

**M E M O R A N D U M**

February 27, 2023

TO: Government Operations & Fiscal Policy Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Expedited Bill 5-23, Personnel and Human Resources -Prospective Employees – Health Care Privacy

PURPOSE: Worksession – recommendation expected

**Expected Attendees**

Traci L. Anderson, Director, Office of Human Resources  
Johnna Bryant, Manager, Occupational Medical Services

Expedited Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy, sponsored by Lead Sponsor Councilmember Luedtke and Co-Sponsors Councilmembers Albornoz, Balcombe, Friedson, Stewart, Sayles, Glass, Jawando, Katz, Mink, and Fani-González, was introduced on January 31, 2023. A public hearing took place on February 14, 2023.

Expedited Bill 5-23 would:

- (1) limit inquiries by the County regarding certain health information of prospective employees;
- (2) prohibit inquiries by the County regarding certain reproductive health information of prospective employees;
- (3) limit consideration by the County of certain health information of prospective employees;
- (4) permit certain appeals to the Merit System Protection Board; and
- (5) generally amend the laws regarding human resources and health care privacy.

**BACKGROUND**

Prior to hiring a new County employee, the County currently requires prospective employees to complete a medical form for evaluation by the Office of Human Resources – Occupational Medical Services. According to the form, “[t]he information submitted is used to determine your ability to perform the essential functions of the job for which you applied and could be used for evaluation in future workers’ compensation claims.” The form further states that, in accordance with Montgomery

County Personnel Regulations (MCPR), “an applicant must be able to perform the essential job functions, with or without a reasonable accommodation.”

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.

Expedited Bill 5-23 would require the County to alter and restrict the types of medical information it seeks from prospective employees.

### **BILL SPECIFICS**

Under Expedited Bill 5-23, 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 explicitly prohibit the County from requesting or considering applicants’ reproductive health information, such as information related to abortion care, miscarriage, contraception, sterilization, pregnancy, or family planning.

An individual aggrieved by a violation of the bill’s requirements would be able to appeal to the Merit System Protection Board under Section 33-13 of the County Code.

### **SUMMARY OF PUBLIC HEARING**

The County Executive submitted a memorandum in support of the bill with an amendment regarding the timing of implementation. The potential amendment is discussed below under Issue #2.

Two speakers testified at the public hearing:

- An individual spoke in favor of the bill, noting that the disclosure of any disability must be voluntary and that the current health form leaves room for bias.
- A representative of the Municipal and County Government Employees Organization stated that the union wholeheartedly supports the bill.

### **SUMMARY OF IMPACT STATEMENTS**

**Fiscal Impact Statement.** The Office of Management and Budget (OMB) states: “The bill is not expected to impact County revenues. The impact on County expenditures cannot be reliably calculated at this time, as described below, but could be significant.” OMB notes that the impact on expenditures could be significant because the medical form currently is used: (1) by the

Montgomery County Employee Retirement Plans Disability Review Plan when making recommendations about eligibility for service-connected disability benefits; and (2) by the Office of the County Attorney (OCA) when defending the County against workers' compensation claims, "in order to avoid payment of claims for injuries that are proven to not have occurred at work (or exacerbation of physical conditions that would have been identified on the pre-employment questionnaire presently in use)."

**Climate Assessment.** The bill has no expected climate impacts.

**Racial Equity Impact Statement.** The Office of Legislative Oversight anticipates that this bill will have a minimal impact on racial equity and social justice in the County.

**Economic Impact Statement.** The Office of Legislative Oversight anticipates that this bill will have an insignificant impact on economic conditions in the County.

#### ISSUES FOR THE COMMITTEE'S CONSIDERATION

##### 1. Contractual Employees

Under Bill 5-23 as originally drafted, the term *applicant* would be defined as "a person seeking County employment, including a merit system position, non-merit system position, appointed position, or contractual position."

Regarding this definition, the Office of the County Attorney has pointed out that the County does not use "contractual positions" *per se*. Instead, the County sometimes procures services from individuals in accordance with the County's procurement law, Chapter 11B of the County Code. Accordingly, the Committee might wish to delete "contractual position[s]" from the definition of applicants to avoid confusion. The potential amendment is:

*Amend lines 6-8 as follows.*

*Applicant* means a person seeking County employment, including a merit system position, non-merit system position, or appointed position[[, or contractual position]].

Alternatively, to ensure that medical forms are not required of individuals who enter into small procurements to provide services to the County (*e.g.*, individuals who contract to provide certain services to Councilmember offices), the term "contractual position" could remain in the bill, but could be defined as follows.

*After line 11, insert the following.*

Contractual position means an individual providing services to the County pursuant to a procurement under Chapter 11B. Contractual position does not include the employees or subcontractors of a contractor under Chapter 11B.

## **2. Potential Amendment - Timing of Implementation**

As originally drafted, Bill 5-23 is expedited, meaning that it would take effect on the same day that it becomes law. The County Executive has requested an effective date of 120 days after the bill becomes law. In support of the request, the Executive explains:

To make these changes and fully comply with Bill, the Office of Human Resources will need time to revise and automate medical history forms and consult with internal stakeholders and partners to ensure continued compliance with medical protocols. This may require job class specification updates, which is a manually intensive process, in order to reflect any changes in medical protocols in the Classification Plan. We strongly believe that we can accomplish this work within 120 days of passage.

An amendment to implement the Executive's request would be as follows.

*Amend lines 58 through 60 as follows.*

**Sec. 2.** **[[Expedited effective]] Effective date.** **[[The Council declares that this legislation is necessary for the immediate protection of the public interest.]] This Act takes effect [[on the date on which]] 120 days after it becomes law.**

## **3. Potential Clarifying Amendment**

Under Bill 5-23, the County would be able to request and consider applicants' business-related health information. To clarify that the County, as a prospective employer, would have the discretion to determine whether and how to request and consider the business-related information, the Committee might wish to adopt the following amendment.

*Amend lines 34-39 as follows.*

- (2) Unless otherwise prohibited by law, the County **[[may]]** is entitled to:
  - (A) request or seek business-related health care information; and
  - (B) consider business-related health care information solely to determine whether an applicant meets a minimum qualification.

**Next step:** Committee recommendation on whether to enact Expedited Bill 5-23, including with any amendments.

This packet contains:

Expedited Bill 5-23  
Medical Form – Office of Human Resources (Revised 6/2022)  
County Executive Memorandum  
Fiscal Impact Statement  
Climate Assessment  
Racial Equity and Social Justice Impact Statement  
Economic Impact Statement

Circle #

1  
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11  
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Expedited Bill No. 5-23  
Concerning: Personnel and Human  
Resources – Prospective Employees  
– Health Care Privacy  
Revised: 01/17/23 Draft No. 2  
Introduced: January 31, 2023  
Expires: December 7, 2026  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Luedtke

Co-Sponsors: Councilmembers Alborno and Balcombe, Council Vice-President Friedson,  
Councilmembers Stewart and Sayles, Council President Glass, and Councilmembers Jawando,  
Katz, Mink, and Fani-Gonzalez

### AN EXPEDITED ACT to:

- (1) limit inquiries by the County regarding certain health information of prospective employees;
- (2) prohibit inquiries by the County regarding certain reproductive health information of prospective employees;
- (3) limit consideration by the County of certain health information of prospective employees;
- (4) permit certain appeals to the Merit System Protection Board; and
- (5) generally amend the laws regarding human resources and health care privacy.

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-25A

*The County Council for Montgomery County, Maryland approves the following Act:*

<b>Boldface</b>	<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>

1           **Sec. 1. Section 33-25A is added as follows:**

2    **33-25A. Prospective Employees – Health Care Privacy.**

3           (a)   Definitions. As used in this section:

4               Americans with Disabilities Act means the federal Americans with  
5               Disabilities Act of 1990, as amended.

6               Applicant means a person seeking County employment, including a  
7               merit system position, non-merit system position, appointed position, or  
8               contractual position.

9               Business-related health information means health care information that  
10              is necessary to evaluate whether an applicant meets a minimum  
11              qualification for a position.

12              Health care means any care, treatment, or procedure by a health care  
13              provider:

14              (1)   to diagnose, evaluate, rehabilitate, manage, treat, or maintain  
15              the physical or mental condition of a patient or recipient; or

16              (2)   that affects the structure or any function of the human body.

17              Health care information means any individually identifiable  
18              information related to health care.

19              Minimum qualification means a mandatory qualification that:

20              (1)   must be met to perform the required job functions of the position;  
21              and

22              (2)   was posted publicly prior to the acceptance of any application for  
23              the position.

24              Reproductive health information means health care information related  
25              to any aspect of reproductive health, including abortion care,  
26              miscarriage, contraception, sterilization, pregnancy, and family  
27              planning.

(b) Requesting or considering health care information - Limitations.

(1) Except as provided in paragraph (2), the County must not:

(A) request or seek health care information regarding an applicant; or

(B) consider health care information as a factor in determining whether to hire an applicant.

(2) Unless otherwise prohibited by law, the County may:

(A) request or seek business-related health care information; and

(B) consider business-related health care information solely to determine whether an applicant meets a minimum qualification.

(c) Requesting reproductive health information – Prohibited. The County must not request or consider an applicant’s reproductive health information.

(d) This Section does not prohibit:

(1) an applicant from voluntarily submitting, or the County from processing, a request for a reasonable accommodation under the Americans with Disabilities Act related to the job application process; or

(2) if the applicant is a County employee, an applicant from disclosing, or the County from requesting, health care information necessary for:

(A) enrolling in or processing employee benefits;

(B) making or processing workers’ compensation claims;

(C) making or processing leave requests in accordance with County laws and regulations; or



55                    (D)    complying with applicable state or federal law.  
56            (e)    An applicant aggrieved under this section may appeal to the Merit  
57                    System Protection Board under Section 33-13.

58            **Sec. 2. Expedited effective date.** The Council declares that this legislation is  
59    necessary for the immediate protection of the public interest. This Act takes effect on  
60    the date on which it becomes law.

Applicant Name: \_\_\_\_\_ Last 4 Digits of SSN: \_\_\_\_\_

**For OHR Use Only**

Department: \_\_\_\_\_ Division: \_\_\_\_\_ Position: \_\_\_\_\_

OMS Exam Date: \_\_\_\_\_ OMS Exam Type: \_\_\_\_\_

Clearance Date: \_\_\_\_\_ Check here for Temporary/Seasonal Position ☐

Recruitment Specialist(s): \_\_\_\_\_ Hiring Department Contact: \_\_\_\_\_

COVID-19 Vaccine Requirement ☐

**OFFICE OF HUMAN RESOURCES – OCCUPATIONAL MEDICAL SERVICES**

**27 Courthouse Square, Suite 184, Rockville, Maryland 20850**

**Phone: (240) 777-5118**

**MedicalInfo.OMS@montgomerycountymd.gov**

**Fax: (240) 777-5132**

**Montgomery County Government Medical History Review Form**

You have received an offer of employment conditioned on the result of this medical evaluation. The information submitted is used to determine your ability to perform the essential functions of the job for which you applied and could be used for evaluation in future workers' compensation claims. If necessary, you may request a reasonable accommodation consistent with provisions of the Americans with Disabilities Act and Montgomery County Personnel Regulations (MCPR), Section 8. The aforementioned law and County regulation in part require that an applicant be able to perform the essential job functions, with or without a reasonable accommodation. The County will take appropriate action to comply with any such request.

This form is to be completed and sent directly to Occupational Medical Services (OMS). Your employment application will not be further processed until OMS receives and evaluates this **completed** report. The information provided will be maintained in confidential medical files in accordance with MCPR, Section 4, and will be kept in the medical section of the Office of Human Resources (OHR). This form complies with all applicable HIPAA, PHI and County privacy requirements, and the information will be reviewed only by Occupational Medical Services or other authorized persons. **The medical evaluation cannot proceed unless all items below are answered fully.**

**Note:** This form is both a County personnel record and a record of the County's retirement system. Any information presented on this medical history form may also be used to evaluate an individual's future eligibility for disability or disability retirement benefits. This form is not used to determine eligibility for insurance benefits, nor will this form be provided to health insurers without your written consent.

\_\_\_\_\_  
**LAST NAME                      FIRST NAME                      MIDDLE NAME                      POSITION APPLIED FOR**

\_\_\_\_\_  
**HOME ADDRESS (STREET, CITY, STATE, ZIP CODE)                      SOCIAL SECURITY NUMBER**

\_\_\_\_\_  
**PHONE NUMBER                      EMAIL ADDRESS                      DATE OF BIRTH                      AGE                      SEX**

\_\_\_\_\_  
**EMERGENCY CONTACT (NAME, ADDRESS, PHONE)**

\_\_\_\_\_  
**HEALTH CARE PROVIDER (NAME, ADDRESS, PHONE)**

\_\_\_\_\_  
**DATE OF LAST PHYSICAL                      DATE OF LAST CHEST X-RAY OR TB TEST**

Applicant Name: \_\_\_\_\_ Last 4 Digits of SSN: \_\_\_\_\_

Statement of Personal Health (in your own words):

1. Have you been medically evaluated by Montgomery County in the past as a job applicant? ☐ Yes ☐ No
2. Do you currently have any physical or mental conditions or are you currently disabled in any way that may limit your ability to perform the job for which you have applied? ☐ Yes ☐ No
3. Do you wear a hearing aid or use an assistive device such as (i.e. wheelchair, cane, crutches, walker, or artificial limb)? ☐ Yes ☐ No
4. Do you have any disability requiring a reasonable accommodation in order for you to perform this job? ☐ Yes ☐ No
5. Have you been refused employment or been terminated from a job due to:
  - a. sensitivity to chemicals, dust, sunlight, etc. .... ☐ Yes ☐ No
  - b. inability to perform certain motions ..... ☐ Yes ☐ No
  - c. inability to assume certain positions ..... ☐ Yes ☐ No
  - d. any other medical, psychological or physical reason? ..... ☐ Yes ☐ No
6. Have you, within the past 3 years, had to change jobs because of a diagnosed injury or illness (physical or psychological)? ☐ Yes ☐ No
7. Have you been a patient in a hospital or rehabilitation center within the past 3 years? ☐ Yes ☐ No
8. Have you, within the past 3 years, been advised to have surgery that you declined to have? ☐ Yes ☐ No

**If you answered YES to any of the above questions 1-8, please provide date(s), relevant facts and explanations for each below:**

Applicant Name: \_\_\_\_\_ Last 4 Digits of SSN: \_\_\_\_\_

9. Within the past three years, have you had any of the following? (complete all 3 columns) Yes = Y, No = N

Y	N	Y	N	Y	N
1. High Blood Pressure		27. Kidney/UTI Condition		53. Bone Disease	
2. High Cholesterol		28. Gall Bladder Condition		54. Prostate Cancer	
3. Hypoglycemia		29. Hernia		55. Cancer or Tumor	
4. Diabetes		30. Poor Urine Control		56. Frequent Infections	
5. Varicose Veins		31. Blood in Urine		57. Rash or Skin Condition	
6. Phlebitis/Blood Clot		32. Stomach Ulcer		58. Yellow Jaundice	
7. Anemia		33. Chronic Diarrhea		59. Alcoholism	
8. Bleeding Disorder		34. Frequent Indigestion		60. Drug Addiction	
9. Abnormal Chest X-Ray		35. Intestinal Condition		61. Post-Traumatic Stress	
10. Abnormal EKG		36. Significant Intestinal Discomfort		62. Psychological/Mental Condition	
11. Heart Palpitations		37. Slipped/Ruptured Disc		63. Chronic Fatigue	
12. Heart Murmur		38. Back of Neck Pain		64. Clinical Depression	
13. Heart Attack		39. Arthritis/Gout		65. Learning Disability	
14. Stroke		40. Swollen or Painful Joint		66. Fear of Heights	
15. Dizziness/Fainting		41. Bursitis		67. Chronic Sleep Condition	
16. Severe Headaches		42. Leg Pain		68. Double Vision	
17. Loss of Consciousness		43. Knee/leg/ankle/foot condition		69. Poor Night Vision	
18. Memory Impairment		44. Shoulder/arm condition		70. Detached Retina	
19. Collapsed Lung		45. Loss of limb/finger/toe		71. Cataracts	
20. Tuberculosis		46. Fractured Bone		72. Speech Impairment	
21. Wheezing/Asthma		47. Sciatica or Neuritis		73. Hearing Impairment	
22. Chronic Cough		48. Significant Tremors/Shaking		74. Allergies	
23. Rheumatic Fever		49. Epilepsy/Seizure		75. Recent Substantial Weight Change	
24. Pneumonia		50. Paralysis		76. Other	
25. Liver Disease		51. Head Injury			
26. Pancreatitis		52. Thyroid Condition			

Explain all YES answers by number. Be sure to include dates and types of treatments, where applicable.

10. Have you been vaccinated against the following? Check all that apply.

<input type="checkbox"/> Hepatitis B	<input type="checkbox"/> Tetanus
<input type="checkbox"/> Rubella (German Measles)	<input type="checkbox"/> Mumps
<input type="checkbox"/> Varicella (Chicken Pox)	<input type="checkbox"/> Rubeola (Measles)
<input type="checkbox"/> Polio	<input type="checkbox"/> Rabies
<input type="checkbox"/> Hepatitis A	<input type="checkbox"/> Other

11. Montgomery County Government requires candidates to be vaccinated against COVID-19 prior to beginning employment. Have you received your primary dose(s) of a COVID-19 vaccine? ☐ Yes ☐ No

If YES, please upload proof of vaccination by clicking on the paperclip icon on the screen.

If NO, please explain:

☐ Requesting medical exemption ☐ Requested religious exemption through my recruiter ☐ Other

Applicant Name: \_\_\_\_\_ Last 4 Digits of SSN: \_\_\_\_\_

12. Do you have allergies to any of the following? Check all that apply.

<input type="checkbox"/> Animal Dander	<input type="checkbox"/> Metals, Chromium
<input type="checkbox"/> Bee Stings	<input type="checkbox"/> Nickel
<input type="checkbox"/> Food	<input type="checkbox"/> Plants (such as Poison Ivy)
<input type="checkbox"/> Epoxy Resin	<input type="checkbox"/> Pollen
<input type="checkbox"/> House Dust	<input type="checkbox"/> Rubber
<input type="checkbox"/> Industrial Chemicals	<input type="checkbox"/> Soaps or Detergents
<input type="checkbox"/> Insect Scales	<input type="checkbox"/> Other:

13. Are you pregnant or is there a possibility you are? ☐ Yes ☐ No

14. Do you wear: ☐ glasses ☐ contact lenses\* ☐ artificial eye  
 \*If wearer of contact lenses, indicate whether: ☐ soft ☐ hard ☐ gas permeable

15. Do you have any medical or other restrictions pertaining to driving a motor vehicle? ☐ Yes ☐ No

If YES, please explain:

16. Are you currently taking prescription medications? ☐ Yes ☐ No

If YES, please explain:

17. Are you currently taking any over-the-counter medications (decongestants, antihistamines, cough medicines, etc.) or supplements (i.e. St. Johns Wort, Echinacea, etc.) that may cause drowsiness? ☐ Yes ☐ No

If YES, please list:

18. Do you currently smoke? ☐ Yes ☐ No

If YES, how long have you smoked and how much? \_\_\_\_\_

19. Do you drink alcoholic beverages? ☐ Yes ☐ No

If YES, how often? ☐ daily ☐ weekly ☐ monthly ☐ occasionally

If YES, average consumption amount: \_\_\_\_\_

20. Within the past three years, have you been advised by a health care provider to reduce your consumption of alcohol because of a health condition resulting from or made worse by drinking alcohol? ☐ Yes ☐ No

If YES, please explain:

Applicant Name: \_\_\_\_\_

Last 4 Digits of SSN: \_\_\_\_\_

21. To the best of your knowledge, have you had an exposure to any of the following, either in your work or while engaged in a hobby?

Y N

Y N

1. Mercury (scientific instruments, chlorine plants, dental offices)		13. Radioactive materials, lasers, x-rays, radar	
2. Arsenic (insecticides)		14. Toluene (solvents, lacquers, inks)	
3. Acrylamide (construction, routing)		15. Methylene Chloride	
4. Hexane (solvents, rubber cements, inks)		16. Fumes or Hazardous Gases	
5. Trichloroethylene (trichlor, "tri," degreasing)		17. Carbon Monoxide (by-product of combustion)	
6. Perchloroethylene (perchlor, perc, dry-cleaning industry)		18. Industrial Dust or Flames	
7. Pesticides		19. Firearms/guns	
8. Methyl butyl ketone (MEK, inks)		20. Loud industrial noise	
9. Asbestos		21. Frequent/prolonged use of a chainsaw	
10. Carbon Disulfide (rayon/rubber industry, labs)		22. Frequent/prolonged use of lawn equipment or chippers	
11. Lead (jewelry, foundries, battery industry, ammunition)		23. Frequent/prolonged exposure to motorcycle noise	
12. Frequent/prolonged exposure to extreme temperatures		24. Frequent/prolonged use of vibrating industrial equipment (jackhammers)	

Explain all YES answers by number. Be sure to include estimated dates and duration of exposure.

22. To the best of your knowledge, have you ever been exposed to a chemical or hazardous material not listed above?

☐ Yes ☐ No

If YES, give dates(s) and describe if any illness or symptoms resulted from the exposure.

23. In the past three years, have you regularly worn any of the following protective equipment in your previous work or while engaged in your hobby? Check any that apply.

<input type="checkbox"/> Ear plugs/muffs	<input type="checkbox"/> Gloves
<input type="checkbox"/> Goggles/face mask	<input type="checkbox"/> Apron or Gown
<input type="checkbox"/> Dust mask	<input type="checkbox"/> Other*
<input type="checkbox"/> Respirators	

\*Please explain: \_\_\_\_\_

24. (FIREFIGHTER / RESCUER POSITION ONLY) Are you, or have you been in the past three years, a volunteer firefighter or cadet with Montgomery County, MD?

☐ Yes ☐ No

If Yes, please explain:

Applicant Name: \_\_\_\_\_ Last 4 Digits of SSN: \_\_\_\_\_

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**Certification of Information**

I certify that I have reviewed the forgoing information supplied by me and that it is true and complete to the best of my knowledge. Further, I understand that:

1. Any offer of employment is conditioned on the results of this medical evaluation;
2. Any intentionally false or misleading statement may result in the rejection of my application for employment or in my discharge from County employment. Such a false or misleading statement may also exclude me from coverage in the County medical disability retirement or disability benefit programs.
3. I may be required to provide additional medical information and/or undergo further medical evaluation as a condition of employment.
4. Upon written request, a copy of this form or any component of my medical record will be made available to me in accordance with MCPR Section 4.

Applicant's Signature: \_\_\_\_\_  
(or signature of Parent if applicant is a minor)

Date: \_\_\_\_\_

Parent's Printed Name (if applicant is a minor): \_\_\_\_\_

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Physical/Nurse comments, summary or elaboration of all pertinent data.

Montgomery County Physician / Nurse Signature

\_\_\_\_\_  
Date: \_\_\_\_\_




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
*County Executive*

M E M O R A N D U M

February 14, 2023

TO: Evan Glass, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Bill 5-23, Personnel – Prospective Employees – Health Care Privacy

I support Bill 5-23 with a request for amendment and thank the Council for ensuring protection for prospective employees' personal health care information during their candidacy process.

Bill 5-23 supports the County's ability to assess the medical capability of candidates to perform essential job functions prior to hiring and delineates the definitions and expectations under which the current medical review process operates. The medical history review process was established to both ensure that the candidate is medically able to perform the essential functions required of their position, to assure the availability of required accommodations if requested and/or needed at the time of hire, and to give the County a reasonable baseline record on medical status. The County does not monitor or require further medical review for employees unless a work-related injury occurs or a change in health status impacts employees' ability to perform their duties.

This Bill would prohibit inquiries that are not related to the position for which the prospective employee is being considered. The medical history review form is intended to ask only job-related questions. The Office of Human Resources, in collaboration with the Department of Finance, Montgomery County Employee Retirement Plans, and the County Attorney's Office, edited the medical history review form in June 2022, and narrowed the scope of questions at that time. This proposed legislation has challenged us to more closely examine the medical questionnaire, and assure they are position relevant for each applicant's intended position.

For positions that require a physical medical exam due to prescribed medical protocols, state and federal requirements, some questions in the medical history review form will still be appropriate



for the independent employee medical examiner to determine fitness for duty. For those positions that solely require a medical history review form in accordance with their current medical protocols, the County will need to modify its process to significantly narrow the scope of medical questions asked at time of hire to those that are job-related.

To make these changes and fully comply with Bill, the Office of Human Resources will need time to revise and automate medical history forms and consult with internal stakeholders and partners to ensure continued compliance with medical protocols. This may require job class specification updates, which is a manually intensive process, in order to reflect any changes in medical protocols in the Classification Plan. We strongly believe that we can accomplish this work within 120 days of passage.

The Executive Branch looks forward to working with the Council on this legislation. Thank you to Councilmember Luedtke and team, and this Council, for your leadership on this issue.

# Fiscal Impact Statement

Office of Management and Budget

## Bill 5-23

## Personnel and Human Resources - Prospective Employees - Health Care Privacy

### Bill Summary

This bill limits and restricts the types of medical information that the County may ask prospective employees, and use as a factor for consideration in hiring an applicant. This bill also allows applicants to appeal a violation of the bill's provisions to the Merit System Protection Board.

### Fiscal Impact Summary

The bill is not expected to impact County revenues. The impact on County expenditures can not be reliably calculated at this time, as described below, but could be significant.

### Fiscal Impact Analysis

The extent of the impact of this bill is unknown due to several factors. Personal information submitted on the pre-employment Medical History Review Form is used by the Montgomery County Employee Retirement Plans Disability Review Plan when making recommendations about eligibility for service-connected disability benefits. Montgomery County Employee Retirement Plans notes that removing certain items from the medical form that might highlight a pre-existing condition of prospective employees may result in higher determinations of service-connected disabilities.

The Department of Finance - Division of Risk Management indicates that it is difficult to determine how the implementation of the bill might affect County expenditures for Workers' Compensation coverage. The Montgomery County Self Insurance Program is included in the County's Operating budget in the operating expense category. Expenditures occur every year, and are variable.

The Office of the County Attorney (OCA) uses the pre-employment medical form when a Workers' Compensation claim is submitted to assist in the defense of the County in order to avoid payment of claims for injuries that are proven to not have occurred at work (or exacerbation of physical conditions that would have been identified on the pre-employment questionnaire presently in use). Discontinuing use of the detailed form (presently in use) may limit the work of OCA to defend worker's compensation matters, possibly resulting in higher payments of claims.

### Staff Impact

Implementation of the bill may result in a significant but unknown amount of increased staff time and responsibilities because there are several areas that might be impacted, and the degree of impact is also unknown.

### Actuarial Analysis

Implementation of the bill may impact retiree pension or group insurance costs by a significant but unknown amount. To the extent the bill results in more successful workers compensation claims against the County and increased disability retirements, the costs associated could be significant.

### Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

### Other Information



*Later actions that may impact  
revenue or expenditures if future  
spending is projected*

The bill does not authorize future spending.

**Contributors**

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# Climate Assessment

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 that Expedited Bill 5-23 will likely have no impact on the County's contribution to addressing climate change as it is proposing changes to required medical forms in the hiring process of County employees.

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### BACKGROUND AND PURPOSE OF EXPEDITED BILL 5-23

Prior to hiring, prospective County employees are required to complete a medical history review form from the Occupational Medical Services department 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."<sup>1</sup>

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.

Expedited Bill 5-23 was introduced by the Council on January 31, 2023.

## ANTICIPATED IMPACTS

As Bill 5-23 is proposing changes to medical forms required in the County's hiring process, OLO anticipates that it will have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

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## RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.<sup>2</sup> OLO does not offer recommendations or amendments as Bill 5-23 is likely to have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

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## CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not 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.

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## PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

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## CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

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<sup>1</sup> [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.](#)

<sup>2</sup> Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

# 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.

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## 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.<sup>1</sup> 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.<sup>2</sup>

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## 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.”<sup>3</sup>

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.<sup>4</sup>

# RESJ Impact Statement

## Expedited Bill 5-23

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

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### 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.<sup>5</sup> Examples of disabilities covered by the ADA include cancer, autism, deafness, major depressive disorder, and mobility disabilities.<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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### 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.<sup>11</sup>

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.



# RESJ Impact Statement

## Expedited Bill 5-23

**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.”<sup>12</sup>

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.

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## 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.<sup>13</sup> OLO anticipates Expedited Bill 5-23 will have minimal impact on RESJ in the County. As such, OLO does not offer recommended amendments.

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## 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.

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## CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

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<sup>1</sup> 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>

<sup>2</sup> Ibid

<sup>3</sup> 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](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2023/20230131/20230131_4C.pdf)

<sup>4</sup> Ibid

<sup>5</sup> 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](https://adata.org/research_brief/experience-discrimination-and-ada)

<sup>6</sup> “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>

<sup>7</sup> “Disability Discrimination and Employment Decisions,” U.S. Equal Employment Opportunity Commission.

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

# RESJ Impact Statement

## Expedited Bill 5-23

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<sup>8</sup> 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>

<sup>9</sup> Sarah Parker Harris, et al

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

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

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

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

# Economic Impact Statement

Montgomery County, Maryland

## Expedited Bill 5-23

## Personnel and Human Resources – Prospective Employees – Health Care Privacy

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 5-23 would have an insignificant impact on economic conditions in the County in terms of the Council’s priority indicators.

### BACKGROUND AND 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 (OHR). 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.”

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.

Expedited Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy, was introduced by the Council on January 31, 2023.<sup>1</sup>

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<sup>1</sup> Background on the Bill is based on the following sources: [Montgomery County Government Medical History Review Form](#); [Wellons to Council](#); and [Expedited Bill 5-23](#).

## INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Expedited Bill 5-23 on County-based private organizations and residents in terms of the Council's priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.<sup>2</sup>

Based on consultations with OHR personnel and a survey of County hiring managers conducted in January 2020,<sup>3</sup> it is unlikely that any changes to the hiring process induced by the Bill would significantly affect whether candidates are offered or accept a position with the County. For this reason, OLO anticipates that the change in law would have insignificant impacts on private organizations, residents, and overall economic conditions in the County in terms of the economic indicators prioritized by the Council.

## VARIABLES

Not applicable

## IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Not applicable

## DISCUSSION ITEMS

Not applicable

## WORKS CITED

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Council. [Expedited Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy](#). Introduced on January 31, 2023.

Office of Human Resources. [Montgomery County Government Medical History Review Form](#).

Office of Human Resources. [OHR Partner Survey](#). January 19, 2020.

Wellons, Christine to County Council. [Memorandum](#). January 26, 2023.

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<sup>2</sup> Montgomery County Code, [Sec. 2-81B](#).

<sup>3</sup> [OHR Partner Survey](#).

## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not 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.

## CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.