

Bill No. 51-14  
Concerning: Discriminatory Employment  
Practices – Retaliation for Wage  
Disclosure - Prohibited  
Revised: January 15, 2015 Draft No. 4  
Introduced: October 28, 2014  
Enacted: February 3, 2015  
Executive: February 11, 2015  
Effective: May 13, 2015  
Sunset Date: None  
Ch. 3, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Vice President Leventhal and Councilmembers Navarro, Elrich, Riemer, Berliner, and Hucker

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**AN ACT** to:

- (1) prohibit an employer from retaliating against an employee for certain disclosures of wages of the employee or another employee;
- (2) establishing certain exceptions to the prohibition against retaliation for wage disclosures; and
- (3) generally amending the law concerning discriminatory employment practices.

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Section 27-19

<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>

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

**Sec. 1. Section 27-19 is amended as follows:**

**27-19. Discriminatory employment practices.**

(a) A person must not because of the race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status of any individual or disability of a qualified individual, or because of any reason that would not have been asserted but for the race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status:

(1) For an employer:

(A) fail or refuse to hire, fail to accept the services of, discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment; or

(B) limit, segregate, or classify employees in any way that would deprive or tend to affect adversely any individual's employment opportunities or status as an employee;

(2) For an employment agency: fail or refuse to refer for employment, assign job classifications to, classify or refer for employment, or otherwise discriminate against, any individual;

(3) For a labor organization:

(A) exclude or expel from its membership, or otherwise discriminate against any individual;

(B) limit, segregate, or classify its membership or classify, or fail or refuse to refer for employment, any individual in any way that would deprive or tend to deprive any individual of equal employment opportunities, or affect

adversely the individual's employment opportunities or status as an employee or as an applicant for employment; or

(C) cause or attempt to cause an employer to discriminate against an individual in violation of this section; or

(4) For an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training programs: discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(b) The term "discriminate" in subsection (a) includes excluding, or otherwise denying, equal job opportunity or benefits to, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

(c) A person must not:

(1) retaliate against any person for:

(A) lawfully opposing any discriminatory practice prohibited under this division; or

(B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this division;

(2) assist in, compel, or coerce any discriminatory practice prohibited under this division;

(3) obstruct or prevent enforcement or compliance with this division; or

(4) attempt directly or indirectly to commit any discriminatory practice prohibited under this division.

(d) (1) Except as provided in paragraph 2, a person must not print, publish, or cause to be printed or published, any notice or advertisement indicating any preference, limitation, or specification based on race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status relating to:

(A) employment by an employer;

(B) membership in or any classification or referral for employment by a labor organization; or

(C) any classification or referral for employment by an employment agency.

(2) This subsection does not prohibit a notice or advertisement from indicating a preference, limitation, or specification that is a bona fide occupational qualification for employment reasonably necessary to the normal operation of the particular business or enterprise.

(e) Notwithstanding any other provision of this division, it is not an unlawful employment practice:

(1) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any program, on the basis of race, color, religious creed, age, sex,

marital status, national origin, ancestry, disability, sexual orientation, gender identity, family responsibilities, or genetic status based on a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) for a religious corporation, association, or society to hire and employ employees of a particular religion; or

(3) for an employer to deny employment on the basis of religious creed if the observance, practice, or belief cannot be reasonably accommodated by an employer without causing undue hardship on the conduct of the employer's business.

(f) Notwithstanding any other provision of this division, it is not unlawful for any employer to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the provisions and purposes of this division, except that an employee benefit plan must not excuse an employer's failure to hire any qualified person.

(g) (1) [Reserved] Except as provided in paragraph (2), an employer must not discharge or in any other manner discriminate or retaliate against an employee because the employee:

(A) has inquired about, discussed, or disclosed the wages of the employee or another employee; or

(B) asserts any right under this subsection.

(2) The prohibition against retaliation for wage disclosure under paragraph (1) does not apply to an employee who has access to wage information of other employees or applicants as part of the employee's essential job functions and discloses the wages

of other employees or applicants to individuals who do not otherwise have access to the information, unless the disclosure is in response to:

(A) a formal complaint or charge;

(B) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the [[contractor]] employer; or

(C) is consistent with the [[contractor's]] employer's legal duty to furnish information.

(h) Notwithstanding any other provision of this division, a physician or other licensed medical professional may use genetic information about, and consider the genetic status of, an employee to evaluate whether a disease, medical condition, or disability that is currently manifest is preventing the employee from performing the essential functions of the position if:

(1) the genetic information is provided to the employee in writing as soon as the information is available;

(2) the genetic information is not disclosed to any other person (including the employer) without the employee's voluntary, written consent;

(3) the genetic information is maintained as a medical record separate from the employee's employment records; and

(4) no other law prohibits:

(A) the medical professional from collecting or using the genetic information, or

(B) the employer from considering the disease or disability, or the employee's genetic status.

- 136 (i) This division does not prohibit genetic monitoring of biological effects  
 137 of toxic substances in the workplace if:  
 138 (1) the employee has provided prior voluntary, informed consent in  
 139 writing to participate in the monitoring;  
 140 (2) the employee receives the results of the monitoring, including  
 141 both aggregate information and any information regarding the  
 142 specific employee, as soon as results are available;  
 143 (3) the monitoring complies with all other laws, such as regulations  
 144 protecting human subjects in research; and  
 145 (4) the employer (other than a licensed medical professional involved  
 146 in the genetic monitoring) receives results of the monitoring only  
 147 in aggregate terms that do not disclose the identity of any specific  
 148 employee.
- 149 (j) An employer must not require an employee to obtain or reveal any  
 150 genetic information that the employer is prohibited from considering  
 151 under this division.
- 152 (k) An employer may require an employee to adhere to reasonable  
 153 workplace appearance, grooming, and dress standards that are  
 154 nondiscriminatory and not precluded by any provision of state or federal  
 155 law. However, an employer must allow an employee to appear, groom,  
 156 and dress consistent with the employer's gender identity.

157 *Approved:*

158 George Leventhal 2/5/15  
George Leventhal, President, County Council Date

159 *Approved:*

160 Isiah Leggett Feb 11, 2015  
Isiah Leggett, County Executive Date

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

162 Linda M. Lauer 2/11/15  
Linda M. Lauer, Clerk of the Council Date