



Committee: Directly to Council
Committee Review: N/A
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To receive testimony/final action - vote expected
Keywords: #MinimumWorkWeek

AGENDA ITEM 8
December 8, 2020
Public Hearing/Action

SUBJECT

Expedited Bill 48-20, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week – Effective Date
Lead Sponsor: County Council

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing followed by Action – Council roll call vote expected

DESCRIPTION/ISSUE

Expedited Bill 48-20 would Delay the effective date of Chapter 25, Laws of Montgomery County 2019.

SUMMARY OF KEY DISCUSSION POINTS

The global pandemic has created near empty office buildings in the County due to many office workers forced to work from home. Both SEIU and AOBA believe the implementation of the law during this pandemic is likely to further destabilize employment of these workers.

This report contains:

Expedited Bill 48-20	©1
Legislative Request Report	©3
Bill 12-19 as enacted	©4
32BJ, SEIU and AOBA letter	©11

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M E M O R A N D U M

December 3, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 48-20, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week – Effective Date

PURPOSE: Public Hearing/Action – Council vote required

Expedited Bill 48-20, Human Rights and Civil Liberties – Racial Equity and Social Justice Advisory Committee – Members - Amendments, sponsored by Lead Sponsor County Council, was introduced on December 1, 2020. Action is scheduled following this public hearing.¹

Bill 48-20 would Delay the effective date of Chapter 25, Laws of Montgomery County 2019 (Bill 12-19, Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week). Bill 12-19, enacted on November 5, 2019 and signed into law on November 7, 2019, takes effect on January 1, 2021. See ©4-10.

Bill 12-19 will require an employer to provide a minimum work week of at least 30 hours for each employee performing janitorial services at an office building occupying at least 350,000 square feet in the County with an occupancy rate of 50% or more. The law will also apply to a County government employee performing janitorial services in a privately-owned office building of at least 350,000 square feet. The law will not apply to a person working in a building owned by the United States, any State, or any local government. An employer may reserve up to 30% of the available hours for part-time work of at least 20 hours per week.

A Complaint may be filed with the County Office of Human Rights. The County Human Rights Commission may award a range of compensatory damages for a violation, including attorney's fees and equitable relief. The law will not apply to an employee:

- (1) who is a manager or confidential employee;
- (2) who works in an executive, administrative, or professional capacity;
- (3) who earns more than twice the living wage;
- (4) who works as a security officer only on Saturday or Sunday;
- (5) who temporarily replaces a building maintenance worker who is absent for less than one week; and
- (6) of a Federal, State, or local government other than the County.

¹#MinimumWorkWeek

The Council received correspondence from the union representing many of these workers, 32BJ, SEIU and the Apartment and Office Building Association of Metropolitan Washington (AOBA) requesting a delay of the January 1, 2021 effective date until January 1, 2022. See ©11. The global pandemic has created near empty office buildings in the County due to many office workers forced to work from home. Both SEIU and AOBA believe the implementation of the law during this pandemic is likely to further destabilize employment of these workers.

Expedited Bill 48-20 would delay the effective date of this law until January 1, 2022.

This packet contains:	<u>Circle #</u>
Expedited Bill 48-20	1
Legislative Request Report	3
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Expedited Bill No. 48-20
Concerning: Human Rights and Civil
Liberties – Building Maintenance
Worker – Minimum Work Week –
Effective Date
Revised: 11-18-20 Draft No. 1
Introduced: December 1, 2020
Expires: June 1, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

AN EXPEDITED ACT to:

Delay the effective date of Chapter 25, Laws of Montgomery County 2019

By amending

Chapter 25, Laws of Montgomery County 2019

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>

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

Sec. 1. Chapter 25, Laws of Mont. Co. 2019 is amended as follows:

Sec. 2. Effective date.

This Act takes effect on [January 1, 2021] January 1, 2022.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Tom Hucker, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 48-20

Human Rights and Civil Liberties – Building Maintenance Worker – Minimum Work Week – Effective Date

DESCRIPTION: Expedited Bill 48-20 would Delay the effective date of Chapter 25, Laws of Montgomery County 2019.

PROBLEM: The global pandemic has created near empty office buildings in the County due to many office workers forced to work from home. Both SEIU and AOBA believe the implementation of the law during this pandemic is likely to further destabilize employment of these workers.

GOALS AND OBJECTIVES: Delay the effective date of the law.

COORDINATION:

FISCAL IMPACT: To be provided

ECONOMIC IMPACT: To be provided

EVALUATION: To be provided

EXPERIENCE ELSEWHERE: To be researched

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

Clerk's Note: Corrected Article numbers and Section numbers on lines 2, 6, 17, 32, 39, 52, 56, 67, 70, 72, 114 and make corresponding changes to page 1. Added the word or on line 82.

Bill No. 12-19
Concerning: Human Rights and Civil
Liberties – Building Maintenance
Worker – Minimum Work Week
Revised: October 7, 2019 Draft No. 3
Introduced: May 7, 2019
Enacted: November 5, 2019
Executive: November 7, 2019
Effective: January 1, 2021
Sunset Date: None
Ch. 25, Laws of Mont. Co. 2019

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer

Co-Sponsors: Councilmembers Jawando, Hucker, Council President Navarro and Councilmember Rice

AN ACT to:

- (1) require certain employers in the County to provide certain building maintenance workers with a minimum work week;
- (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 minimum work week for certain workers in the County.

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 ~~[[XIV]]~~ XV, Minimum Work Week for Building Maintenance Workers
Sections ~~[[27-83 and]]~~ 27-84 and 27-85

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>

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

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 Articles X, XI, XII, [or] XIII, or ~~[[XIV]]~~ XV 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 Articles X, XI, XII, [or] XIII, or ~~[[XIV]]~~ XV 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 a violation of this Article or Articles X, XI, XII, [or] XIII, or ~~[[XIV]]~~ XV 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 Articles X, XI, [or] XIII, or ~~[[XIV]]~~ XV, 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:

(A) reasonable attorney's fees;

(B) property damage;

(C) personal injury;

(D) unreimbursed travel or other reasonable expenses;

(E) damages not exceeding \$500,000 for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others;

(F) financial losses resulting from the discriminatory act or a violation of Article X or ~~[[XIV]]~~ XV; and

(G) interest on any damages from the date of the discriminatory act or violation, as provided in subsection (c);

- 55 (2) equitable relief to prevent the discrimination or the violation of
56 Articles X, XI, [or] XIII, or ~~[[XIV]]~~ XV and otherwise effectuate
57 the purposes of this Chapter;
- 58 (3) consequential damages, such as lost wages from employment
59 discrimination or a violation of Article X or higher housing costs
60 from housing discrimination, for up to 2 years after the violation,
61 not exceeding the actual difference in expenses or benefits that the
62 complainant realized while seeking to mitigate the consequences
63 of the violation (such as income from alternate employment or
64 unemployment compensation following employment
65 discrimination); and
- 66 (4) any other relief that furthers the purposes of this Article or Articles
67 X, XI, [or] XIII, or ~~[[XIV]]~~ XV, or is necessary to eliminate the
68 effects of any discrimination prohibited under this Article.

69 * * *

70 **ARTICLE ~~[[XIV]]~~ XV. MINIMUM WORK WEEK FOR BUILDING**
71 **MAINTENANCE WORKERS.**

72 **~~[[27-83]] 27-84. Definitions.~~**

73 As used in this Article:

74 Building maintenance worker means an individual employed at a covered
75 location ~~[[as a janitor, building cleaner, security officer, concierge, doorman,~~
76 handyperson, or building superintendent]] performing janitorial services. A
77 building maintenance worker does not include:

- 78 (1) a managerial or confidential employee;
- 79 (2) an employee who works in an executive, administrative, or
80 professional capacity;

(3) an employee who earns more than twice the wage requirement established under Section 11B-33A; or

(4) [[an employee who works as a security officer solely on Saturday or Sunday; or

(5)] an employee who temporarily replaces a building maintenance worker who is absent for less than one week.

Covered employer means any person, individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association, or other entity operating and doing business in the County that employs one or more persons as a building maintenance worker at a covered location in the County. Covered employer includes the County government, but does not include the United States, any State, or any other local government.

Covered leave means paid or unpaid leave voluntarily used by a building maintenance worker as authorized by Federal, State, or County law, a collective bargaining agreement, or a written employee handbook.

Covered location means an office building or contiguous group of office buildings under common ownership or management occupying a total of 350,000 square feet or more in the County with an occupancy rate of 50% or more. Covered location does not include:

(1) an office building or group of office buildings owned by the United States, any State, or any local government; or

(2) a building used primarily for apartment or condominium dwelling units, retail stores, hospitals, schools, warehouses, parking garages, or data centers.

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

Employ means to engage a person to work for compensation.

Minimum work week means the minimum number of compensated hours provided to a building maintenance worker in any work week.

Office means a room, set of rooms, or a building where the business of a commercial or industrial organization or of a professional person is conducted.

Work week means a fixed regularly recurring period of 168 hours or 7 consecutive 24 hour periods.

[[27-84]] 27-85. Minimum work week; enforcement.

(a) Minimum work week. ~~[[The]]~~ Except as provided in subsection (b), the minimum work week for each employee working as a building maintenance worker at a covered location for a covered employer must be at least 30 hours unless the employee is taking covered leave.

(b) A covered employer may preserve up to 30% of the total hours scheduled for all building maintenance workers at a covered location for part-time workers with a minimum shift of 4 hours per day and 20 hours per week per covered building maintenance worker.

~~[[b)]]~~ (c) Complaints. A building maintenance worker who is aggrieved by a violation of this Article may file a complaint with the Director under Section 27-7.

~~[[c)]]~~ (d) Retaliation prohibited. A person must not:

(1) retaliate against any person for:

(A) lawfully opposing any violation of this Article; or

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

(2) obstruct or prevent enforcement or compliance with this Article.

Sec. 2. Effective date.

This Act takes effect on ~~[[July 1, 2020]]~~ January 1, 2021.

Approved:

<u>/s/</u>	<u>11/6/19</u>
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Nancy Navarro, President, County Council

Date

Approved:

<u>s/</u>	<u>11/7/19</u>
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Marc Elrich, County Executive

Date

This is a correct copy of Council action.

<u>s/</u>	<u>11/12/19</u>
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Mary Anne Paradise, Acting Clerk of the Council

Date



November 18, 2020

Dear Councilmembers:

As representatives of the members of the Service Employees International Union (SEIU 32BJ) and the Apartment and Office Building Association of Metropolitan Washington (AOBA), we write this joint letter to request that the Council act immediately to delay the January 1, 2021 effective date of the Human Rights and Civil Liberties - Building Maintenance Worker - Minimum Work Week Act (“Act”) to January 1, 2022. The Act is scheduled to take effect on January 1 amidst an ongoing global pandemic and recession which continues to wreak havoc on the local and state economies.

As a result of the continued economic fallout from COVID-19, residents and businesses are facing an extended period of economic uncertainty. Already, our organizations are reporting staffing reductions because of the economic toll from the ongoing pandemic. Across the county are near empty office buildings as most employees continue to work from home. We expect little change to occupancy levels and for telecommuting to continue well into 2021 as public health officials predict a winter surge in COVID-19 cases. Notably, both the county and state have already begun imposing new COVID-related restrictions on businesses.

We do not intend to reopen discussions around the merits of the Act. The Act clearly requires covered employers to provide a minimum work week of at least 30 hours to building maintenance workers. Our organizations are committed to an eventual implementation and enforcement of the Act. Instead, our primary concern is the health, safety and economic stability of the men and women who continue to work in commercial office buildings during the pandemic. We believe that delaying the Act’s effective date to January 1, 2022 will help stabilize employment by minimizing further reductions resulting from the economic effects of the pandemic on the county’s commercial real estate market. Further, the proposed delay also factors in recent reports about possible widespread availability of COVID-19 vaccines for the general population in 2021 and commercial office market recovery in 2022.

While the pandemic continues to have a devastating impact on residents’ health and the economy, AOBA and SEIU 32BJ believe that we are stronger together. We will continue to work with the county and other stakeholders to focus our collective efforts on stabilizing the economy. We are one community.

Nicola Y. Whiteman, Esq.
Senior Vice President of Government
Affairs, AOBA

Jaime Contreras
VP and Capital Area Director
SEIU 32BJ

Cc: County Executive Mark Elrich
James L. Stowe, Director, Office of Human Rights