

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

**EXPEDITED
BILL 5-23:**

**PERSONNEL AND HUMAN RESOURCES – PROSPECTIVE
EMPLOYEES – HEALTH CARE PRIVACY**

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 5-23 will have a minimal impact on racial equity and social justice (RESJ) in the County. While perceptions among prospective employees with disabilities could improve, the changes anticipated from this Bill are not likely to meaningfully impact current employment outcomes by race, ethnicity, or disability status.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF EXPEDITED BILL 5-23

Prior to hiring, prospective County employees are required to complete a medical history review form from Occupational Medical Services within the Office of Human Resources. The form states “[t]he information submitted is used to determine [the prospective employee’s] ability to perform essential functions of the job for which [they] applied and could be used for evaluation in future workers’ compensation claims.”

As described in the introduction staff report for Expedited Bill 5-23:

“The medical form requires prospective employees to provide myriad information, including whether the applicant has been hospitalized over the past three years; whether the applicant is or might be pregnant; whether the applicant requires a reasonable accommodation; and what prescription medications and over-the-counter medications the applicant takes.”³

If enacted, Bill 5-23 would limit inquiries by the County regarding certain health information of prospective employees and limit the County in considering certain health information in hiring decisions. As explained in the staff report, “the County would be permitted to ask prospective employees about health care information only to the extent information is ‘business-related’ in that it bears on the individual’s ability to meet published minimum job qualifications.”

The Bill would also prohibit inquiries by the County regarding certain reproductive health information of prospective employees, including abortion care, miscarriage, contraception, sterilization, pregnancy, or family planning. Additionally, the Bill would allow individuals aggrieved by violations of the proposed law to appeal to the Merit System Protection Board.⁴

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Expedited Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy, was introduced by the Council on January 31, 2023.

ADA AND WORKPLACE DISCRIMINATION

Passed in 1990, the Americans with Disabilities Act (ADA) enshrined legal protections for people with disabilities, allowing challenges to discrimination in employment, public services, and places of public use.⁵ Examples of disabilities covered by the ADA include cancer, autism, deafness, major depressive disorder, and mobility disabilities.⁶ As described by the U.S. Equal Employment Opportunity Commission (EEOC), employment protections in the ADA “forbid discrimination [because of disability] when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.”⁷

Despite ADA protections, people with disabilities continue to experience discrimination in the workplace. In fiscal year 2021, the EEOC secured \$122 million in monetary benefits for over 4,000 individuals filing disability charges with the commission.⁸ Studying discrimination in the wake of the ADA, a research brief from the ADA Knowledge Translation Center noted the following findings:

- People with disabilities perceive stigmatizing attitudes as having a negative impact on their career progression, including on hiring, promotion, and interactions with coworkers.
- Experience with discrimination often causes employees with disabilities to hide their disability status, including for “fear of teasing, harassment, potential changes in coworker relationships, being perceived as less capable, and reduced progress in their careers.”
- Experiences with disability-based discrimination have been shown to be impacted and compounded by race, gender, and socioeconomic class.⁹

Of note, 6.7 percent of Latinx constituents, 7.5 percent of Asian constituents, 8.4 percent of Black constituents, 9.8 percent of White constituents, and 14.4 percent of Native American constituents in the County have a disability.¹⁰

ANTICIPATED RESJ IMPACTS

In practice, if enacted, Bill 5-23 will give prospective employees the opportunity to opt-out of disclosing medical information that is not required for performing published minimum job qualifications. If a job-related question is unanswered, the third-party clinical provider will reach out to request that information.¹¹

To consider the anticipated impact of Bill 5-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO does not anticipate disproportionalities among primary beneficiaries by race, ethnicity, or disability status. All prospective employees could potentially benefit from having more flexibility in disclosing medical information to the County.

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For the second question, OLO considered how this Bill could impact employment-related concerns for people with disabilities. Increased flexibility in disclosing medical information could improve perceptions among prospective employees with disabilities, given experiences with discrimination. However, as noted in the Economic Impact Statement for this Bill, “[b]ased on consultations with OHR personnel and a survey of County hiring managers conducted in January 2020, it is unlikely that any changes to the hiring process induced by the Bill would meaningfully affect whether candidates are offered or accept a position with the County.”¹²

Taken together, OLO anticipates Bill 5-23 will have a minimal impact on RESJ in the County. While perceptions among prospective employees with disabilities could improve, the changes anticipated from this Bill are not likely to meaningfully impact current employment outcomes by race, ethnicity, or disability status.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹³ OLO anticipates Expedited Bill 5-23 will have minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ Introduction Staff Report for Expedited Bill 5-23, Personnel and Human Resources - Prospective Employees - Health Care Privacy, Montgomery County Council, Montgomery County, Maryland, Introduced January 31, 2023.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131_4C.pdf

⁴ Ibid

⁵ Sarah Parker Harris, et al, “Research Brief: Experience of Discrimination and the ADA,” Department of Disability and Human Development, University of Illinois at Chicago, 2019. https://adata.org/research_brief/experience-discrimination-and-ada

⁶ “Introduction to the American with Disabilities Act,” Civil Rights Division, U.S. Department of Justice.

<https://www.ada.gov/topics/intro-to-ada/#the-ada-protects-people-with-disabilities>

⁷ “Disability Discrimination and Employment Decisions,” U.S. Equal Employment Opportunity Commission.

<https://www.eeoc.gov/disability-discrimination-and-employment-decisions>

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⁸ ADA Charge Data – Monetary Benefits, U.S. Equal Employment Opportunity Commission. <https://www.eeoc.gov/data/ada-charge-data-monetary-benefits-charges-filed-eeoc-fy-1997-fy-2021>

⁹ Sarah Parker Harris, et al

¹⁰ Table S1810, Disability Characteristics, 2021 American Community Survey 5-Year Estimates, Census Bureau.

¹¹ Reported by OMS staff during meeting with OLO staff on 2/15/23.

¹² Economic Impact Statement for Expedited Bill 5-23, Office of Legislative Oversight, Montgomery County, Maryland, February 16, 2023.

¹³ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council