

[[Expedited]] Bill No. 5-23
Concerning: Personnel and Human
Resources – Prospective Employees
– Health Care Privacy
Revised: 03/16/23 Draft No. 3
Introduced: January 31, 2023
Enacted: March 21, 2023
Executive: March 31, 2023
Effective: July 29, 2023
Sunset Date: None
Ch. 5, Laws of Mont. Co. 2023

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Luedtke

Co-Sponsors: Councilmembers Alborno and Balcombe, Council Vice-President Friedson,
Councilmembers Stewart and Sayles, Council President Glass, and Councilmembers Jawando,
Katz, Mink, and Fani-Gonzalez

AN **[[EXPEDITED]]** ACT to:

- (1) limit inquiries by the County regarding certain health information of prospective employees;
- (2) prohibit inquiries by the County regarding certain reproductive health information of prospective employees;
- (3) limit consideration by the County of certain health information of prospective employees;
- (4) permit certain appeals to the Merit System Protection Board; and
- (5) generally amend the laws regarding human resources and health care privacy.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-25A

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

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>

1 **Sec. 1. Section 33-25A is added as follows:**

2 **33-25A. Prospective Employees – Health Care Privacy.**

3 (a) Definitions. As used in this section:

4 Americans with Disabilities Act means the federal Americans with
5 Disabilities Act of 1990, as amended.

6 Applicant means a person seeking County employment, including a
7 merit system position, non-merit system position, appointed position, or
8 contractual position.

9 Business-related health information means health care information that
10 is necessary to evaluate whether an applicant meets a minimum
11 qualification for a position.

12 Contractual position means an individual providing services to the
13 County pursuant to a procurement under Chapter 11B. Contractual
14 position does not include the employees or subcontractors of a
15 contractor under Chapter 11B.

16 Health care means any care, treatment, or procedure by a health care
17 provider:

18 (1) to diagnose, evaluate, rehabilitate, manage, treat, or maintain
19 the physical or mental condition of a patient or recipient; or

20 (2) that affects the structure or any function of the human body.

21 Health care information means any individually identifiable
22 information related to health care.

23 Minimum qualification means a mandatory qualification that:

24 (1) must be met to perform the required job functions of the position;
25 and

26 (2) was posted publicly prior to the acceptance of any application for
27 the position.

28 Reproductive health information means health care information related
29 to any aspect of reproductive health, including abortion care,
30 miscarriage, contraception, sterilization, pregnancy, and family
31 planning.

32 (b) Requesting or considering health care information - Limitations.

33 (1) Except as provided in paragraph (2), the County must not:

34 (A) request or seek health care information regarding an
35 applicant; or

36 (B) consider health care information as a factor in determining
37 whether to hire an applicant.

38 (2) Unless otherwise prohibited by law, the County [[may]] is
39 entitled to:

40 (A) request or seek business-related health care information;
41 and

42 (B) consider business-related health care information solely to
43 determine whether an applicant meets a minimum
44 qualification.

45 (c) Requesting reproductive health information – Prohibited. The County
46 must not request or consider an applicant’s reproductive health
47 information.

48 (d) This Section does not prohibit:

49 (1) an applicant from voluntarily submitting, or the County from
50 processing, a request for a reasonable accommodation under the
51 Americans with Disabilities Act related to the job application
52 process; or

53 (2) if the applicant is a County employee, an applicant from
54 disclosing, or the County from requesting, health care
55 information necessary for:

56 (A) enrolling in or processing employee benefits;

57 (B) making or processing workers' compensation claims;


58 (C) making or processing leave requests in accordance with
59 County laws and regulations; or

60 (D) complying with applicable state or federal law.

61 (e) An applicant aggrieved under this section may appeal to the Merit
62 System Protection Board under Section 33-13.

63 **Sec. 2. [[Expedited effective]] Effective date. [[The Council declares that**
64 **this legislation is necessary for the immediate protection of the public interest.]] This**
65 **Act takes effect [[on the date on which]] 120 days after it becomes law.**

Approved:

 3/22/2023

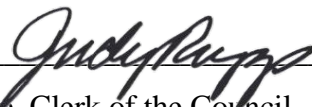
Evan Glass, President, County Council Date

Approved:

 3/31/2023

Marc Elrich, County Executive Date

This is a correct copy of Council action.

 3/31/2023

Judy Rupp, Clerk of the Council Date