

Bill No. 43-15  
Concerning: Contracts and Procurement  
Wage Requirements  
Amendments  
Revised: 1/28/2016 Draft No. 5  
Introduced: October 20, 2015  
Enacted: February 2, 2016  
Executive: February 9, 2016  
Effective: May 10, 2016  
Sunset Date: None  
Ch. 1, Laws of Mont. Co. 2016

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

Lead Sponsor: Councilmembers Elrich and Navarro  
Co-Sponsors: Council President Leventhal and Councilmember Riemer

---

**AN ACT** to:

- (1) require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer;
- (2) specify the remedies for a violation of the wage or records requirements;
- (3) amend the causes for debarment or suspension; **[[and]]**
- (4) prohibit certain contractors or subcontracts from deducting certain amounts from an employee's paycheck; and
- (5) generally amend the County procurement laws.

By amending

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-33A and 11B-37

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<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  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54

(f) *Exceptions to wage requirement.* The wage requirements of this Section do not apply to any employee:

- (1) who performs no measurable work related to any contract with the County;
- (2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section; or
- (3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program[[; or
- (4) for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement]].

(g) *Wage reporting.*

- (1) The Director must insert into each contract subject to this Section a provision that requires a covered employer to submit to the Director a report (on a schedule determined by the Director) showing a summary of the wages paid to its employees, who performed direct, measurable work under the contract, by gender and race.
- (2) Each contractor and subcontractor must submit a complete copy of its payroll records for work performed on a contract covered by this Section to the Chief Administrative Officer or a designee within 14 days after the end of each [[payroll period]] quarter.
- (3) The payroll records must contain a statement signed by the contractor or subcontractor certifying that:
  - (A) the payroll records are correct; and

- 55 (B) the wage rates paid are not less than those required by this  
 56 Section.
- 57 (4) Each payroll record must include:
- 58 (A) the name, address, and telephone number of the contractor  
 59 or subcontractor;
- 60 (B) the name and location of the job; and
- 61 (C) each employee's:
- 62 (i) name;
- 63 (ii) current home address, unless previously reported;
- 64 (iii) daily straight time and overtime hours;
- 65 (iv) total straight time and overtime hours for the payroll  
 66 period;
- 67 (v) rate of pay;
- 68 (vi) fringe benefits by type and amount;
- 69 (vii) gross wages; and
- 70 (viii) the employer and the employee share of any health  
 71 insurance premium provided to the employee.
- 72 (5) Each contractor or subcontractor must:
- 73 (A) keep payroll records covering work performed on a contract  
 74 covered by this Section for not less than 5 years after the  
 75 work is completed; and
- 76 (B) subject to reasonable notice, permit the Chief  
 77 Administrative Officer or a designee to inspect the payroll  
 78 records at any reasonable time and as often as the Chief  
 79 Administrative Officer deems necessary.
- 80 (6) The Chief Administrative Officer or a designee must make payroll  
 81 records obtained from contractors or subcontractors under this

82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107

Section available for public inspection during regular business hours for 5 years after the Chief Administrative Officer receives the records, unless disclosure of a record is prohibited under federal or state law.

[(2)] (7)	*	*	*
[(3)] (8)	*	*	*
[(4)] (9)	*	*	*
[(5)] (10)	*	*	*
	*	*	*

(i) *Enforcement.*

- (1) The Chief Administrative Officer must require each covered employer to:
  - (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;
  - (B) keep and submit any records necessary to show compliance; and
  - (C) conspicuously post notices informing employees of the requirements of this Section, and send a copy of each such notice to the Chief Administrative Officer's designee.
- (2) The Chief Administrative Officer or a designee must [enforce this Section,] perform random or regular audits [and any other audit necessary to do so,] and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including imposing appropriate sanctions, and may

108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134

withhold from payment due the contractor, pending a final decision, an amount sufficient to:

~~[[i]]~~ (A) pay each employee of the contractor or subcontractor the full amount of wages due under this Section; [[and]]

~~[[ii]]~~ (B) satisfy a liability of a contractor for liquidated damages as provided in this Section; and

(C) reimburse the County for the cost of the audit.

(3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.

(4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.

(5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify:

(A) that liquidated damages may be imposed on the contractor in the event that a [a] covered employer violates the wage reporting or payroll records reporting requirement in subsection (g), including for providing late or inaccurate payroll records; and

(B) that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due

135 under this Section and recover any unpaid wages with  
 136 interest, a reasonable attorney's fee, and damages for any  
 137 retaliation for asserting any right under this Section.

138 (6) If a contractor or subcontractor fails to submit, or is late in  
 139 submitting, copies of any payroll record or other report required to  
 140 be submitted under this Section, the County may deem invoices  
 141 unacceptable until the contractor or subcontractor provides the  
 142 required records or reports, and may postpone processing  
 143 payments due under the contract or under an agreement to finance  
 144 the contract.

145 **11B-37. Debarment or suspension.**

146 \* \* \*

147 (c) *Causes for debarment or suspension.* The causes for debarment or  
 148 suspension may include:

- 149 (1) conviction for commission of a criminal offense incident to  
 150 obtaining or attempting to obtain a public or private contract or  
 151 subcontract, or in the performance of the contract or subcontract;
- 152 (2) conviction of embezzlement, theft, forgery, bribery, falsification  
 153 or destruction of records, receiving stolen property, kickbacks or  
 154 any other offense indicating a lack of business integrity;
- 155 (3) conviction under state or federal antitrust statutes arising out of the  
 156 submission of bids or proposals;
- 157 (4) violation of County contract provisions of a character which is  
 158 regarded by the Director to be so serious as to justify debarment  
 159 action. These provisions may include:

- 160 (A) deliberate failure without good cause to perform under the  
 161 specifications or within the time limit provided in the  
 162 contract; or
- 163 (B) a record of failure to perform or of unsatisfactory  
 164 performance under the provisions of one or more contracts;  
 165 however, failure to perform or unsatisfactory performance  
 166 caused by acts beyond the control of the contractor are not  
 167 a basis for debarment;
- 168 (5) violation of the wage requirements in Section 11B-33A;
- 169 (6) any other serious cause the Director determines to be so  
 170 compelling as to affect the competency or integrity of a potential  
 171 contractor, including debarment by another public entity; or
- 172 [(6)] (7) violation of the ethical standards set forth in this Chapter or  
 173 Chapter 19A.
- 174 (d) *Decision.* The Director must issue a written decision to debar or suspend.  
 175 The decision must:
- 176 (1) state the reasons for the action taken; and
- 177 (2) inform the debarred or suspended person of the right to an  
 178 administrative appeal, after the decision becomes final, to the  
 179 Circuit Court under the Maryland Rules.
- 180 (e) The Director must send a copy of the decision to the person involved and  
 181 the Chief Administrative Officer who may approve, revise, or remand the  
 182 decision. If the Chief Administrative Officer takes no action within 5  
 183 working days, the decision of the Director becomes final.
- 184 (f) *Appeal to court.* The debarred or suspended person may appeal the  
 185 decision to debar or suspend to the Circuit Court under the Maryland  
 186 Rules governing administrative appeals. The debarred or suspended

187 person and the County may appeal the decision of the Circuit Court to the  
188 Court of Special Appeals.

189 *Approved:*

190 *Nancy Floreen* February 3, 2016  
Nancy Floreen, President, County Council Date

191 *Approved:*

192 *Isiah Leggett* Feb 7, 2016  
Isiah Leggett, County Executive Date

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

194 *Linda M. Lauer* Feb 10/2016  
Linda M. Lauer, Clerk of the Council Date