


**MEMORANDUM**

June 8, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers

Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers, sponsored by Councilmembers Ervin, Rice, Elrich, Riemer and Navarro, was introduced on May 15, 2012. A Health and Human Services Committee worksession will be scheduled at a later date.

Bill 19-12 would:

- require certain contractors to retain certain service workers for a 90-day transition period;
- provide enforcement by the Office of Human Rights and the Human Rights Commission;
- authorize the Human Rights Commission to award certain relief; and
- generally regulate the displacement of certain service workers by a covered employer.

**Background**

The Bill would provide some temporary job protection for non-management service workers when their employer's service contract is terminated. A service contract is defined as a:

contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, food preparation, or non-professional health care services in a facility located in the County which is used as a:

- (1) private school;
- (2) hospital, nursing care facility, or other health care provider;
- (3) institution, such as a museum, convention center, arena, airport, or music hall;
- (4) multi-family residential building or complex with more than 30 units; or
- (5) commercial building or office building occupying more than 75,000 square feet.

Property owners who hire contractors to provide these services often replace the contractor with little or no notice to the affected service employees. The successor contractor is

not required to retain the incumbent service workers and must quickly recruit new employees. This process often results in sudden unemployment for many of these low-wage service workers.

The Bill would require the terminated contractor to give their service workers 15 days notice before the contract is terminated. The Bill would also require the successor contractor to offer to retain the incumbent service workers for a temporary 90-day transition period. The Bill would permit the successor contractor to hire less than all of the incumbent workers if they can perform the contract with fewer employees. The successor contractor may also release an incumbent service worker during the 90-day transition period for cause. The County Executive supports this Bill. See ©10.

Laws providing similar protection for certain employees have been enacted in other jurisdictions, including the District of Columbia, San Francisco, Los Angeles, Providence, and New York City. Recently, both the Supreme Court of California, in *California Grocer's Association v. City of Los Angeles*, 52 Cal. 4<sup>th</sup> 177 (2011), and the United States Court of Appeals for the 1<sup>st</sup> Circuit, in *Rhode Island Hospitality Association v. City of Providence*, 667 F.3d 17 (1<sup>st</sup> Cir. 2011), held that this type of local law was not preempted by the National Labor Relations Act.

This packet contains:	<u>Circle #</u>
Bill 19-12	1
Legislative Request Report	9
County Executive May 11 Memorandum	10

F:\LAW\BILLS\1219 Human Rights-Displaced Service Workers\PH Memo.Doc

Bill No. 19-12  
Concerning: Human Rights and Civil Liberties - Displaced Service Workers  
Revised: May 2, 2012 Draft No. 5  
Introduced: May 15, 2012  
Expires: November 15, 2013  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Rice, Elrich, Riemer and Navarro

**AN ACT** to:

- (1) require certain contractors to retain certain service workers for a transition period;
- (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 displacement of certain service workers by a covered employer.

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 X, Displaced Service Workers

<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:*



28 (C) set the matter for a hearing by a hearing examiner or the  
29 board itself, and consider and decide the complaint in the  
30 same manner as if the Director had found reasonable  
31 grounds to believe that [discrimination] a violation of this  
32 Article or Article X occurred.

33 (3) If the Director determines that there are reasonable grounds to  
34 believe a violation occurred, the Director must attempt to  
35 conciliate the matter under subsection (g).

36 \* \* \*

37 **27-8. Penalties and relief.**

38 (a) *Damages and other relief for complainant.* After finding a violation  
39 of this Article or Article X, the case review board may order the  
40 payment of damages (other than punitive damages) and any other  
41 relief that the law and the facts warrant, such as:

42 (1) compensation for:

43 \* \* \*

44 (F) financial losses resulting from the discriminatory act or a  
45 violation of Article X; and

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

49 (2) equitable relief to prevent the discrimination or the violation of  
50 Article X and otherwise effectuate the purposes of this Chapter;

51 (3) consequential damages, such as lost wages from employment  
52 discrimination or a violation of Article X or higher housing costs  
53 from housing discrimination, for up to 2 years after the  
54 [discrimination] violation, not exceeding the actual difference in

55 expenses or benefits that the complainant realized while seeking  
 56 to mitigate the consequences of the [discrimination] violation  
 57 (such as income from alternate employment or unemployment  
 58 compensation following employment discrimination); and  
 59 (4) any other relief that furthers the purposes of this Article or Article  
 60 X or is necessary to eliminate the effects of any discrimination  
 61 prohibited under this Article.

62 \* \* \*

63 **ARTICLE X. DISPLACED SERVICE WORKERS PROTECTION ACT.**

64 **27-64. Definitions.**

65 (a) As used in this Article:

66 Awarding authority means any person that awards or enters into a  
 67 service contract or subcontract with a contractor to be performed in the  
 68 County. Awarding authority does not include a Federal, State, County,  
 69 or municipal government.

70 Contractor means any person, including a subcontractor, which enters  
 71 into a service contract to be performed in the County and employs more  
 72 than 20 service employees in the entire company.

73 Director means the Executive Director of the Office of Human Rights  
 74 and includes the Executive Director’s designee.

75 Person means any individual, proprietorship, partnership, joint venture,  
 76 corporation, limited liability company, trust, association, or other entity  
 77 that may employ persons or enter into a service contract.

78 Service contract means a contract between an awarding authority and a  
 79 contractor to provide security, janitorial, building maintenance, food  
 80 preparation, or non-professional health care services in a facility located  
 81 in the County which is used as a:

- 82 (1) private school;
- 83 (2) hospital, nursing care facility, or other health care provider;
- 84 (3) institution, such as a museum, convention center, arena, airport,
- 85 or music hall;
- 86 (4) multi-family residential building or complex with more than 30
- 87 units; or
- 88 (5) commercial building or office building occupying more than
- 89 75,000 square feet.

90 Service employee means an individual employed on a full or part-time  
 91 basis by a contractor as a:

- 92 (1) building service employee, including a janitor, security officer,
- 93 groundskeeper, door staff, maintenance technician, handyman,
- 94 superintendent, elevator operator, window cleaner, or building
- 95 engineer;
- 96 (2) food service worker, including a cafeteria attendant, line
- 97 attendant, cook, butcher, baker, server, cashier, catering worker,
- 98 dining attendant, dishwasher, or merchandise vendor;
- 99 (3) non-professional employee performing health care or related
- 100 service.

101 Service employee does not include:

- 102 (1) a managerial or confidential employee;
- 103 (2) an employee who works in an executive, administrative, or
- 104 professional capacity;
- 105 (3) an employee who earns more than \$30 per hour; or
- 106 (4) an employee who is regularly scheduled to work less than 10
- 107 hours per week.

108 Successor contractor means a contractor that:

- 109           (1) is awarded a service contract to provide, in whole or in part,  
 110           services that are substantially similar to those provided at any  
 111           time during the previous 90 days;
- 112           (2) has purchased or acquired control of a property located in the  
 113           County where service employees were employed at any time  
 114           during the previous 90 days; or
- 115           (3) terminates a service contract and hires service employees as its  
 116           direct employees to perform services that are substantially  
 117           similar, within 90 days after a service contract is terminated or  
 118           cancelled.
- 119           (b) This Article does not limit the ability of an awarding authority to  
 120           terminate a service contract or replace a contractor with another  
 121           contractor.

122 **27-65. Transition employment period.**

- 123           (a) Awarding authority. At least 15 days before a service contract is  
 124           terminated, an awarding authority must:
- 125           (1) request the terminated contractor to give the successor contractor  
 126           a complete list of the name, date of hire, and job classification of  
 127           each service employee working on the service contract;
- 128           (2) give the successor contractor a complete list of the name, date of  
 129           hire, and job classification of each service employee of the  
 130           terminated contractor working on the service contract;
- 131           (3) notify the collective bargaining representative, if any, of the  
 132           affected service employees of the pending termination of the  
 133           service contract; and
- 134           (4) ensure that a written notice to all affected service employees  
 135           describing the pending termination of the service contract and the



136 employee rights provided by this Article is conspicuously posted  
137 at any affected work site.

138 (b) Successor contractor.

139 (1) Subject to paragraph (3), each successor contractor must retain  
140 each affected service employee at an affected site for 90 days or  
141 until the successor contract is terminated, whichever is earlier.

142 (2) Each successor contractor must give each affected service  
143 employee a written offer of employment and send a copy to the  
144 employee's collective bargaining representative, if any. Each  
145 offer must:

146 (A) state the date by which the service employee must accept  
147 the offer; and

148 (B) allow the employee at least 10 days after receiving the  
149 notice to accept the offer.

150 (3) Each successor contractor may retain less than all of the affected  
151 service employees during the 90 day transition period if the  
152 successor contractor:

153 (A) finds that fewer service employees are required to perform  
154 the work than the terminated contractor had employed;

155 (B) retains service employees by seniority within each job  
156 classification;

157 (C) maintains a preferential hiring list of those employees not  
158 retained; and

159 (D) hires any additional service employees from the list, in  
160 order of seniority, until all affected service employees have  
161 been offered employment;

162 (4) must not discharge a service employee retained under this  
163 Section without just cause during the transition period.

164 **27-66. Enforcement.**

165 A service employee who was not retained during the transition period, or who  
166 was discharged in violation of this Article, may file a complaint with the Director  
167 under Section 27-7.

168  
169 *Approved:*

170  
\_\_\_\_\_  
Roger Berliner, President, County Council Date

171 *Approved:*

172  
\_\_\_\_\_  
Isiah Leggett, County Executive Date

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

174  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

Bill 19 -12

*Human Rights and Civil Liberties – Displaced Service Workers*

<b>DESCRIPTION:</b>	This Bill would require certain successor contractors to retain certain service workers for a 90-day transition period after taking over the contract and provide enforcement by the Office of Human Rights and the Human Rights Commission.
<b>PROBLEM:</b>	Property owners who hire contractors to provide building services often replace the contractor with little or no notice to the affected service workers. The successor contractor is not required to retain the incumbent service workers and must quickly recruit new employees. This process often results in sudden unemployment for many of these low-wage service workers.
<b>GOALS AND OBJECTIVES:</b>	To provide notice to and temporary employment for service workers who are subject to unemployment due to their employer's loss of a service contract.
<b>COORDINATION:</b>	CAO, Office of Human Rights, Human Rights Commission
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	Laws providing similar protection for certain employees have been enacted in other jurisdictions, including the District of Columbia, San Francisco, Los Angeles, Providence, and New York City.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Damages awarded by Human Rights Commission

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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
*County Executive*

MEMORANDUM

May 11, 2012

TO: Roger Berliner, President  
County Council

FROM: Isiah Leggett  
County Executive

SUBJECT: Bill 19-12, Human Rights and Civil Liberties - Displaced Service Workers

I am writing to express my support for Bill 19-12, Human Rights and Civil Liberties - Displaced Service Workers. This legislation will help us reach the important goals of protecting our service sector workers and their families who live or work in Montgomery County while assuring that our business environment remains competitive for companies that provide security, building maintenance, food preparation, or non-professional health care services.

It can be extremely disruptive to employees when they lose their livelihood in a sudden manner. Many in these service industries are already supporting themselves and their families on a thin financial margin, and can be irreparably harmed even by short-term interruptions in their income. The displaced workers legislation protects these workers while allowing service companies the flexibility to make personnel decisions and be responsive to client needs and bidding specifications – including terminating employees for just cause.

Similar legislation has been in place in Washington, DC for many years with much success. It has not caused disruption to the cleaning contractor community there, nor has it been a financial burden to the DC government. This legislation allows responsible contractors to stay competitive while at the same time providing fair wages and benefits to employees. It will improve standards for workers, and foster stability for the clients of the service companies.

For these reasons, I urge the Council to support Bill 19-12.