



Committee: GO

Committee Review: At a future date

Staff: Christine Wellons, Senior Legislative Attorney

Purpose: To receive testimony – no vote expected

Keywords: #HealthPrivacy

AGENDA ITEM #8

February 14, 2023

Public Hearing

SUBJECT

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

Lead Sponsor: Councilmember Luedtke

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

EXPECTED ATTENDEES

Public speakers

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

DESCRIPTION/ISSUE

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.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report

Expedited Bill 5-23

Medical Form – Office of Human Resources (Revised 6/2022)

Pages 1-2

© 1

© 5

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M E M O R A N D U M

February 9, 2023

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

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

PURPOSE: Public hearing – no Council votes required

Expedited Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy, sponsored by Lead Sponsor Councilmember Luedtke and Co-Sponsors Councilmembers Alborno, Balcombe, Friedson, Stewart, Sayles, Glass, Jawando, Katz, Mink, and Fani-González, was introduced on January 31, 2023. A public hearing is scheduled for February 14 at 1:30 p.m. A worksession of the Government Operations and Fiscal Policy Committee is tentatively scheduled for March 2, 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.

This packet contains:

Expedited Bill 5-23

Medical Form – Office of Human Resources (Revised 6/2022)

Circle

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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:

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>

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:

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, grouting)			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: _____

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: _____ Date: _____
(or signature of Parent if applicant is a minor)

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

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

Montgomery County Physician / Nurse Signature

_____ Date: _____