health insurance to employees working in the County;
- (3) provide enforcement by the Office of Human Rights and the Human Rights Commission;
- (4) authorize the Human Rights Commission to award certain relief; and
- (5) generally regulate the minimum wage paid to an employee working in the County for certain employers.

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Sections 27-7 and 27-8

By adding

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Article XI, Minimum Wage

<b>Boldface</b>	<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:*



28 (C) set the matter for a hearing by a hearing examiner or the  
29 board itself, and consider and decide the complaint in the  
30 same manner as if the Director had found reasonable  
31 grounds to believe that a violation of this Article or  
32 [Article] Articles X or XI occurred.

33 (3) If the Director determines that there are reasonable grounds to  
34 believe a violation occurred, the Director must attempt to  
35 conciliate the matter under subsection (g).

36 \* \* \*

37 **27-8. Penalties and relief.**

38 (a) *Damages and other relief for complainant.* After finding a violation  
39 of this Article or [Article] Articles X or XI, the case review board may  
40 order the payment of damages (other than punitive damages) and any  
41 other relief that the law and the facts warrant, such as:

42 \* \* \*

43 (2) equitable relief to prevent the discrimination or the violation of  
44 [Article] Articles X or XI and otherwise effectuate the purposes  
45 of this Chapter;

46 \* \* \*

47 (4) any other relief that furthers the purposes of this Article or  
48 [Article] Articles X or XI or is necessary to eliminate the effects  
49 of any discrimination prohibited under this Article.

50 \* \* \*

51 **ARTICLE XI. County Minimum Wage.**

52 **27-67. Findings and Definitions.**

53 (a) Findings.

- 54 (1) Many persons employed in the County are paid wages which are
- 55 insufficient to sustain minimum standards of living in the County.
- 56 (2) Minimum standards of living in the County are higher than the
- 57 minimum standards of living in many other areas of the State.
- 58 (3) Minimum wage standards in the County are necessary to:
- 59 (A) promote the health and welfare of County residents;
- 60 (B) safeguard employers and employees against unfair
- 61 competition;
- 62 (C) increase the stability of industry in the County;
- 63 (D) increase the buying power of employees in the County;
- 64 and
- 65 (E) decrease the need for the County to spend public money
- 66 for the relief of employees who also live in the County.

67 (b) Definitions. As used in this Article:

68 Consumer Price Index means the Consumer Price Index for All Urban  
 69 Consumers: All items in Washington-Baltimore, DC-MD-VA-WV  
 70 (CMSA), as published by the United States Department of Labor,  
 71 Bureau of Labor Statistics, or a successor index.

72 Director means the Executive Director of the Office of Human Rights  
 73 and includes the Executive Director's designee.

74 Employ means to engage a person to work for compensation.

75 Employee means any person permitted or instructed to work or be  
 76 present by an employer in the County and who is an employee subject  
 77 to the minimum wage requirements of the Federal Act or the State Act.

78 Employer means any person, individual, proprietorship, partnership,  
 79 joint venture, corporation, limited liability company, trust, association,

80 or other entity that employs 2 or more persons in the County. Employer  
 81 does not include the United States, any State, or any local government.

82 Federal Act means the federal Fair Labor Standards Act of 1938, as  
 83 amended.

84 Health insurance means insurance coverage that is part of an employer  
 85 benefit package that pays for medical expenses incurred by an employee  
 86 and an employee’s family either by reimbursing the employee or by  
 87 paying the care provider directly.

88 State Act means the Maryland Wage and Hour Law, as amended.

89 Wage means all compensation that is due to an employee for  
 90 employment.

91 **27-68. Minimum Wage Required.**

92 (a) County minimum wage. Except as provided in Subsection (d), an  
 93 employer must pay wages to each employee working in the County at  
 94 least the greater of:

95 (1) the minimum wage required for that employee under the Federal  
 96 Act;

97 (2) the minimum wage required for that employee under the State  
 98 Act; or

99 (3) the County minimum wage of \$12 per hour, as adjusted under  
 100 Subsection (b), less any health insurance credit under Subsection  
 101 (c).

102 (b) Annual adjustment. The Chief Administrative Officer must adjust the  
 103 minimum wage rate required under Subsection (a)(3), effective July 1,  
 104 2017, and July 1 of each subsequent year, by the annual average  
 105 increase, if any, in the Consumer Price Index for the previous calendar  
 106 year. The Chief Administrative Officer must calculate the adjustment to

107 the nearest multiple of 5 cents, and must publish the amount of this  
 108 adjustment not later than March 1 of each year.

109 (c) Health insurance credit. An employer who provides health insurance to  
 110 any employee who works in the County may reduce the County  
 111 minimum wage payable under paragraph (a)(3) to any employee who is  
 112 eligible to receive health insurance by all or part of the per-employee  
 113 hourly cost of the employer’s share of the premium for that insurance.

114 (d) Exclusions. The County minimum wage does not apply to an employee  
 115 who:

116 (1) is exempt from the minimum wage requirements of the State or  
 117 Federal Act;

118 (2) is a tipped employee under the State Act; or

119 (3) is subject to an opportunity wage under the State or Federal Act.

120 **27-69. Enforcement.**

121 A covered employee who was paid a wage rate less than the County minimum  
 122 wage in violation of this Article may file a complaint with the Director under Section  
 123 27-7.

124 **Sec. 2. Transition.**

125 Notwithstanding Section 27-68(a)(3), as added in Section 1, the County  
 126 minimum wage must be:

127 (a) effective July 1, 2014, \$7.25 per hour for an employee during the  
 128 employee’s first 90 days of employment and \$8.25 per hour beginning  
 129 on the employee’s 91<sup>st</sup> day of employment;

130 (b) effective July 1, 2015, \$8.25 per hour for an employee during the  
 131 employee’s first 90 days of employment and \$9.75 per hour beginning  
 132 on the employee’s 91<sup>st</sup> day of employment; and



133 (c) effective July 1, 2016, \$9.75 per hour for an employee during the  
134 employee's first 90 days of employment and \$12.00 per hour beginning  
135 on the employee's 91<sup>st</sup> day of employment.

136 **Sec. 3. Effective Date.**

137 This Act takes effect on July 1, 2014.

138 *Approved:*

139 \_\_\_\_\_  
Nancy Navarro, President, County Council

Date

140 *Approved:*

141 \_\_\_\_\_  
Isiah Leggett, County Executive

Date

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

143 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 27-13

*Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount*

**DESCRIPTION:** The Bill would establish a County minimum wage that must be paid to certain employees working in the County for a private sector employer. The Bill would also encourage an employer to provide health insurance to its employees by providing a credit against the County minimum wage based upon the cost per employee for the insurance. If the State or federal minimum wage is greater than the County minimum wage, an employer would still need to satisfy the State or federal law.

**PROBLEM:** The State and federal minimum wage of \$7.25/hour is insufficient to support a full-time worker in the County.

**GOALS AND OBJECTIVES:** To maintain a reasonable living wage for workers in the County when the State and federal minimum wage is insufficient.

**COORDINATION:** Human Rights Commission

**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, 240-777-7895

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** Class A civil citation and equitable relief.