


**MEMORANDUM**

November 13, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week

Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week, sponsored by Lead Sponsor Councilmember Riemer and Co-Sponsors Councilmembers Navarro, Elrich, and Hucker, is scheduled to be introduced on November 17, 2015. A public hearing is tentatively scheduled for January 19 at 7:30 p.m.

**Background**

Bill 46-15 would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorperson, handyperson, or building superintendent at an office building occupying at least 400,000 square feet in the County. The Bill would also apply to a County government employee working as a building maintenance worker in an office building of at least 400,000 square feet. The Bill would not apply to a person working in a building owned by the United States, any State, or any local government.

A Complaint may be filed with the County Office of Human Rights. The County Human Rights Commission may award a range of compensatory damages for a violation, including attorney's fees and equitable relief. The Bill would not apply to an employee:

- (1) who earns more than twice the living wage;
- (2) who works as a security officer only on Saturday or Sunday;
- (3) who temporarily replaces a building maintenance worker who is absent for less than one week; and
- (4) of a Federal, State, or local government other than the County.

The Bill would take effect on July 1, 2018.

This packet contains:

Bill 46-15

Legislative Request Report

Circle #

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Bill No. 46-15  
 Concerning: Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week  
 Revised: November 10, 2015 Draft No. 7  
 Introduced: November 17, 2015  
 Expires: May 17, 2017  
 Enacted: \_\_\_\_\_  
 Executive: \_\_\_\_\_  
 Effective: July 1, 2018  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
 FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmember Riemer  
 Co-sponsors: Councilmembers Navarro, Elrich and Hucker

**AN ACT** to:

- (1) require certain employers in the County to provide certain building maintenance workers with a minimum work week;
- (2) provide enforcement by the Office of Human Rights and the Human Rights Commission;
- (3) authorize the Human Rights Commission to award certain relief; and
- (4) generally regulate the minimum work week for certain workers in the County.

By amending

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

By adding

Montgomery County Code  
 Chapter 27, Human Rights and Civil Liberties  
 Article XIV, Minimum Work Week for Building Maintenance Workers

<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:*

**Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article XIV is added as follows:**

**27-7. Administration and enforcement.**

(a) *Filing complaints.* Any person subjected to a discriminatory act or practice in violation of this Article, or any group or person seeking to enforce this Article or Articles X, XI, XII, [or] XIII, or XIV may file with the Director a written complaint, sworn to or affirmed under the penalties of perjury, that must state:

- (1) the particulars of the alleged violation;
- (2) the name and address of the person alleged to have committed the violation; and
- (3) any other information required by law or regulation.

\* \* \*

(f) *Initial determination, dismissal before hearing.*

- (1) The Director must determine, based on the investigation, whether reasonable grounds exist to believe that a violation of this Article or Articles X, XI, XII, [or] XIII, or XIV occurred and promptly send the determination to the complainant and the respondent.
- (2) If the Director determines that there are no reasonable grounds to believe a violation occurred, and the complainant appeals the determination to the Commission within 30 days after the Director sends the determination to the complainant, the Director promptly must certify the complaint to the Commission. The Commission must appoint a case review board to consider the appeal. The board may hear oral argument and must:
  - (A) dismiss the complaint without a hearing;
  - (B) order the Director to investigate further; or

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 Articles  
32 X, XI, XII, [or] XIII, or XIV 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 Articles X, XI, [or] XIII, or XIV, the case review board  
40 may order the payment of damages (other than punitive damages) and  
41 any other relief that the law and the facts warrant, such as:

42 (1) compensation for:

43 (A) reasonable attorney's fees;

44 (B) property damage;

45 (C) personal injury;

46 (D) unreimbursed travel or other reasonable expenses;

47 (E) damages not exceeding \$500,000 for humiliation and  
48 embarrassment, based on the nature of the humiliation and  
49 embarrassment, including its severity, duration,  
50 frequency, and breadth of observation by others;

- 51 (F) financial losses resulting from the discriminatory act or a
- 52 violation of Article X or XIV; and
- 53 (G) interest on any damages from the date of the discriminatory
- 54 act or violation, as provided in subsection (c);
- 55 (2) equitable relief to prevent the discrimination or the violation
- 56 of Articles X, [or] XI, or XIV and otherwise effectuate the
- 57 purposes of this Chapter;
- 58 (3) consequential damages, such as lost wages from
- 59 employment discrimination or a violation of Article X or
- 60 higher housing costs from housing discrimination, for up to
- 61 2 years after the violation, not exceeding the actual
- 62 difference in expenses or benefits that the complainant
- 63 realized while seeking to mitigate the consequences of the
- 64 violation (such as income from alternate employment or
- 65 unemployment compensation following employment
- 66 discrimination); and
- 67 (4) any other relief that furthers the purposes of this Article or
- 68 Articles X, [or] XI, or XIV, or is necessary to eliminate the
- 69 effects of any discrimination prohibited under this Article.

\* \* \*

**ARTICLE XIV. Minimum Work Week for Building Maintenance Workers.**

**27-83. Definitions.**

As used in this Article:

Building maintenance worker means an individual employed at a covered location as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent. A building maintenance worker does not include:

- 78           (1)    a managerial or confidential employee;  
 79           (2)    an employee who works in an executive, administrative, or professional  
 80                 capacity;  
 81           (3)    an employee who earns more than twice the wage requirement  
 82                 established under Section 11B-33A;  
 83           (4)    an employee who works as a security officer solely on Saturday or  
 84                 Sunday; or  
 85           (5)    an employee who temporarily replaces a building maintenance worker  
 86                 who is absent for less than one week.

87           Covered employer means any person, individual, proprietorship, partnership,  
 88           joint venture, corporation, Limited Liability Company, trust, association, or  
 89           other entity operating and doing business in the County that employs one or  
 90           more persons as a building maintenance worker at a covered location in the  
 91           County. Covered employer includes the County government, but does not  
 92           include the United States, any State, or any other local government.

93           Covered leave means paid or unpaid leave voluntarily used by a building  
 94           maintenance worker as authorized by Federal, State, or County law, a collective  
 95           bargaining agreement, or a written employee handbook.

96           Covered location means an office building or group of office buildings under  
 97           common ownership or management occupying a total of 400,000 square feet or  
 98           more in the County. Covered location does not include an office building or  
 99           group of office buildings owned by the United States, any State, or any local  
 100           government.

101           Director means the Executive Director of the Office of Human Rights and  
 102           includes the Executive Director's designee.

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

104 Minimum work week means the minimum number of compensated hours  
105 provided to a building maintenance worker in any work week.

106 Work week means a fixed regularly recurring period of 168 hours or 7  
107 consecutive 24 hour periods.

108 **27-84. Minimum work week; enforcement.**

109 (a) Minimum work week. The minimum work week for each employee  
110 working as a building maintenance worker at a covered location for a  
111 covered employer must be at least 30 hours unless the employee is taking  
112 covered leave.

113 (b) Complaints. A building maintenance worker who is aggrieved by a  
114 violation of this Article, may file a complaint with the Director under  
115 Section 27-7.

116 (c) Retaliation prohibited. A person must not:

117 (1) retaliate against any person for:

118 (A) lawfully opposing any violation of this Article; or

119 (B) filing a complaint, testifying, assisting, or participating in  
120 any manner in an investigation, proceeding, or hearing  
121 under this Article; or

122 (2) obstruct or prevent enforcement or compliance with this Article.

123 **Sec. 2. Effective date.**

124 This Act takes effect on July 1, 2018.

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126 *Approved:*

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George Leventhal, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 46-15

*Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week*

- DESCRIPTION:** Bill 46-15 would require an employer to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyperson, or building superintendent at an office building occupying at least 400,000 square feet in the County. The Bill would also apply to a County government employee working as a building maintenance worker in an office building of at least 400,000 square feet.
- PROBLEM:** Employers of building maintenance workers often schedule a building maintenance worker for less than 30 hours per week to avoid providing health insurance under the Affordable Care Act.
- GOALS AND OBJECTIVES:** Increase the availability of full-time work with health insurance for these workers.
- COORDINATION:** Office of Human Rights, County Attorney, Office of Procurement
- 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 attorney's fees.