

Bill No. 43-15
 Concerning: Contracts and Procurement
 - Wage Requirements -
 Amendments
 Revised: 1/28/2016 Draft No. 5
 Introduced: October 20, 2015
 Enacted: February 2, 2016
 Executive: February 9, 2016
 Effective: May 10, 2016
 Sunset Date: None
 Ch. 1, Laws of Mont. Co. 2016

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Elrich and Navarro
 Co-Sponsors: Council President Leventhal and Councilmember Riemer

AN ACT to:

- (1) require certain contractors or subcontractors to submit certain payroll records to the Chief Administrative Officer;
- (2) specify the remedies for a violation of the wage or records requirements;
- (3) amend the causes for debarment or suspension; ~~[[and]]~~
- (4) prohibit certain contractors or subcontracts from deducting certain amounts from an employee's paycheck; and
- (5) generally amend the County procurement laws.

By amending

Montgomery County Code
 Chapter 11B, Contracts and Procurement
 Section 11B-33A and 11B-37

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:

1 **Sec. 1. [[Section]] Sections 11B-33A and 11B-37 [[is]] are amended as**
2 **follows:**

3 **11B-33A. Wage requirements.**

4 * * *

5 (e) *Wage requirement.*

6 (1) Each covered employer must pay each employee who is not
7 exempt under subsection (f) a gross wage of at least \$10.50 per
8 hour during the time the employee actually provides services to the
9 County. For employees who are not paid an hourly wage,
10 compliance with the wage requirement must be measured by
11 dividing the amount paid to the employee each pay period by the
12 number of hours worked each pay period.

13 (2) The Chief Administrative Officer must adjust the wage rate
14 required under this subsection, effective July 1 of each year, by the
15 annual average increase, if any, in the Consumer Price Index for
16 all urban consumers for the Washington- Baltimore metropolitan
17 area, or any successor index, for the previous calendar year. The
18 Chief Administrative Officer must calculate the adjustment to the
19 nearest multiple of 5 cents, and must publish the amount of this
20 adjustment not later than March 1 of each year. Each adjustment
21 under this paragraph applies to any contract covered by this
22 Section which:

23 (A) is in effect when the adjustment takes effect, or

24 (B) takes effect during the next 12 months.

25 (3) A covered employer must not make any deduction for any item
26 necessary for an employee to perform the essential job function
27 unless the deduction is permitted by Executive regulation.

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(f) *Exceptions to wage requirement.* The wage requirements of this Section do not apply to any employee:

- (1) who performs no measurable work related to any contract with the County;
- (2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section; or
- (3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program[]; or
- (4) for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement[].

(g) *Wage reporting.*

- (1) The Director must insert into each contract subject to this Section a provision that requires a covered employer to submit to the Director a report (on a schedule determined by the Director) showing a summary of the wages paid to its employees, who performed direct, measurable work under the contract, by gender and race.
- (2) Each contractor and subcontractor must submit a complete copy of its payroll records for work performed on a contract covered by this Section to the Chief Administrative Officer or a designee within 14 days after the end of each [[payroll period]] quarter.
- (3) The payroll records must contain a statement signed by the contractor or subcontractor certifying that:
 - (A) the payroll records are correct; and

55 (B) the wage rates paid are not less than those required by this
 56 Section.

57 (4) Each payroll record must include:

58 (A) the name, address, and telephone number of the contractor
 59 or subcontractor;

60 (B) the name and location of the job; and

61 (C) each employee's:

62 (i) name;

63 (ii) current home address, unless previously reported;

64 (iii) daily straight time and overtime hours;

65 (iv) total straight time and overtime hours for the payroll
 66 period;

67 (v) rate of pay;

68 (vi) fringe benefits by type and amount;

69 (vii) gross wages; and

70 (viii) the employer and the employee share of any health
 71 insurance premium provided to the employee.

72 (5) Each contractor or subcontractor must:

73 (A) keep payroll records covering work performed on a contract
 74 covered by this Section for not less than 5 years after the
 75 work is completed; and

76 (B) subject to reasonable notice, permit the Chief
 77 Administrative Officer or a designee to inspect the payroll
 78 records at any reasonable time and as often as the Chief
 79 Administrative Officer deems necessary.

80 (6) The Chief Administrative Officer or a designee must make payroll
 81 records obtained from contractors or subcontractors under this

82 Section available for public inspection during regular business
 83 hours for 5 years after the Chief Administrative Officer receives
 84 the records, unless disclosure of a record is prohibited under
 85 federal or state law.

- 86 [(2)] (7) * * *
- 87 [(3)] (8) * * *
- 88 [(4)] (9) * * *
- 89 [(5)] (10) * * *
- 90 * * *

91 (i) *Enforcement.*

92 (1) The Chief Administrative Officer must require each covered
 93 employer to:

94 (A) certify that the employer and each subcontractor is aware of
 95 and will comply with the applicable wage requirements of
 96 this Section;

97 (B) keep and submit any records necessary to show compliance;
 98 and

99 (C) conspicuously post notices informing employees of the
 100 requirements of this Section, and send a copy of each such
 101 notice to the Chief Administrative Officer's designee.

102 (2) The Chief Administrative Officer or a designee must [enforce this
 103 Section,] perform random or regular audits [and any other audit
 104 necessary to do so,] and investigate any complaint of a violation of
 105 this Section. If the Director determines that a provision of this
 106 Section has been violated, the Director must issue a written
 107 decision, including imposing appropriate sanctions, and may

108 withhold from payment due the contractor, pending a final
 109 decision, an amount sufficient to:

110 ~~[(i)]~~ (A) pay each employee of the contractor or subcontractor the
 111 full amount of wages due under this Section; ~~[[and]]~~

112 ~~[(ii)]~~ (B) satisfy a liability of a contractor for liquidated damages
 113 as provided in this Section; and

114 (C) reimburse the County for the cost of the audit.

115 (3) An employer must not discharge or otherwise retaliate against an
 116 employee for asserting any right under this Section or filing a
 117 complaint of violation. Any retaliation is subject to all sanctions
 118 for noncompliance with this Section.

119 (4) The sanctions of Section 11B-33(b) which apply to noncompliance
 120 with nondiscrimination requirements apply with equal force and
 121 scope to noncompliance with the wage requirements of this
 122 Section.

123 (5) Each contract may specify that liquidated damages for any
 124 noncompliance with this Section includes the amount of any
 125 unpaid wages, with interest, and that the contractor is jointly and
 126 severally liable for any noncompliance by a subcontractor. In
 127 addition, each contract must specify:

128 (A) that liquidated damages may be imposed on the contractor
 129 in the event that a [a] covered employer violates the wage
 130 reporting or payroll records reporting requirement in
 131 subsection (g), including for providing late or inaccurate
 132 payroll records; and

133 (B) that an aggrieved employee, as a third-party beneficiary,
 134 may by civil action enforce the payment of wages due

135 under this Section and recover any unpaid wages with
 136 interest, a reasonable attorney's fee, and damages for any
 137 retaliation for asserting any right under this Section.

138 (6) If a contractor or subcontractor fails to submit, or is late in
 139 submitting, copies of any payroll record or other report required to
 140 be submitted under this Section, the County may deem invoices
 141 unacceptable until the contractor or subcontractor provides the
 142 required records or reports, and may postpone processing
 143 payments due under the contract or under an agreement to finance
 144 the contract.

145 **11B-37. Debarment or suspension.**

146 * * *

147 (c) *Causes for debarment or suspension.* The causes for debarment or
 148 suspension may include:

- 149 (1) conviction for commission of a criminal offense incident to
 150 obtaining or attempting to obtain a public or private contract or
 151 subcontract, or in the performance of the contract or subcontract;
- 152 (2) conviction of embezzlement, theft, forgery, bribery, falsification
 153 or destruction of records, receiving stolen property, kickbacks or
 154 any other offense indicating a lack of business integrity;
- 155 (3) conviction under state or federal antitrust statutes arising out of the
 156 submission of bids or proposals;
- 157 (4) violation of County contract provisions of a character which is
 158 regarded by the Director to be so serious as to justify debarment
 159 action. These provisions may include:

- 160 (A) deliberate failure without good cause to perform under the
 161 specifications or within the time limit provided in the
 162 contract; or
- 163 (B) a record of failure to perform or of unsatisfactory
 164 performance under the provisions of one or more contracts;
 165 however, failure to perform or unsatisfactory performance
 166 caused by acts beyond the control of the contractor are not
 167 a basis for debarment;
- 168 (5) violation of the wage requirements in Section 11B-33A;
- 169 (6) any other serious cause the Director determines to be so
 170 compelling as to affect the competency or integrity of a potential
 171 contractor, including debarment by another public entity; or
- 172 ~~[(6)]~~ (7) violation of the ethical standards set forth in this Chapter or
 173 Chapter 19A.
- 174 (d) *Decision.* The Director must issue a written decision to debar or suspend.
 175 The decision must:
- 176 (1) state the reasons for the action taken; and
 177 (2) inform the debarred or suspended person of the right to an
 178 administrative appeal, after the decision becomes final, to the
 179 Circuit Court under the Maryland Rules.
- 180 (e) The Director must send a copy of the decision to the person involved and
 181 the Chief Administrative Officer who may approve, revise, or remand the
 182 decision. If the Chief Administrative Officer takes no action within 5
 183 working days, the decision of the Director becomes final.
- 184 (f) *Appeal to court.* The debarred or suspended person may appeal the
 185 decision to debar or suspend to the Circuit Court under the Maryland
 186 Rules governing administrative appeals. The debarred or suspended

187 person and the County may appeal the decision of the Circuit Court to the
188 Court of Special Appeals.

189 *Approved:*

190 *Nancy Floreen* February 3, 2016
Nancy Floreen, President, County Council Date

191 *Approved:*

192 *Isiah Leggett* Feb 7, 2016
Isiah Leggett, County Executive Date

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

194 *Linda M. Lauer* Feb 10/2016
Linda M. Lauer, Clerk of the Council Date