

Bill No. 35-19  
Concerning: Personnel – Collective Bargaining – Certified Representative – Duty of Fair Representation  
Revised: October 3, 2019 Draft No. 2  
Introduced: November 25, 2019  
Enacted: February 4, 2020  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker

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**AN ACT** to:

- (1) amend the duty of fair representation for a certified representative of County employees;
- (2) authorize a certified representative to impose the reasonable costs of filing a grievance or pursuing arbitration on an employee who does not pay membership dues or the equivalent;
- (3) require a certified representative to file a grievance or pursue arbitration for an employee who does not pay membership dues or the equivalent only if the employee pays the reasonable costs imposed; and
- (4) generally amending the duty of fair representation of a certified representative of County employees.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-78, 33-104, and 33-150

|                              |  |
|------------------------------|--|
| <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:*

1           **Sec. 1. Sections 33-78, 33-104, and 33-150 are amended as follows:**

2   **33-78. Employee rights.**

3           (a) Employees shall have the right:

4               (1) To form, join, support, contribute to, or participate in, or to refrain  
5                       from forming, joining, supporting, contributing to, or participating  
6                       in, any employee organization or its lawful activities; and

7               (2) To be fairly represented by their certified representative, if any.

8           (b) The employer must extend to the certified representative the exclusive  
9                       right to represent the employees for the purposes of collective bargaining,  
10                      including the orderly processing and settlement of grievances as agreed  
11                      by the parties.

12           (c) Except as provided in subsections (e) and (f), a [A] certified  
13                       representative must serve as the bargaining agent for all employees and  
14                       must represent fairly and without discrimination all employees without  
15                       regard to whether the employees are members of the employee  
16                       organization, pay dues or other contributions to it, or participate in its  
17                       affairs. [However, it is not a violation of this duty for a certified  
18                       representative to seek enforcement of an agency shop provision in a valid  
19                       collective bargaining agreement.]

20           (d) The right of the certified representative to receive membership dues  
21                       deductions [or agency shop provisions shall] must be determined through  
22                       negotiations, unless the authority to negotiate such provisions has been  
23                       suspended under section 33-84. No collective bargaining agreement may  
24                       include a provision requiring membership in, participation in the affairs  
25                       of, or contributions to an employee organization [other than an agency  
26                       shop provision].

- 27           (e)    A certified representative may require an employee who does not pay  
 28                   membership dues or equivalent fees to pay:
- 29                   (1)   the reasonable costs and fees, including expenses for staff time and  
 30                           materials, arbitrator fees, and related attorney’s fees, for filing a  
 31                           grievance or arbitrating a matter that arises under a collective  
 32                           bargaining agreement brought by the certified representative at the  
 33                           request of the employee; and
- 34                   (2)   any anticipated proportional costs and fees before a grievance is  
 35                           filed or arbitration is pursued.
- 36           (f)    If an employee fails to pay the reasonable costs to file a grievance or  
 37                   pursue arbitration imposed under subsection (e), the certified  
 38                   representative may refuse to file the grievance or pursue arbitration on  
 39                   behalf of the employee. A dispute concerning the reasonableness of the  
 40                   fees imposed by the certified representative under subsection (e) may be  
 41                   submitted to the permanent umpire as a prohibited practice under Section  
 42                   33-82.

43   **33-104. Employee rights.**

- 44           (a)    Employees have the right to:
- 45                   (1)   Form, join, support, contribute to, or participate in, or to refrain  
 46                           from forming, joining, supporting, contributing to, or participating  
 47                           in, any employee organization or its lawful activities; and
- 48                   (2)   Be represented fairly by their certified representative, if any.
- 49           (b)    The employer has the duty to extend to the certified representative the  
 50                   exclusive right to represent the employees for the purposes of collective  
 51                   bargaining, including the orderly processing and settlement of grievances  
 52                   as agreed by the parties in accordance with this article.

- 53 (c) Except as provided in subsections (e) and (f), a [A] certified  
54 representative serves as the exclusive bargaining agent for all employees  
55 in the unit for which it is certified and has the duty to represent fairly and  
56 without discrimination all employees in the unit without regard to  
57 whether the employees are members of the employee organization, pay  
58 dues or other contributions to it, or participate in its affairs. [However, it  
59 is not a violation of this duty for a certified representative to seek  
60 enforcement of an agency shop provision in a valid collective bargaining  
61 agreement.]
- 62 (d) The right of a certified representative to receive voluntary dues or service  
63 fee deductions [or agency shop provisions shall] must be determined  
64 through negotiations, unless the authority to negotiate these provisions  
65 has been suspended under this article. A collective bargaining agreement  
66 may not include a provision requiring membership in, participation in the  
67 affairs of, or contributions to an employee organization [other than an  
68 agency shop provision].
- 69 (e) A certified representative may require an employee who does not pay  
70 membership dues or equivalent fees to pay:
- 71 (1) the reasonable costs and fees, including expenses for staff time and  
72 materials, arbitrator fees, and related attorney's fees, for filing a  
73 grievance or arbitrating a matter that arises under a collective  
74 bargaining agreement brought by the certified representative at the  
75 request of the employee; and
- 76 (2) any anticipated proportional costs and fees before a grievance is  
77 filed or arbitration is pursued.
- 78 (f) If an employee fails to pay the reasonable costs to file a grievance or  
79 pursue arbitration imposed under subsection (e), the certified

80 representative may refuse to file the grievance or pursue arbitration on  
 81 behalf of the employee. A dispute concerning the reasonableness of the  
 82 fees imposed by the certified representative under subsection (e) may be  
 83 submitted to the labor relations administrator as a prohibited practice  
 84 under Section 33-109.

85 **33-150. Employee rights.**

86 (a) Employees have the right to:

87 (1) form, join, support, contribute to, or participate in, or refrain from  
 88 forming, joining, supporting, contributing to, or participating in,  
 89 any employee organization or its lawful activities; and

90 (2) be represented fairly by their certified representative, if any.

91 (b) The employer must extend to the certified representative the exclusive  
 92 right to represent the employees for the purposes of collective bargaining,  
 93 including the orderly processing and settlement of grievances as agreed  
 94 by the parties under this Article.

95 (c) Except as provided in subsections (e) and (f), a [A] certified  
 96 representative serves as the exclusive bargaining agent for all employees  
 97 in the unit and must represent fairly and without discrimination all  
 98 employees in the unit without regard to whether the employees are  
 99 members of the employee organization, pay dues or other contributions  
 100 to it, or participate in its affairs. [However, it is not a violation of this  
 101 duty for a certified representative to seek enforcement of an agency shop  
 102 provision in a valid collective bargaining agreement.]

103 (d) The right of a certified representative to receive voluntary dues or service  
 104 fee deductions [or agency shop provisions] must be determined through  
 105 negotiations, unless the authority to negotiate these provisions has been  
 106 suspended under this Article. [Other than an agency shop provision, a] A

107 collective bargaining agreement must not require membership in,  
108 participation in the affairs of, or contributions to an employee  
109 organization.

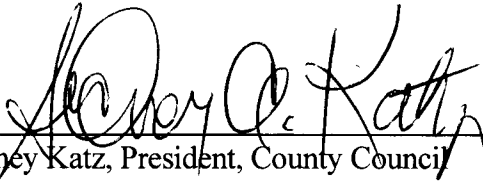
110 (e) A certified representative may require an employee who does not pay  
111 membership dues or equivalent fees to pay:

112 (1) the reasonable costs and fees, including expenses for staff time and  
113 materials, arbitrator fees, and related attorney's fees, for filing a  
114 grievance or arbitrating a matter that arises under a collective  
115 bargaining agreement brought by the certified representative at the  
116 request of the employee; and

117 (2) any anticipated proportional costs and fees before a grievance is  
118 filed or arbitration is pursued.

119 (f) If an employee fails to pay the reasonable costs to file a grievance or  
120 pursue arbitration imposed under subsection (e), the certified  
121 representative may refuse to file the grievance or pursue arbitration on  
122 behalf of the employee. A dispute concerning the reasonableness of the  
123 fees imposed by the certified representative under subsection (e) may be  
124 submitted to the labor relations administrator as a prohibited practice  
125 under Section 33-154.

*Approved:*



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Sidney Katz, President, County Council

2/5/20<sup>1</sup>20

Date

*Approved:*

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Marc Elrich, County Executive

Date

*This is a correct copy of Council action.*

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Selena Mendy Singleton, Esq., Clerk of the Council

Date