

Bill No. 51-14
Concerning: Discriminatory Employment Practices - Retaliation for Wage Disclosure - Prohibited
Revised: January 15, 2015 Draft No. 4
Introduced: October 28, 2014
Enacted: February 3, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Vice President Leventhal and Councilmembers Navarro, Elrich, Riemer, Berliner, and Hucker

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

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 27-19 is amended as follows:

27-19. Discriminatory employment practices.

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

(1) For an employer:

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

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

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

(3) For a labor organization:

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

(B) limit, segregate, or classify its membership or classify, or fail or refuse to refer for employment, any individual in any way that would deprive or tend to deprive any 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:*

158 George Leventhal 2/5/15
 George Leventhal, President, County Council Date

159 *Approved:*

160 _____
 Isiah Leggett, County Executive Date

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

162 _____
 Linda M. Lauer, Clerk of the Council Date