



Committee: GO
Committee Review: At a future date
Staff: Ludeen McCartney-Green, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: N/A

AGENDA ITEM 8
 September 14, 2021
Public Hearing

SUBJECT

Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited
 Lead Sponsor: Councilmember Hucker

EXPECTED ATTENDEES

Members of the Public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

Bill 32-21 would:

- prohibit county employee settlement agreements to include a “no-rehire” clause;
- provide the Chief Administrative Officer or agency head the authority to include certain clause;
- establish a right to appeal; and
- generally amend the County law governing personnel and human resources.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

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MEMORANDUM

September 9, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited

PURPOSE: Public Hearing – no Council vote required

Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited, sponsored by Lead Sponsor Council President Hucker, was introduced on July 20, 2021. A Government Operations & Fiscal Policy Committee worksession will be scheduled for a later date.

Bill 32-21 would:

- prohibit county employee settlement agreements to include a “no-rehire” clause;
- provide the Chief Administrative Officer or agency head the authority to include certain clause;
- establish a right to appeal; and
- generally amend the County law governing personnel and human resources.

PURPOSE

The purpose of the bill is to prohibit “no-rehire” clause from County employee settlement agreements. When an employee files an employment dispute or claim against the County, and a settlement agreement is proffered, it contains a no-rehire clause that will prevent the employee from seeking future employment opportunities with the County. This automatic bar places an undue burden on County employees who may have gained several years of knowledge, skills, and abilities with no viable option to return to County employment, even after, the dispute has been settled.

BILL SPECIFICS

Generally, the bill would ban the County from including a “no-rehire” clause in an employee settlement agreement. However, it is important to note the bill does provide an exemption to include a “no rehire” clause, if: (1) the County and the employee mutually agree or (2) if the employee by the Chief Administrative Offer or agency head was terminated “for cause.” In addition, the bill provides the option for an aggrieved employee to file an appeal with the

County’s Merit System Protection Board, if a decision was made to include the “no-rehire” clause in the settlement agreement.

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Bill No. 32-21
Concerning: Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited
Revised: 7/12/21 Draft No. 2
Introduced: July 20, 2021
Expires: January 20, 2023
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Hucker

AN ACT to:

- (1) prohibit county employee settlement agreements to include a “no-rehire” clause;
- (2) provide the Chief Administrative Officer or agency head the authority to include certain clause;
- (3) establish a right to appeal; and
- (4) generally amend the County law governing personnel and human resources.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-22

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 33-22 is added as follows:**

2 **33-22. [Reserved] County Employee Settlement Agreements; right to appeal.**

3 (a) Definitions. For purposes of this Section, the following terms have the
4 meanings indicated:

5 Employment dispute means any grievance, claim or lawsuit filed
6 against the County.

7 No-rehire clause: a provision prohibiting, preventing, or otherwise
8 restricting an employee from obtaining future employment.

9 (b) An agreement to settle an employment dispute must not contain a no-
10 rehire clause from County employment.

11 (c) Except as provided in subsection (b), a settlement agreement may
12 include a no-rehire clause if:

13 (1) the provision is mutually agreed upon to end the current
14 employment relationship; or

15 (2) the Chief Administrative Officer or agency head has made a
16 finding that there are sufficient grounds to terminate the
17 employment for cause.

18 (d) If an employee disagrees with the decision to include a no-rehire clause,
19 within ten days from the receipt of the decision, the aggrieved employee
20 may in writing, appeal to the County's Merit System Protection Board.

21 **Sec. 2. Transition.**

22 This Act does not apply to any County employee settlement agreement that
23 was executed by all parties before this Act took effect.

LEGISLATIVE REQUEST REPORT

Bill 32-21

Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited

DESCRIPTION: Bill 32-21 would prohibit the County from including a no-rehire clause in an employee settlement agreement unless certain circumstances apply. It also provides the County employee the right to appeal if a no-rehire clause is included in a settlement agreement.

PROBLEM: County employee settlement agreements contain a “no-rehire” clause that prohibits an employee from reemployment with the County. The restriction eliminates the opportunity for an employee to apply and work for the County indefinitely.

GOALS AND OBJECTIVES: To prohibit “no rehire” clause in County employee settlement agreements.

COORDINATION: Office of Human Resources and Office of County Attorney

FISCAL IMPACT: To be provided

ECONOMIC IMPACT: To be provided

EVALUATION: To be provided

EXPERIENCE ELSEWHERE: California and Vermont

SOURCE OF INFORMATION: Ludeen McCartney-Green, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

To: Montgomery County Council

From: Council President Tom Hucker

Date: July 15, 2021

Re: Bill 32-21 Employee Settlement Agreement with No-Rehire Clause – Prohibited

Bill 32-21 is a straightforward bill that seeks to limit the use of “no-rehire” clauses in employment dispute agreements. The employment disputes may include grievances, claims or lawsuits filed against the County. The bill will permit a “no-rehire” clause if the Chief Administrative Officer or agency head decide it is necessary or both parties agree to it. However, if the employee disagrees with the use of a “no-rehire” clause, they may appeal it to the County’s Merit System Protection Board.

The County should not make it a standard practice to include “no-rehire” clauses in employment disputes. Unless the dispute escalates to a serious incident, individuals should have the opportunity to compete again for a job with the County. Furthermore, a “no-rehire” clause is essentially a lifetime ban and making them a standard practice can rob former employees from contributing to the County in the future.

In conclusion, this is a small change that will have an important impact. We are a County that believes in second chances, and we can uphold that value through this bill. I greatly appreciate your consideration of this legislation and look forward to discussing it further.

Fiscal Impact Statement
Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited

1. Legislative Summary.

Bill 32-21 prohibits county employee settlement agreements from including a “no-rehire” clause, with limited exceptions. The bill also establishes a right to for employees to appeal a settlement containing a “no-rehire” clause.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed legislation prohibits the inclusion of a “no-rehire” clause in county employee settlement agreements. This proposed legislation is not anticipated to have a fiscal impact.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See response #2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill.

The bill is not expected to materially impact staff duties.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

This legislation prohibits the inclusion of a “no-rehire” clause but does not make any adjustments to the fiscal components of the settlement. This change is not expected to have an impact on the fiscal considerations of any county employee settlement.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Corey Orlosky, Office of Management and Budget



Jennifer Bryant, Director
Office of Management and Budget

9/8/21
Date

Economic Impact Statement

Office of Legislative Oversight

Bill 32-21 Personnel – Employee Settlement Agreements with No-Rehire Clause - Prohibited

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 32-21 would have an insignificant impact on economic conditions in the County due to the small number of residents who would likely be affected by the change in law. However, the Bill would economically benefit any resident who the County reemploys after entering into a County employee settlement agreement and who would otherwise receive a lower compensation package with employment outside the County.

BACKGROUND

Bill 32-21 responds to the “no-rehire” clause in County employee settlement agreements which prohibits an employee from working for the County indefinitely. If enacted, the Bill would make the following changes to County law governing personnel and human resources:

- prohibit the no-rehire clause in County employee settlement agreements;
- provide the Chief Administrative Officer or agency head the authority to include a no-rehire clause if “there are sufficient grounds to terminate the employment for cause”; and
- establish a right to appeal for employees who disagree with the decision to include a no-rehire clause.¹

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

No methodologies were used in this statement. The claims made in subsequent sections are based on the following assumption:

- **Assumption:** the number of residents who would attain reemployment with the County after entering into a County employee settlement agreement would be insufficient to have meaningful impacts on local economic conditions.

VARIABLES

The primary variables that would affect the economic impacts of Bill 32-21 are the following:

- number of residents the County reemploys after entering into a County employee settlement agreement; and
- total household income for residents who the County reemploys after entering into a County employee settlement agreement.

¹ Montgomery County Council, Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited , Introduced on July 20, 2021.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

Based on the assumption made in this analysis (see above), OLO anticipates that enacting Bill 32-21 would have no significant impacts on private organizations in the County in terms of the Council's priority indicators.²

Residents

Enacting Bill 32-21 would affect households with residents who the County reemploys after entering into a County employee settlement agreement. For residents who would otherwise receive a lower compensation package with employment outside the County, their households would experience a net increase in income. However, based on the assumption made in this analysis, OLO anticipates that the Bill would have no significant impacts on other residents in terms of the Council's priority indicators.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Bill 32-21, Personnel – Employee Settlement Agreements with No-Rehire Clause – Prohibited. Introduced on July 20, 2021.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

² Montgomery County Code, Sec. 2-81B, Economic Impact Statements, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 32-21: PERSONNEL-EMPLOYEE SETTLEMENT AGREEMENTS WITH NO-REHIRE CLAUSE-PROHIBITED

SUMMARY

OLO anticipates that Bill 32-21 will have a minimal impact on racial inequities and social injustices in the County.

PURPOSE OF RESJ STATEMENT

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 32-21

The purpose of Bill 32-21 is to change the current “no rehire” clause in County employee settlement agreements. Bill 32-21 was introduced on July 20, 2021. If enacted, the Bill would:

- Prohibit County employee settlement agreements to include a “no rehire” clause;
 - Provide the Chief Administrative Officer or agency head the authority to include a certain clause;
 - Establish a right to appeal; and
 - Generally amend the County law governing personnel and human resources.³
-

ANTICIPATED RESJ IMPACTS

Since the scope of Bill 32-21’s influence is estimated to impact a limited number of County employees, OLO anticipates that the bill would have a minimal impact on racial equity and social justice in the County. No changes in racial equity or social justice for County residents are anticipated under Bill 32-21.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

RESJ Impact Statement

Bill 32-21

CONTRIBUTIONS

OLO staffer Dr. Theo Holt, Performance Management and Data Analyst, drafted this RESJ impact statement.

¹ Adopted from definition of racial equity described in the Racial Equity Policy Scorecard included in “Applying a Racial Equity Lens into Federal Nutrition Programs,” authored by Marlysa Gamblin; see the Government Alliance for Race and Equity’s “Advancing Racial Equity and Transforming Government” resource guide for understanding the historical role of government in maintaining racial inequities https://racialequityalliance.org/wp-content/uploads/2015/02/GARE-Resource_Guide.pdf

² Adopted from racial equity definition provided by Racial Equity Tools. <https://www.racialequitytools.org/glossary>

³ Montgomery County Council Bill 32-21- Personnel - Employee Settlement Agreements with No-Rehire Clause - Prohibited, Introduced July 20, 2021, Montgomery County, Maryland