

Bill No. 12-16  
Concerning: Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment  
Revised: 01/17/2017 Draft No. 3  
Introduced: April 12, 2016  
Enacted: January 17, 2017  
Executive: Vetoed: January 23, 2017  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN ACT** to:

- (1) increase the County minimum wage by a certain amount;
- (2) require the Chief Administrative Officer to adjust the County minimum wage rate each year; and
- (3) generally amend the laws governing the minimum wage

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Article XI. County Minimum Wage  
Section 27-68

By adding

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Article XI. County Minimum Wage  
Section 27-70A

**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 27-68 is amended and Section 27-70A is added as follows:**

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

(a) *County minimum wage.* Except as provided in Subsection (b), an employer must pay wages to each employee for work performed in the County at least the greater of:

- (1) the minimum wage required for that employee under the Federal Act;
- (2) the minimum wage required for that employee under the State Act; or
- (3) ~~[\$11.50]~~ \$15.00 per hour.

(b) *Annual adjustment.* The Chief Administrative Officer must adjust the minimum wage rate required under Subsection (a)(3), effective July 1, ~~[[2021]]~~ 2023, and July 1 of each subsequent year, by the annual average increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, or a successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of five cents, and must publish the amount of this adjustment not later than March 1 of each year.

(c) *Exclusions.* The County minimum wage does not apply to an employee who:

- (1) is exempt from the minimum wage requirements of the State or Federal Act;
- (2) is under the age of 19 years and is employed no more than 20 hours per week; or
- (3) is subject to an opportunity wage under the State or Federal Act.

~~[(c)]~~(d) *Retaliation prohibited.* A person must not:

(1) retaliate against any person for:

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

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

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

\* \* \*

**27-70A. Annual impact analysis.**

The Office of Legislative Oversight must provide to the Council, by January 31 of each year, an analysis of impact of the County minimum wage on the local economy.

**Sec. 2. Transition.**

Notwithstanding Section 27-68, as amended in Section 1, except when the scheduled increases are temporarily suspended under subsection (d), the County minimum wage, until July 1, ~~[[2020]]~~ 2022, must be the greater of the minimum wage required under the Federal or State Act or:

(a) for an employer who employs 26 or more employees:

(1) effective July 1, 2017, \$11.50 per hour;

~~[[b]]~~(2) effective July 1, 2018, \$12.50 per hour; [[and]]

~~[[c]]~~(3) effective July 1, 2019, \$13.75 per hour[[.]]; and

(4) effective July 1, 2020, \$15.00 per hour.

(b) for an employer who employs 25 or fewer employees:

(1) effective July 1, 2017, \$11.50 per hour;

(2) effective July 1, 2018, \$12.00 per hour;

(3) effective July 1, 2019, \$12.75 per hour;

(4) effective July 1, 2020, \$13.50 per hour; and

(5) effective July 1, 2021, \$14.25 per hour.

55           (c)   For the purposes of subsections (a) and (b), an employer's number of  
56           employees must be calculated based upon the employer's average  
57           number of employees per calendar week during the preceding  
58           calendar year for any and all weeks during which at least one  
59           employee worked for compensation. For employers that did not have  
60           any employees during the preceding calendar year, the employer's  
61           number of employees must be calculated based upon the average  
62           number of employees who worked for compensation per calendar  
63           week during the first 90 calendar days of the current year in which the  
64           employer engaged in business.

65           (d)   (1)   On or before January 31 of each year beginning in 2018  
66           through 2022, to ensure that economic conditions can support a  
67           minimum wage increase, the Director of Finance must make a  
68           determination and certify to the Executive and Council whether  
69           each of the following conditions is met:

70                   (A)   total private employment for Montgomery County  
71                   decreased by 1.5% over the period from April 1 to June  
72                   30 of the previous year. The calculation must compare  
73                   total private employment in June to total private  
74                   employment in April, as reported by the Maryland State  
75                   Department of Labor, Licensing, and Regulation's  
76                   Quarterly Census of Employment and Wages data series;

77                   (B)   total private employment for Montgomery County  
78                   decreased by 2.0% over the period from January 1 to  
79                   June 30 of the previous year. The calculation must  
80                   compare total private employment in June to total private  
81                   employment in January, as reported by the Maryland

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State Department of Labor, Licensing, and Regulation's  
Quarterly Census of Employment and Wages data series;

(C) the Gross Domestic Product of the United States, as  
published by the U.S. Department of Commerce, has  
experienced negative growth for the preceding two  
quarters; and

(D) the National Bureau of Economic Research has  
determined that the United States economy is in  
recession.

(2) If, in any year, the Director of Finance certifies that a condition  
in subparagraphs (A) through (D) of paragraph (1) is met, the  
Executive may, on or before February 10 of that year,  
temporarily suspend the minimum wage increases scheduled  
under subsections (a) and (b) for that year.

(3) If the Executive temporarily suspends the scheduled minimum  
wage increases for a year, all dates specified in subsections (a)  
and (b) that follow the temporary suspension must be postponed  
by an additional year.

(4) The Executive must not temporarily suspend scheduled  
minimum wage increases under this Section more than two  
times.

**Sec. 3. Effective Date.**

This Act takes effect on ~~[[October 1, 2016]]~~ July 1, 2017.

Approved:

*[Handwritten signature]*

*1/18/17*

Roger Berliner, President, County Council

Date

Approved:

*X see January 23, 2017 message*  
*[Handwritten signature]*

Vetoed

Isiah Leggett, County Executive

*1/23/17*

Date

*This is a correct copy of Council action.*

*Linda M. Lauer*

*1/24/17*

Linda M. Lauer, Clerk of the Council

Date



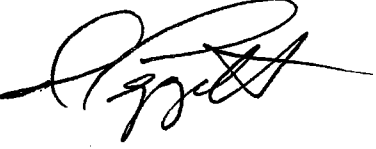
OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

MEMORANDUM

Isiah Leggett  
County Executive

January 23, 2017

TO: Roger Berliner, President  
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 12-16, Human Rights and Civil Liberties – County Minimum  
Wage – Amount – Annual Adjustment

There continues to be a great deal of discussion since the passage of Bill 12-16, Human Rights and Civil Liberties – County Minimum Wage – Amount – Annual Adjustment, and my position regarding this bill. I understand that there is a strong interest by some councilmembers to even reconsider the bill. However this is no longer a possibility since this bill has been signed and transmitted to the executive branch. At present, I have only three options: sign the bill and it becomes law as is, not sign the bill and it will go into effect without my signature or veto the bill. The only way to express my position regarding this bill at this time is to reluctantly veto and return it to you with what I believe is a more reasonable path to moving the County to a \$15 wage.

That said, I wish to congratulate the County Council on the very full and thoughtful discussion it held on the bill. In particular, I want to commend Councilmember Elrich for his commitment to the issue. I respect his very principled position on a matter that is extremely important to our County and the nation as a whole.

As I have said on numerous occasions, I support the effort to move toward \$15 per hour over an appropriate timeframe and under certain conditions. And that sentiment was expressed by you and your Council colleagues who voted against the bill. Indeed, the Council unanimously passed Bill 27-13, the 2013 Minimum Wage bill, and we celebrated together with a public bill signing ceremony. But this year's effort became much more contentious and divided resulting in only a 5-4 majority. Many believed it went too far, too fast, and I am disappointed that we did not find a broader consensus.

It is my hope that a modified bill can be introduced in the near future and, similar to the 2013 bill, receive greater support. Such an effort would send a stronger and clearer message to our County and to the rest of the State.



Roger Berliner, President  
January 23, 2017  
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While the Council adopted several amendments intended to address some of the issues I raised in my November 22, 2016 memorandum, I do not believe they went far enough to address the very serious issues that I am concerned about or to gain more widespread support. I wish to thank the Council for adopting my recommendation for the so-called "off ramp" to address concerns about increasing the minimum wage during economic downturns. Other issues, however, were not addressed satisfactorily.

As mentioned previously, Montgomery County has already put itself in the forefront on the minimum wage issue and several other initiatives to assist our more vulnerable residents. Montgomery County's minimum wage is, and will continue to be, higher than both the federal and State minimum wage, as well as that in all surrounding jurisdictions except the District of Columbia. I remain concerned, however, about the competitive disadvantage Bill 12-16 would put the County in compared to our neighboring jurisdictions. Additionally, we must realize that Bill 27-13 would put our County in a different position compared to the few jurisdictions that have already passed a \$15 minimum wage. Unlike Seattle or New York City, we are not a "destination city" that draws great numbers of business travelers or tourists that will be able to afford higher costs for short-term visits. Our residents will essentially shoulder the bulk of the cost. Also, in California the \$15 minimum wage does not go effect until 2022, and there is an additional one-year phase-in for small businesses with less than 26 employees. For this reason and others, we must act in a more measured way based on the best information available and the potential unintended negative impacts to Montgomery County.

While some experts may disagree, I believe in an expeditious and timely study of relevant issues on the fiscal and economic impact of an increase in the minimum wage on Montgomery County, I maintain that a study will better inform the Council on the direct and indirect impacts on private employers' bottom line as well as the impact on County government. As you know, there are very few jurisdictions that provide the array of health and human services to help vulnerable populations at the same level that Montgomery County does. For example, all things remaining equal, if the Council continues the policy of providing financial support to our non-profit partners for imposed legislated wage adjustments, when the minimum wage reaches \$15, there will be a significant financial impact to the County. The County's budget for Developmental Disability providers alone would be \$21.1 million over the current FY17 base of \$13.8 million. Based on our current budget projections, this would be a very difficult amount to absorb, and this does not address the challenge faced by all of our non-profit partners.

Another example of the financial impact of the increase in the minimum wage comes from our Medicaid providers. I will send to you separately a letter and data I received a few days ago. In sum, they estimate that the move to \$15/hour will result in an approximate 5.5% increase in the cost of operations each year. Unlike some businesses, Medicaid providers



Roger Berliner, President

January 23, 2017

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cannot legally pass these increases on to the consumer and will be unable to absorb the significant increased costs.

It is my view that a study addressing these issues can be accomplished in a relatively short time. I propose that it be completed by no later than July of this year. This study would give the Council ample time to propose and enact a new bill long before the first new increment under Bill 12-16 would have taken effect.

In my November 22, 2016 memorandum, I urged the Council to consider a longer timeframe for raising the County minimum wage, noting that California would not reach \$15 until 2022. While the Council provided an extension to 2022 for small employers (25 or fewer employees), the bill retained 2020 as the date for the County minimum to reach \$15/hour for all other employees. I think that is too fast and believe we should not reach \$15/hour for all employees until 2022. In addition, small employers will be hit particularly hard, and thus should be exempted entirely from the increased minimum wage requirement.

In summary, for me to fully agree with a bill, it should:

- Be based on an expeditious study on the direct and indirect financial impacts on private employers, non-profits and County government;
- Include an exemption for small business, the definition of which can be informed by the study;
- Include an exemption for youth workers; and,
- Provide for reaching \$15/hour in 2022

It is clear that there is broad support in the community and on the Council for an increase in the minimum wage to \$15/hour. The real questions are how quickly we get there and what exemptions should be made. By adopting a revised bill that addresses these issues, I believe we can work toward a broader consensus and a better outcome for Montgomery County residents and businesses.