COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice President Berliner, and Council President Andrews

AN ACT to:

(1) require County contractors and subcontractors to provide equal benefits for employees working on certain County contracts; and

(2) generally regulate the benefits provided to employees of contractors and subcontractors on certain County contracts.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-33D, Equal Benefits

The County Council for Montgomery County, Maryland approves the following Act:
Bill No. 37-09

Sec. 1. Section 11B-33D is added as follows:

11B-33D. Equal Benefits.

(a) Definitions. In this Section, the following words have the meanings indicated:

Benefit means a plan, program, or policy provided or offered by a contractor or subcontractor to some or all employees as part of the employer's total compensation package. This may include:

(1) bereavement leave;

(2) family medical leave;

(3) sick leave;

(4) health benefits;

(5) dental benefits;

(6) disability insurance;

(7) life insurance; and

(8) retirement benefits.

Cash equivalent means the actual cost to the employer for insurance benefits to the spouse of a married employee, which are not provided to a domestic partner, if:

(1) the benefit would be provided to a domestic partner of an employee if that person were a spouse of the employee; and
(2) the employer is unable to provide the benefit to a domestic partner of an employee after making a reasonable effort to do so.

Contract means a contract for services subject to Section 11B-33A or a contract for construction services subject to Section 11B-33C.

Domestic partnership means:

(1) a relationship between two individuals of the same sex that has been licensed as a civil union or marriage in a jurisdiction where such a civil union or marriage is permitted; or

(2) an unlicensed relationship between two individuals of the same sex who:

(A) share a close personal relationship and are responsible for each other's welfare;

(B) have shared the same legal residence for at least 12 months;

(C) are at least 18 years old;

(D) have voluntarily consented to the relationship, without fraud or duress;

(E) are not married to, or in a domestic partnership with, any other person;
are not related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were opposite sexes;

are each legally competent to contract;

share financial and legal obligations; and

legally register the domestic partnership if a domestic partnership registration system exists in the jurisdiction where the employee resides.

*Employee* means a person who performs work on a contract in an employment relationship with the contractor or a subcontractor.

*(b)* *Equal benefits requirement.* A contractor or subcontractor must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse. If a benefit cannot reasonably be provided to a domestic partner, the contractor or subcontractor must pay the employee the cash equivalent.

*(c)* *Contract requirements.* Each contract covered by this Section must:

(1) require the contractor and all subcontractors to comply with this Section; and

(2) specify that an aggrieved employee, as a third-party beneficiary, may by civil action recover the cash equivalent of any benefit denied in violation of this Section or other compensable damages.
(d) **Enforcement.**

(1) The Director or a designee may perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that this Section has been violated, the Director must issue a written decision, including appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to:

   (i) pay each employee of the contractor or subcontractor the cash equivalent of the benefits denied; and

   (ii) satisfy a liability of a contractor for liquidated damages as provide in this Section.

(2) A contractor or subcontractor must not discharge or otherwise retaliate against an employee for asserting any right under this Section or for filing a complaint of a violation.

(3) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with this Section.

(4) Each contract subject to this Section may specify the payment of liquidated damages to the County by the contractor for any noncompliance with this Section.
(5) Each contractor is jointly and severally liable for noncompliance with this Section by a subcontractor.

(6) A contractor may appeal a written decision of the Director that the contractor violated this Section to the Chief Administrative Officer within 10 working days after receiving a copy of the decision. The Chief Administrative Officer must designate a hearing officer to conduct a hearing under Chapter 2A after receiving a timely appeal. If the contractor does not appeal a written decision within 10 working days after receipt, the decision of the Director becomes final and binding.

(e) Report. The Chief Administrative Officer must report annually to the Council and Executive on the operation of and compliance with this Section.

Sec. 2. Effective Date. This Act applies to any contract awarded on or after January 1, 2011, but does not apply to any renewal or extension of a contract that was originally awarded before January 1, 2011.
Approved:

Nancy Floreen
Nancy Floreen, President, County Council

February 3, 2010
Date

Isiah Leggett
Isiah Leggett, County Executive

Feb. 16, 2010
Date

This is a correct copy of Council action.

Linda M. Lauer
Linda M. Lauer, Clerk of the Council

Feb. 16, 2010
Date