



**Committee GO**

**Staff:** Ludeen McCartney-Green, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** n/a

AGENDA ITEM #13B

July 20, 2021

**Introduction**

**SUBJECT**

Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited  
Lead Sponsor: Council President Hucker

**EXPECTED ATTENDEES**

None

**COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

- To introduce Bill – no vote expected

**DESCRIPTION/ISSUE**

Bill 32-21 would:

- prohibit county employee settlement agreements to include a “no-rehire” clause;
- provide the Chief Administrative Officer or agency head the authority to include certain clause;
- establish a right to appeal; and
- generally amend the County law governing personnel and human resources.

**SUMMARY OF KEY DISCUSSION POINTS**

N/A; introduction

**This report contains:**

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| Legislative Request Report | ©3     |
| Sponsor Memorandum         | ©4     |

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**MEMORANDUM**

July 16, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited

PURPOSE: Introduction – no Council vote required

Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited, sponsored by Lead Sponsor Council President Huckler, is scheduled to be introduced on July 20, 2021. A public hearing is tentatively scheduled for September 14, 2021 at 1:30 p.m.<sup>1</sup>

Bill 32-21 would:

- prohibit county employee settlement agreements to include a “no-rehire” clause;
- provide the Chief Administrative Officer or agency head the authority to include certain clause;
- establish a right to appeal; and
- generally amend the County law governing personnel and human resources.

**PURPOSE**

The purpose of the bill is to prohibit “no-rehire” clause from County employee settlement agreements. When an employee files an employment dispute or claim against the County, and a settlement agreement is proffered, it contains a no-rehire clause that will prevent the employee from seeking future employment opportunities with the County. This automatic bar places an undue burden on County employees who may have gained several years of knowledge, skill, and ability with no viable option to return to County employment, even after, the dispute has been settled.

**BILL SPECIFICS**

Generally, the bill would ban the County from including a “no-rehire” clause in an employee settlement agreement. However, it is important to note the bill does provide an exemption to include a “no rehire” clause, if: (1) the County and the employee mutually agree or (2) if the employee by the Chief Administrative Offer or agency head was terminated “for cause.” In addition, the bill provides the option for an aggrieved employee to file an appeal with the

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County’s Merit System Protection Board, if a decision was made to include the “no-rehire” clause in the settlement agreement.

|                            |                 |
|----------------------------|-----------------|
| This packet contains:      | <u>Circle #</u> |
| Bill 32-21                 | 1               |
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Bill No. 32-21  
Concerning: Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited  
Revised: 7/12/21 Draft No. 2  
Introduced: July 20, 2021  
Expires: January 20, 2023  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President Hucker

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**AN ACT to:**

- (1) prohibit county employee settlement agreements to include a “no-rehire” clause;
- (2) provide the Chief Administrative Officer or agency head the authority to include certain clause;
- (3) establish a right to appeal; and
- (4) generally amend the County law governing personnel and human resources.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-22

|                              |  |
|------------------------------|--|
| <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. Section 33-22 is added as follows:**

2   **33-22. [Reserved] County Employee Settlement Agreements; right to appeal.**

3           (a)   Definitions. For purposes of this Section, the following terms have the  
4                   meanings indicated:

5                   Employment dispute means any grievance, claim or lawsuit filed  
6                   against the County.

7                   No-rehire clause: a provision prohibiting, preventing, or otherwise  
8                   restricting an employee from obtaining future employment.

9           (b)   An agreement to settle an employment dispute must not contain a no-  
10                   rehire clause from County employment.

11           (c)   Except as provided in subsection (b), a settlement agreement may  
12                   include a no-rehire clause if:

13                   (1)   the provision is mutually agreed upon to end the current  
14                   employment relationship; or

15                   (2)   the Chief Administrative Officer or agency head has made a  
16                   finding that there are sufficient grounds to terminate the  
17                   employment for cause.

18           (d)   If an employee disagrees with the decision to include a no-rehire clause,  
19                   within ten days from the receipt of the decision, the aggrieved employee  
20                   may in writing, appeal to the County's Merit System Protection Board.

21           **Sec. 2. Transition.**

22           This Act does not apply to any County employee settlement agreement that  
23           was executed by all parties before this Act took effect.

## LEGISLATIVE REQUEST REPORT

Bill 32-21

*Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited*

**DESCRIPTION:** Bill 32-21 would prohibit the County from including a no-rehire clause in an employee settlement agreement unless certain circumstances apply. It also provides the County employee the right to appeal if a no-rehire clause is included in a settlement agreement.

**PROBLEM:** County employee settlement agreements contain a “no-rehire” clause that prohibits an employee from reemployment with the County. The restriction eliminates the opportunity for an employee to apply and work for the County indefinitely.

**GOALS AND OBJECTIVES:** To prohibit “no rehire” clause in County employee settlement agreements.

**COORDINATION:** Office of Human Resources, County Attorney

**FISCAL IMPACT:** To be provided

**ECONOMIC IMPACT:** To be provided

**EVALUATION:** To be provided

**EXPERIENCE ELSEWHERE:** California and Vermont

**SOURCE OF INFORMATION:** Ludeen McCartney-Green, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

**MEMORANDUM**

To: Montgomery County Council

From: Council President Tom Hucker

Date: July 15, 2021

Re: Bill 32-21 Employee Settlement Agreement with No-Rehire Clause – Prohibited

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Bill 32-21 is a straightforward bill that seeks to limit the use of “no-rehire” clauses in employment dispute agreements. The employment disputes may include grievances, claims or lawsuits filed against the County. The bill will permit a “no-rehire” clause if the Chief Administrative Officer or agency head decide it is necessary or both parties agree to it. However, if the employee disagrees with the use of a “no-rehire” clause, they may appeal it to the County’s Merit System Protection Board.

The County should not make it a standard practice to include “no-rehire” clauses in employment disputes. Unless the dispute escalates to a serious incident, individuals should have the opportunity to compete again for a job with the County. Furthermore, a “no-rehire” clause is essentially a lifetime ban and making them a standard practice can rob former employees from contributing to the County in the future.

In conclusion, this is a small change that will have an important impact. We are a County that believes in second chances, and we can uphold that value through this bill. I greatly appreciate your consideration of this legislation and look forward to discussing it further.