


MEMORANDUM

July 7, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** 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 Rierner and Co-Sponsors Councilmembers Navarro, Elrich, and Hucker, was introduced on November 17, 2015.

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, 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. 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
Fiscal and Economic Impact statement

Circle #

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Bill No. 46-15
Concerning: Human Rights and Civil
Liberties – Building Maintenance
Worker – Minimum Work Week
Revised: November 24, 2015 Draft No. 8
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 Sponsor: 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

Boldface	<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:

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

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

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

* * *

27-8. Penalties and relief.

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

(1) compensation for:

(A) reasonable attorney's fees;

(B) property damage;

(C) personal injury;

(D) unreimbursed travel or other reasonable expenses;

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

- (F) financial losses resulting from the discriminatory act or a violation of Article X or XIV; and
- (G) interest on any damages from the date of the discriminatory act or violation, as provided in subsection (c);
- (2) equitable relief to prevent the discrimination or the violation of Articles X, XI, [or] XIII or XIV and otherwise effectuate the purposes of this Chapter;
- (3) consequential damages, such as lost wages from employment discrimination or a violation of Article X or higher housing costs from housing discrimination, for up to 2 years after the violation, not exceeding the actual difference in expenses or benefits that the complainant realized while seeking to mitigate the consequences of the violation (such as income from alternate employment or unemployment compensation following employment discrimination); and
- (4) any other relief that furthers the purposes of this Article or Articles X, XI, [or] XIII or XIV, or is necessary to eliminate the 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:

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

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

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

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

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

Employ means to engage a person to work for compensation.

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

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

27-84. Minimum work week; enforcement.

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

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

(c) 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.

Sec. 2. Effective date.

This Act takes effect on July 1, 2018.

Approved:

Roger Berliner, 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.

B46-15



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ROCKVILLE, MARYLAND

RECEIVED
MONTGOMERY COUNTY
COUNCIL

MEMORANDUM

January 5, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 46-15, Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
James Stowe, Director, Office of Human Rights
Michael Coveyou, Department of Finance
Alex Espinosa, Office of Management and Budget
Phil Weeda, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Wage Amendment

1. Legislative Summary.

Amends Sections 27-7 and 27-8 of Chapter 27, Article XIV, Administration and Enforcement of the County Code and requires certain employers to provide a minimum work week of at least 30 hours for each employee working as a janitor, building cleaner, security officer, concierge, doorman, handyman or building superintendent at an office building occupying at least 400,000 square feet in the County. The bill also applies to a County employee working as a building maintenance worker in an office building of at least 400,000 square feet.

This bill would not apply to an employee who earns more than twice the living wage; who works as a security officer only on a Saturday or Sunday; who temporarily replaces a building maintenance worker who is absent for less than one week; and an employee of a Federal, State, or local government other than Montgomery County.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Any person subject to a discriminatory act or practice in violation of the law can file a complaint with the Office of Human Rights. The Office must investigate the complaint, determine whether a violation did occur, dismiss the complaint, or set the matter for hearing by the hearing examiner of the board itself. The Human Rights Commission may award a range of compensatory damages for a violation, including attorney's fees and equitable relief. It is unknown at this time how many complaints would be filed in Montgomery County each year, so the effect on the Office of Human Rights' caseload cannot be determined at this time. The office will monitor its workload to assess the legislation's actual impact.

As reported by the Department of General Services, the County currently does not have an office building occupying at least 400,000 square feet and therefore would not be impacted by the Legislation.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Unable to determine at this time because the number of complaints that may be filed is unknown; and if the County would build or occupy a building over 400,000 square feet.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

The proposed legislation does not affect retiree pension or group insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

The proposed legislation does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

See #2

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed.

10. A description of any variable that could affect revenue and cost estimates.

The number of complaints filed with the Human Rights Commission; and future space and building size owned or occupied by the County.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See #2

12. If a bill is likely to have no fiscal impact, why that is the case.

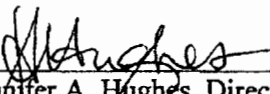
See #2

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Angela Dizelos, Department of General Services, Marc Hansen, County Attorney, James Stowe, Office Of Human Rights, and Jedediah Millard, Richard Harris and Philip Weeda, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

1/5/16
Date

Economic Impact Statement
Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Work Week

Background:

This legislation would require certain employers in Montgomery County (County) to provide certain building maintenance workers with a minimum work week of at least thirty (30) hours in a covered location. Bill 46-15 defines a covered location as an office building occupying a total of at least 400,000 square feet, including Montgomery County government, but excludes office buildings owned by the federal, state, or other local government. The legislation provides enforcement by the Office of Human Rights and the Human Rights Commission and authorizes the Human Rights Commission to award certain relief.

1. The sources of information, assumptions, and methodologies used.

Source of information include:

- Maryland Department of Labor, Licensing and Regulation (DLLR),
- Bureau of Labor Statistics (BLS), U.S. Department of Labor,
- Montgomery County Department of Economic Development (DED),
- Service Employees Industrial Union (SEIU).

From data provided by SEIU, there are 400 employees that would qualify for the minimum work week of at least 30 hours. The information is based on those employees who are part of the collective bargaining agreement with the commercial office market. Finance assumes that employees that would qualify for the extended work week currently work 20 hours per week (Source: BLS and SEIU). Finally, the average part-time employee currently earns \$13.20 per hour plus an additional \$1.20 per hour for health care, training fund, and paid leave (Source: SEIU). Average hourly wage rates provided by DLLR are as follows:

- Janitor (\$12.75)
- Building Cleaner (\$12.50)
- Security Guard (\$18.75)
- Concierge (\$13.75)

For these four categories, the average hourly wage is \$14.44 which is similar to the combined wage rate provided by SEIU. Finance will assume a \$14.00 per hour wage rate for the economic impact analysis.

To determine the number of commercial buildings that occupy at least 400,000 square feet, Finance obtained data from DED and SEIU. The total number of properties vary by definition and source of information. Therefore, the economic impact statement will analyze the impact of labor costs and income based on the 400 employees as

Economic Impact Statement
Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Work Week

provided by SEIU and the hourly rates provided by SEIU and DLLR at \$14.00 per hour.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are either a greater or lesser number of employees who currently work less than 30 hours per week (i.e., 400) and an average hourly wage rate that is either greater or less than what is assumed in this analysis (i.e., \$14.00), and currently work in an office building with at least 400,000 square feet.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Assuming current part-time employees work 20 hours per week, an average hourly wage of \$14.00, and the total number of part-time employees of 400, the total annual labor costs would be \$5.824 million.

If the number of hours increased to 30 hours per week, the total annual labor costs incurred by management and total income to part-time employees would increase to \$8.736 million per year – an increase of \$2.912 million or an additional \$7,280 of annual income per employee.

Bill 46-15 would have a positive economic impact on part-time employees by increasing the average work week from an average of 20 hours per week to at least 30 hours per week. But the gain to employees would be either partially or fully offset by a loss in business income due to the increase in labor costs incurred by management if they cannot reduce other fixed costs to compensate for the increase in labor costs assuming there is not sufficient work available to cover the increased work week. Second, it is uncertain if management would reduce the number of current employees to a number lower than 400 employees. With an increase in the number of maximum hours and labor costs, it is possible that management would reduce the overall number of employees thereby reducing its labor costs and as a result have a negative impact on some employees and therefore County employment and personal income.

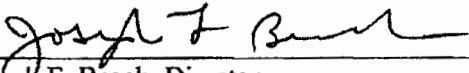
Due to the uncertainty of how businesses will respond to an increase in labor costs resulting from a required longer workweek – assuming there is currently no operational need for businesses to extend the workweek – it is unclear what the net economic impact will be on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see #3.

Economic Impact Statement
Bill 46-15, Human Rights and Civil Liberties – Building Maintenance Worker –
Minimum Work Week

5. **The following contributed to or concurred with this analysis:** David Platt, Mary Casciotti, and Rob Hagedoorn, Finance.



Joseph F. Beach, Director
Department of Finance

1/5/16
Date