

MEMORANDUM

May 11, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers

Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers, sponsored by Councilmembers Ervin, Rice, Elrich and Riemer, is scheduled to be introduced on May 15, 2012. A public hearing is tentatively scheduled for June 12 at 1:30 p.m.

Bill 19-12 would:

- require certain contractors to retain certain service workers for a 90-day transition period;
- provide enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award certain relief; and
- generally regulate the displacement of certain service workers by a covered employer.

Background

The Bill would provide some temporary job protection for non-management service workers when their employer's service contract is terminated. A service contract is defined as a:

contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, food preparation, or non-professional health care services in a facility located in the County which is used as a:

- (1) private school;
- (2) hospital, nursing care facility, or other health care provider;
- (3) institution, such as a museum, convention center, arena, airport, or music hall;
- (4) multi-family residential building or complex with more than 30 units; or
- (5) commercial building or office building occupying more than 75,000 square feet.

Property owners who hire contractors to provide these services often replace the contractor with little or no notice to the affected service employees. The successor contractor is

not required to retain the incumbent service workers and must quickly recruit new employees. This process often results in sudden unemployment for many of these low-wage service workers.

The Bill would require the terminated contractor to give their service workers 15 days notice before the contract is terminated. The Bill would also require the successor contractor to offer to retain the incumbent service workers for a temporary 90-day transition period. The Bill would permit the successor contractor to hire less than all of the incumbent workers if they can perform the contract with fewer employees. The successor contractor may also release an incumbent service worker during the 90-day transition period for cause. The County Executive supports this Bill. See ©10.

Laws providing similar protection for certain employees have been enacted in other jurisdictions, including the District of Columbia, San Francisco, Los Angeles, Providence, and New York City. Recently, both the Supreme Court of California, in *California Grocer's Association v. City of Los Angeles*, 52 Cal. 4th 177 (2011), and the United States Court of Appeals for the 1st Circuit, in *Rhode Island Hospitality Association v. City of Providence*, 667 F.3d 17 (1st Cir. 2011), held that this type of local law was not preempted by the National Labor Relations Act.

This packet contains:

Bill 19-12

Legislative Request Report

May 11 County Executive Memorandum

Circle #

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Bill No. 19-12
Concerning: Human Rights and Civil
Liberties – Displaced Service
Workers
Revised: May 2, 2012 Draft No. 5
Introduced: May 15, 2012
Expires: November 15, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Rice, Elrich, and Riemer

AN ACT to:

- (1) require certain contractors to retain certain service workers for a transition period;
- (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 displacement of certain service workers by a covered employer.

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 X, Displaced Service Workers

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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 X 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 Article X, 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 Article X 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 [discrimination] a violation of this Article or Article X 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 Article X, 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:

* * *

(F) financial losses resulting from the discriminatory act or a violation of Article X; 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 Article X 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 [discrimination] violation, not exceeding the actual difference in

- expenses or benefits that the complainant realized while seeking to mitigate the consequences of the [discrimination] 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 Article X or is necessary to eliminate the effects of any discrimination prohibited under this Article.

* * *

ARTICLE X. DISPLACED SERVICE WORKERS PROTECTION ACT.

27-64. Definitions.

(a) As used in this Article:

Awarding authority means any person that awards or enters into a service contract or subcontract with a contractor to be performed in the County. Awarding authority does not include a Federal, State, County, or municipal government.

Contractor means any person, including a subcontractor, which enters into a service contract to be performed in the County and employs more than 20 service employees in the entire company.

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

Person means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into a service contract.

Service contract means a contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, food preparation, or non-professional health care services in a facility located in the County which is used as a:

- (1) private school;
- (2) hospital, nursing care facility, or other health care provider;
- (3) institution, such as a museum, convention center, arena, airport, or music hall;
- (4) multi-family residential building or complex with more than 30 units; or
- (5) commercial building or office building occupying more than 75,000 square feet.

Service employee means an individual employed on a full or part-time basis by a contractor as a:

- (1) building service employee, including a janitor, security officer, groundskeeper, door staff, maintenance technician, handyman, superintendent, elevator operator, window cleaner, or building engineer;
- (2) food service worker, including a cafeteria attendant, line attendant, cook, butcher, baker, server, cashier, catering worker, dining attendant, dishwasher, or merchandise vendor;
- (3) non-professional employee performing health care or related service.

Service employee 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 \$30 per hour; or
- (4) an employee who is regularly scheduled to work less than 10 hours per week.

Successor contractor means a contractor that:

- (1) is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days;
- (2) has purchased or acquired control of a property located in the County where service employees were employed at any time during the previous 90 days; or
- (3) terminates a service contract and hires service employees as its direct employees to perform services that are substantially similar, within 90 days after a service contract is terminated or cancelled.

(b) This Article does not limit the ability of an awarding authority to terminate a service contract or replace a contractor with another contractor.

27-65. Transition employment period.

(a) Awarding authority. At least 15 days before a service contract is terminated, an awarding authority must:

- (1) request the terminated contractor to give the successor contractor a complete list of the name, date of hire, and job classification of each service employee working on the service contract;
- (2) give the successor contractor a complete list of the name, date of hire, and job classification of each service employee of the terminated contractor working on the service contract;
- (3) notify the collective bargaining representative, if any, of the affected service employees of the pending termination of the service contract; and
- (4) ensure that a written notice to all affected service employees describing the pending termination of the service contract and the

employee rights provided by this Article is conspicuously posted at any affected work site.

(b) Successor contractor.

(1) Subject to paragraph (3), each successor contractor must retain each affected service employee at an affected site for 90 days or until the successor contract is terminated, whichever is earlier.

(2) Each successor contractor must give each affected service employee a written offer of employment and send a copy to the employee's collective bargaining representative, if any. Each offer must:

(A) state the date by which the service employee must accept the offer; and

(B) allow the employee at least 10 days after receiving the notice to accept the offer.

(3) Each successor contractor may retain less than all of the affected service employees during the 90 day transition period if the successor contractor:

(A) finds that fewer service employees are required to perform the work than the terminated contractor had employed;

(B) retains service employees by seniority within each job classification;

(C) maintains a preferential hiring list of those employees not retained; and

(D) hires any additional service employees from the list, in order of seniority, until all affected service employees have been offered employment;

162 (4) must not discharge a service employee retained under this
 163 Section without just cause during the transition period.

164 **27-66. Enforcement.**

165 A service employee who was not retained during the transition period, or who
 166 was discharged in violation of this Article, may file a complaint with the Director
 167 under Section 27-7.

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169 *Approved:*

170

Roger Berliner, President, County Council

Date

171 *Approved:*

172

Isiah Leggett, County Executive

Date

173 *This is a correct copy of Council action.*

174

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 19 -12

Human Rights and Civil Liberties – Displaced Service Workers

DESCRIPTION:	This Bill would require certain successor contractors to retain certain service workers for a 90-day transition period after taking over the contract and provide enforcement by the Office of Human Rights and the Human Rights Commission.
PROBLEM:	Property owners who hire contractors to provide building services often replace the contractor with little or no notice to the affected service workers. The successor contractor is not required to retain the incumbent service workers and must quickly recruit new employees. This process often results in sudden unemployment for many of these low-wage service workers.
GOALS AND OBJECTIVES:	To provide notice to and temporary employment for service workers who are subject to unemployment due to their employer's loss of a service contract.
COORDINATION:	CAO, Office of Human Rights, Human Rights Commission
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Laws providing similar protection for certain employees have been enacted in other jurisdictions, including the District of Columbia, San Francisco, Los Angeles, Providence, and New York City.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Damages awarded by Human Rights Commission

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

May 11, 2012

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett
County Executive

SUBJECT: Bill 19-12, Human Rights and Civil Liberties - Displaced Service Workers

I am writing to express my support for Bill 19-12, Human Rights and Civil Liberties - Displaced Service Workers. This legislation will help us reach the important goals of protecting our service sector workers and their families who live or work in Montgomery County while assuring that our business environment remains competitive for companies that provide security, building maintenance, food preparation, or non-professional health care services.

It can be extremely disruptive to employees when they lose their livelihood in a sudden manner. Many in these service industries are already supporting themselves and their families on a thin financial margin, and can be irreparably harmed even by short-term interruptions in their income. The displaced workers legislation protects these workers while allowing service companies the flexibility to make personnel decisions and be responsive to client needs and bidding specifications – including terminating employees for just cause.

Similar legislation has been in place in Washington, DC for many years with much success. It has not caused disruption to the cleaning contractor community there, nor has it been a financial burden to the DC government. This legislation allows responsible contractors to stay competitive while at the same time providing fair wages and benefits to employees. It will improve standards for workers, and foster stability for the clients of the service companies.

For these reasons, I urge the Council to support Bill 19-12.