

Bill No. 2-10  
Concerning: Personnel, Contracts -  
Retaliation  
Revised: March 1, 2010 Draft No. 6  
Introduced: January 19, 2010  
Enacted: March 16, 2010  
Executive: March 26, 2010  
Effective: June 25, 2010  
Sunset Date: None  
Ch. 8, Laws of Mont. Co. 2010

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council Vice President Ervin, Councilmember Andrews, Councilmember Trachtenberg,  
Council President Floreen, Councilmember Navarro and Councilmember Elrich

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**AN ACT** to:

- (1) provide an appeal to the Merit System Protection Board by certain employees who allege retaliation for certain actions;
- (2) prohibit retaliation against a County employee or an employee of certain contractors or subcontractors for disclosing certain information; and
- (3) generally amend the law regarding retaliation for disclosure of illegal or improper actions in County government.

By amending

Montgomery County Code  
Chapter 2, Administration.  
Section 2-151.  
Chapter 33, Personnel and Human Resources  
Sections 33-10, 33-13A, and 33-17

By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
[[Section 11B-36]] Section 11B-35A

<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. Sections 2-151, 33-10, 33-13A, and 33-17 are amended as follows:**

**2-151. Inspector General**

\* \* \*

(1) *Access to information.*

\* \* \*

(5) An employee of the County government or any instrumentality of the County, and an employee of any contractor or subcontractor with the County or any instrumentality of the County, must not be retaliated against or penalized, or threatened with retaliation or penalty, for providing information to, cooperating with, or in any way assisting the Inspector General in connection with any activity of that Office under this Section.

\* \* \*

**33-10. Disclosure of illegal or improper actions in [county] County government; protection for merit system employees against retaliation or coercion [for disclosing illegal or improper actions in county government; prohibited practices; complaint procedures; investigations; penalties;] appeals.**

(a) *Disclosure of illegal or improper actions.*

(1) Employees should report illegal or improper actions in County government.

(2) Employees should first report illegal or improper actions to the individual responsible for corrective action. That person may be anyone from the employee's immediate supervisor [up] to [and including] the County Executive, or for legislative branch employees, the County Council.

[(3) In unusual circumstances, or if a retaliatory action or coercion

28 has taken place, the employee may file a report directly with  
 29 either the Board or the Ethics Commission. Unless expressly  
 30 authorized by Section 19A-10, the identity of both the  
 31 employee filing a report and the county employee or official  
 32 who is the subject of this report must be kept confidential  
 33 unless waived in writing by each party, respectively. The Board  
 34 or the Ethics Commission must refer the report to the  
 35 government agency, including the Board or the Ethics  
 36 Commission, that is responsible for addressing the unlawful  
 37 conduct raised in the report. That government agency must then  
 38 conduct an inquiry.]

39 (b) *Protection for employees.*

40 (1) A personnel action is an act or omission by a supervisor which  
 41 has a significant adverse impact on the employee, or a change  
 42 in the employee's duties or responsibilities which is inconsistent  
 43 with the employee's grade and salary. A personnel action does  
 44 not include an act or omission by a supervisor that is not subject  
 45 to review by the Merit Systems Protection Board under Section  
 46 33-12.

47 (2) [Any] A merit system employee must not be subjected to a  
 48 personnel action in retaliation for:

49 (A) [who refuses] refusing to obey an instruction involving  
 50 an illegal or improper action; or

51 (B) [who discloses] disclosing, to a Federal, State, or County  
 52 official or employee, information concerning illegal or  
 53 improper action in [county] County government [[to a  
 54 County official or employee]] with a reasonable good-

55 faith belief that [such disclosures are true and] the  
 56 information disclosed is accurate [shall be protected  
 57 under procedures authorized herein from any retaliatory  
 58 or coercive personnel action].

59 (3) This [provision] subsection does not [extend protection to]  
 60 protect a merit system employee [upon a determination that] if  
 61 the:

62 (A) [(1) The] employee's actions were frivolous,  
 63 unreasonable, and without foundation, even though not  
 64 brought in bad faith;

65 (B) [(2) The] employee, without good cause, [failed to] did  
 66 not comply with [administrative] applicable regulations  
 67 concerning the making of such disclosures; or

68 (C) [(3) The] employee was the subject of an otherwise  
 69 proper personnel [actions] action that would have been  
 70 taken regardless of the employee's disclosure of  
 71 information concerning illegal or improper action in  
 72 County government [taken for disciplinary reasons and  
 73 not for retaliatory purposes prohibited by this section].

74 [A "personnel action" shall mean any administrative act or omission which  
 75 has a significant adverse impact upon the employee, or a change in the  
 76 employee's duties or responsibilities inconsistent with the employee's grade  
 77 and salary.]

78 (c) [*Prohibited practices.* It shall be unlawful for any person to coerce  
 79 any merit system employee into taking an illegal or improper action or  
 80 take any retaliatory action against any merit system employee because  
 81 of that employee's disclosure of information relating to illegal and

82 improper action in county government.] Appeal. A merit system  
 83 employee who alleges that he or she was subjected to a retaliatory  
 84 personnel action in violation of subsection (b) may appeal to the Merit  
 85 System Protection Board under Section 33-12.

86 (d) [*Filing of complaints.* If an employee believes a retaliatory action or  
 87 coercion has taken place or been attempted because of his refusal to  
 88 obey an illegal or improper instruction or disclosure of same, the  
 89 employee may file a written complaint with the board. The complaint  
 90 must be filed within sixty (60) days of the alleged violation or action  
 91 and must contain:]

92 [(1) The employee's name and signature;

93 (2) The employee's home address and telephone number;

94 (3) The name of the individual who allegedly took the action;

95 (4) A concise description of the alleged coercion or retaliatory  
 96 action and reasons for believing it to be so. The identity of all  
 97 parties shall be kept confidential unless and until there is a  
 98 finding of probable cause or all parties waive such  
 99 confidentiality in writing.

100 The board may initiate an inquiry of any person suspected of taking  
 101 retaliatory or coercive action, with or without a written complaint  
 102 from an employee.] Decision. The Board must issue a written  
 103 decision, including necessary findings of fact and conclusions of law,  
 104 and may order any remedy authorized by Section 33-14.

105 [(e) *Investigations.* All complaints charging a violation of subsection (c)  
 106 shall be promptly investigated by the board's staff, who shall  
 107 determine whether probable cause exists to believe a violation of that  
 108 subsection has occurred. Should the board's staff determine that the

109 subject matter of the complaint involved allegations more properly the  
 110 subject of an employee grievance or complaint to be filed under the  
 111 provisions of the personnel regulations or other laws or regulations,  
 112 the complainant shall be so advised and the complaint dismissed; and  
 113 the period of limitations for the bringing of such other action shall be  
 114 deemed to run from the date of the dismissal. Should the board's staff  
 115 determine that no probable cause exists, that determination shall be  
 116 final and the complaint dismissed unless board reconsideration is  
 117 requested. Should the board's staff determine that probable cause does  
 118 exist, the staff shall prepare and cause to be served on the person  
 119 believed to have violated subsection (c) a statement of charges fairly  
 120 describing the alleged violation and the sanctions sought to be  
 121 imposed for such violation. The charges shall then be certified to the  
 122 board to schedule and conduct hearings in accordance with the  
 123 provisions of this chapter. The case in support of charges shall be  
 124 presented by the board's staff.]

125 [(f) *Penalties.* If a county employee is found guilty of coercion,  
 126 harassment or retaliation, the merit system protection board may order  
 127 the imposition of one (1) or more of the following penalties:

- 128 (1) Any disciplinary action provided for in the personnel  
 129 regulations up to and including dismissal;  
 130 (2) A monetary fine in any amount up to two thousand dollars  
 131 (\$2,000.00);  
 132 (3) Reimbursement of expenses incurred by all parties;  
 133 (4) Other penalties as may be deemed appropriate and consistent  
 134 with the charter and laws of Montgomery County, Maryland.]

135 [(g) *Appeals.* An employee subject to the foregoing penalties based on the

136 merit system protection board's findings and decision may appeal to a  
137 court of competent jurisdiction.]

138 **33-13A. Audits, investigations and inquiries.**

139 \* \* \*

140 There is hereby created the position of special personnel investigator. The  
141 special personnel investigator shall exercise the following powers and perform the  
142 following duties and functions:

143 (a) Investigate any matter referred to him by the merit system protection  
144 board[, including matters arising under section 33-10, in which case  
145 he shall be deemed board staff as provided in section 33-10(e)].

146 \* \* \*

147 **33-17. Prohibited personnel practices; criminal penalty.**

148 \* \* \*

149 (g) A person must not threaten, promise, or take any action against a  
150 County employee to:

151 (1) induce or coerce an employee to take an illegal or improper  
152 action; or

153 (2) retaliate against an employee for disclosing information to a  
154 Federal, State, or County official or employee concerning an  
155 illegal or improper action in County government that the  
156 employee has a good faith belief is accurate.

157 \* \* \*

158 **Sec. 2. Section ~~[[11B-36]] 11B-35A~~ is added as follows:**

159 **~~[[11B-36]] 11B-35A. Disclosure of illegal or improper actions.~~**

160 (a) Definitions. In this Section, the following words have the meaning  
161 indicated:

162 [[Contract means an agreement to which the County is a party for the  
163 procurement or disposal of goods, services, or construction, including  
164 any contract modification.]]

165 Covered employee means an employee of a contractor or subcontractor  
166 [[who]] that performs or performed services under a contract subject to  
167 this Section.

168 [[Director means the Director of the Department of General Services or  
169 the Director's designee.]]

170 Employer means a contractor or subcontractor that, through the use of a  
171 covered employee, performs or performed services under a County  
172 contract.

173 Personnel action means an act or omission by the employer that has a  
174 significant adverse impact on the employee, or a change in the  
175 employee's duties or responsibilities which is inconsistent with the  
176 employee's position and salary.

177 (b) Policy. A covered employee must not be subjected to a personnel  
178 action by the Employer for disclosing, to a County official or employee,  
179 information involving the solicitation, award, administration, or  
180 performance of any contract [[to a County official or employee]] that  
181 the employee reasonably believes is:

182 (1) an abuse of authority, gross mismanagement, or gross waste of  
183 money;

184 (2) a substantial and specific danger to public health or safety; or

185 (3) a violation of law.

186 (c) Each contract must:



- 187           (1) prohibit retaliation by the Employer against a covered employee  
188           who discloses any illegal or improper action described in  
189           subsection (b); and
- 190           (2) specify that an aggrieved covered employee, as a third-party  
191           beneficiary, may by civil action recover compensatory damages,  
192           including interest and a reasonable attorney's fee, against the  
193           employer for retaliation in violation of this Section.
- 194           (d) In addition to other authority granted by law, [[The]] the Director may  
195           cancel, terminate, or suspend a contract, in whole or in part, and declare  
196           a contractor or subcontractor ineligible for further County contracts  
197           based upon a final court judgment in favor of a covered employee for  
198           retaliation in violation of [[for non-compliance with]] this Section. The  
199           Director may impose other appropriate sanctions and remedies as  
200           provided in applicable regulations or by contract. Each Contractor must  
201           bind its subcontractors contractually to comply with this Section.
- 202           (e) This Section does not prohibit a personnel action against a covered  
203           employee that would have been taken regardless of a disclosure of  
204           information described in subsection (b).

205 *Approved:*

206 *Nancy Floreen* *3/17/10*  
Nancy Floreen, President, County Council Date

207 *Approved:*

208 *Isiah Leggett* *3/26/10*  
Isiah Leggett, County Executive Date

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

210 *Linda M. Lauer* *3/29/10*  
Linda M. Lauer, Clerk of the Council Date