
By: **Montgomery County Delegation**

Introduced and read first time: February 2, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County - Displaced Building Service Workers Protection Act**
3 **MC 515-05**

4 FOR the purpose of requiring, in Montgomery County, certain contractors to retain
5 certain building service workers for a certain transition employment period;
6 requiring certain contractors to provide a list containing employee information
7 to certain contractors and to post certain information; requiring certain
8 contractors to maintain a preferential hiring list for building service workers not
9 retained during the transitional period; requiring certain contractors to make
10 certain offers of employment to certain employees; requiring certain contractors
11 to perform a written performance evaluation for each employee retained during
12 the transitional period; requiring certain contractors to retain employees with
13 satisfactory performance evaluations after the transitional period ends; creating
14 a certain right of action for certain employees under certain circumstances;
15 providing for the construction of this Act; establishing certain penalties;
16 defining certain terms; and generally relating to displaced building service
17 workers in Montgomery County.

18 BY adding to
19 Article - Labor and Employment
20 Section 3-901 through 3-906 to be under the new subtitle "Subtitle 9. Displaced
21 Building Service Workers in Montgomery County"
22 Annotated Code of Maryland
23 (1999 Replacement Volume and 2004 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Labor and Employment

2

SUBTITLE 9. DISPLACED BUILDING SERVICE WORKERS IN MONTGOMERY COUNTY.

3 3-901.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "AWARDING AUTHORITY" MEANS A PERSON THAT AWARDS OR OTHERWISE
7 ENTERS INTO A BUILDING SERVICE CONTRACT FOR BUILDING SERVICES
8 PERFORMED WITHIN MONTGOMERY COUNTY, INCLUDING ANY SUBCONTRACTS FOR
9 BUILDING SERVICE.

10 (C) "BUILDING SERVICE" MEANS WORK PERFORMED IN CONNECTION WITH
11 THE CARE, MAINTENANCE OR SECURITY OF AN EXISTING:

12 (1) BUILDING OCCUPYING A TOTAL OF 75,000 SQUARE FEET OR MORE;
13 OR

14 (2) OFFICE PARK CONSISTING OF A SERIES OF BUILDINGS UNDER
15 COMMON MANAGEMENT, CONTROL OR OWNERSHIP OCCUPYING A TOTAL OF 75,000
16 SQUARE FEET OR MORE.

17 (D) (1) "CONTRACTOR" MEANS ANY PERSON THAT EMPLOYS 15 OR MORE
18 INDIVIDUALS AND THAT ENTERS INTO A BUILDING SERVICE CONTRACT WITH THE
19 AWARDING AUTHORITY.

20 (2) "CONTRACTOR" INCLUDES A SUBCONTRACTOR AT ANY TIER THAT IS
21 NOT AN EMPLOYEE.

22 (E) (1) "EMPLOYEE" INCLUDES BUT IS NOT LIMITED TO ANY PERSON
23 EMPLOYED BY A CONTRACTOR AS A JANITOR, SECURITY OFFICER, GROUNDSKEEPER,
24 WATCHMAN, DOOR STAFF, MAINTENANCE TECHNICIAN, HANDYMAN, ELEVATOR
25 OPERATOR, WINDOW CLEANER, OR BUILDING ENGINEER.

26 (2) "EMPLOYEE" DOES NOT INCLUDE:

27 (I) A MANAGERIAL, SUPERVISORY, OR CONFIDENTIAL EMPLOYEE
28 AS DEFINED BY THE SECRETARY OF LABOR UNDER THE FEDERAL FAIR LABOR
29 STANDARDS ACT;

30 (II) AN EMPLOYEE WORKING IN AN EXECUTIVE, ADMINISTRATIVE,
31 OR PROFESSIONAL CAPACITY;

32 (III) AN EMPLOYEE EARNING MORE THAN \$25 PER HOUR; OR

33 (IV) AN EMPLOYEE REGULARLY SCHEDULED TO WORK LESS THAN
34 15 HOURS PER WEEK.

1 (F) "PERSON" INCLUDES A GOVERNMENTAL UNIT.

2 (G) "SUCCESSOR CONTRACTOR" MEANS A CONTRACTOR OR SUBCONTRACTOR
3 THAT ENTERS INTO A CONTRACT FOR THE PERFORMANCE OF ESSENTIALLY THE
4 SAME SERVICES PREVIOUSLY PERFORMED UNDER A DIFFERENT CONTRACT AT THE
5 SAME FACILITY THAT TERMINATED WITHIN THE PREVIOUS 30 DAYS.

6 3-902.

7 THIS SUBTITLE APPLIES ONLY IN MONTGOMERY COUNTY.

8 3-903.

9 THIS SUBTITLE DOES NOT DIMINISH THE RIGHT OF A PROPERTY OWNER OR AN
10 AWARDING AUTHORITY TO:

11 (1) TERMINATE A BUILDING SERVICE CONTRACT; OR

12 (2) REPLACE A CONTRACTOR WITH ANOTHER CONTRACTOR, THE
13 PROPERTY OWNER'S EMPLOYEES, OR AN AWARDING AUTHORITY'S OWN EMPLOYEES.
14 3-904.

15 (A) WITHIN 10 CALENDAR DAYS AFTER RECEIVING NOTICE THAT ITS
16 CONTRACT HAS BEEN TERMINATED, A TERMINATED CONTRACTOR SHALL:

17 (1) PROVIDE TO THE SUCCESSOR CONTRACTOR A FULL AND ACCURATE
18 LIST CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT
19 CLASSIFICATION OF EACH EMPLOYEE CURRENTLY EMPLOYED AT ANY SITE
20 COVERED BY THE TERMINATED CONTRACT; AND

21 (2) ENSURE THAT A NOTICE TO ALL BUILDING SERVICE EMPLOYEES IS
22 CONSPICUOUSLY POSTED AT ANY AFFECTED SITE SETTING FORTH THE RIGHTS
23 PROVIDED FOR UNDER THIS SUBTITLE.

24 (B) THE SUCCESSOR CONTRACTOR THAT IS AWARDED A CONTRACT TO
25 PROVIDE BUILDING SERVICES SIMILAR TO THOSE PROVIDED BY THE TERMINATED
26 CONTRACTOR SHALL RETAIN FOR A 90-DAY TRANSITION EMPLOYMENT PERIOD AT
27 AN AFFECTED SITE THOSE EMPLOYEES WHOM THE TERMINATED CONTRACTOR
28 EMPLOYED AT THE SITE COVERED BY THE TERMINATED CONTRACT.

29 (C) (1) THE SUCCESSOR CONTRACTOR SHALL MAKE A WRITTEN OFFER OF
30 EMPLOYMENT TO EACH EMPLOYEE, AS REQUIRED BY THIS SECTION, AND PROVIDE A
31 COPY OF SUCH NOTICE TO THE EMPLOYEE'S BARGAINING REPRESENTATIVE.

32 (2) THE WRITTEN OFFER OF EMPLOYMENT SHALL STATE THE TIME
33 WITHIN WHICH THE EMPLOYEE MUST ACCEPT THE OFFER, BUT IN NO CASE MAY THE
34 TIME BE LESS THAN 10 DAYS FROM THE DATE THE NOTICE IS GIVEN NOR LATER
35 THAN 5 DAYS PRIOR TO THE COMMENCEMENT OF THE SUCCESSOR SERVICE
36 CONTRACT.

1 (D) (1) IF AT ANY TIME THE SUCCESSOR CONTRACTOR DETERMINES THAT
2 FEWER EMPLOYEES ARE REQUIRED TO PERFORM THE BUILDING SERVICES THAN
3 WERE REQUIRED BY THE TERMINATED CONTRACTOR, THE SUCCESSOR CONTRACTOR
4 SHALL RETAIN EMPLOYEES BY SENIORITY WITHIN A JOB CLASSIFICATION.

5 (2) DURING THE 90-DAY TRANSITION PERIOD, THE SUCCESSOR
6 CONTRACTOR SHALL MAINTAIN A PREFERENTIAL HIRING LIST OF THOSE
7 EMPLOYEES NOT RETAINED, FROM WHICH THE SUCCESSOR CONTRACTOR MUST
8 HIRE ANY ADDITIONAL EMPLOYEES AT THE SITE UNTIL ALL OF THE EMPLOYEES OF
9 THE TERMINATED CONTRACTOR HAVE BEEN OFFERED EMPLOYMENT WITH THE
10 SUCCESSOR CONTRACTOR.

11 (E) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE
12 SUCCESSOR CONTRACTOR MAY NOT DISCHARGE AN EMPLOYEE RETAINED IN
13 ACCORDANCE WITH THIS SECTION DURING THE 90-DAY TRANSITION PERIOD
14 WITHOUT CAUSE.

15 (2) CAUSE SHALL BE BASED SOLELY ON THE PERFORMANCE OR
16 CONDUCT OF THE PARTICULAR EMPLOYEE.

17 (F) (1) AT THE END OF THE 90-DAY TRANSITION PERIOD, THE SUCCESSOR
18 CONTRACTOR SHALL PERFORM A WRITTEN PERFORMANCE EVALUATION FOR EACH
19 EMPLOYEE RETAINED IN ACCORDANCE WITH THIS SECTION.

20 (2) IF THE EMPLOYEE'S PERFORMANCE DURING THE 90-DAY
21 TRANSITION PERIOD IS SATISFACTORY, THE SUCCESSOR CONTRACTOR SHALL OFFER
22 THE EMPLOYEE CONTINUED EMPLOYMENT UNDER THE TERMS AND CONDITIONS
23 ESTABLISHED BY THE SUCCESSOR CONTRACTOR OR AS REQUIRED BY LAW.

24 (G) A CONTRACT ENTERED INTO MORE THAN 30 DAYS AFTER THE
25 TERMINATION OF A PREDECESSOR SERVICE CONTRACT IS A SUCCESSOR SERVICE
26 CONTRACT IF THE EXECUTION IS DELAYED FOR THE PURPOSE OF AVOIDING
27 APPLICATION OF THIS SECTION.

28 3-905.

29 (A) AN EMPLOYEE WHO WAS NOT OFFERED EMPLOYMENT OR WHO HAS BEEN
30 DISCHARGED IN VIOLATION OF THIS SUBTITLE MAY BRING AN ACTION AGAINST A
31 SUCCESSOR CONTRACTOR AND MAY BE AWARDED:

32 (1) BACK PAY FOR EACH DAY THE VIOLATION CONTINUES AT A RATE OF
33 COMPENSATION CALCULATED AS THE GREATER OF EITHER OF THE FOLLOWING:

34 (I) THE AVERAGE HOURLY RATE OF PAY RECEIVED BY THE
35 EMPLOYEE DURING THE LAST YEAR OF THE EMPLOYEE'S EMPLOYMENT, OR DURING
36 THE EMPLOYEE'S LENGTH OF EMPLOYMENT IF LESS THAN ONE YEAR, IN THE SAME
37 OCCUPATION CLASSIFICATION MULTIPLIED BY THE AVERAGE HOURS WORKED IN
38 THE WEEKS THAT THE EMPLOYEE WORKED DURING THE LAST YEAR OF THE
39 EMPLOYEE'S EMPLOYMENT; OR

1 (II) THE FINAL REGULAR RATE OF PAY RECEIVED BY THE
2 EMPLOYEE AT THE TIME OF TERMINATION OF THE PREDECESSOR CONTRACT
3 MULTIPLIED BY THE NUMBER OF HOURS USUALLY WORKED BY THE EMPLOYEE; AND

4 (2) THE COSTS OF BENEFITS THE SUCCESSOR CONTRACTOR WOULD
5 HAVE INCURRED FOR THE EMPLOYEE UNDER THE SUCCESSOR CONTRACTOR'S
6 BENEFIT PLAN.

7 (B) THE COURT MAY AWARD THE PREVAILING PARTY REASONABLE
8 ATTORNEY'S FEES AND COSTS AS PART OF THE COSTS RECOVERABLE.

9 (C) IN THE ABSENCE OF A CLAIM BY AN EMPLOYEE THAT THE EMPLOYEE WAS
10 TERMINATED IN VIOLATION OF THIS SECTION, AN EMPLOYEE MAY NOT MAINTAIN A
11 CAUSE OF ACTION UNDER THIS SECTION SOLELY FOR THE FAILURE OF AN
12 EMPLOYER TO PROVIDE A WRITTEN PERFORMANCE EVALUATION.

13 (D) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT AN EMPLOYEE'S RIGHT
14 TO BRING A CAUSE OF ACTION FOR WRONGFUL TERMINATION.

15 3-906.

16 IF ANY PROVISION OF THIS SUBTITLE OR ANY APPLICATION THEREOF IS HELD
17 INVALID BY ANY COURT OF LAW, THE INVALIDITY SHALL NOT AFFECT ANY OTHER
18 PROVISIONS OR APPLICATIONS OF THIS SUBTITLE THAT CAN BE GIVEN EFFECT
19 WITHOUT THE INVALID PROVISION OR APPLICATION.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2005.