



**Committee:** GO  
**Committee Review:** At a future date  
**Staff:** Robert H. Drummer, Senior Legislative Attorney  
**Purpose:** To receive testimony – no vote expected  
**Keywords:** #SeveringSeverance

AGENDA ITEM 10  
October 20, 2020  
**Public Hearing**

## SUBJECT

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited  
Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Rice, Council President Katz, Councilmembers Glass, Navarro and Council Vice President Hucker

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony – no vote expected

## DESCRIPTION/ISSUE

Bill 43-20 would prohibit severance pay for a County employee unless authorized by law and prohibit severance pay for certain employees who violate the Ethics Law.

## SUMMARY OF KEY DISCUSSION POINTS

- Should severance pay be regulated and disclosed.

### This report contains:

Bill 43-20	©1
Legislative Request Report	©4
Councilmember Friedson Memorandum	©5
Economic Impact statement	©6
County Attorney Bill Review Memorandum	©8
Racial Equity and Social Justice Impact statement	©11

F:\LAW\BILLS\2043 Non-Merit Employees - Severance Pay - Amendments\PH Cover Sheet.Docx

**Alternative format requests for people with disabilities. If you need assistance accessing this report you may [submit alternative format requests](#) to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at [adacompliance@montgomerycountymd.gov](mailto:adacompliance@montgomerycountymd.gov)**

**MEMORANDUM**

October 15, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited

PURPOSE: Public Hearing – Receive testimony - no Council vote required

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay - Limited, sponsored by Lead Sponsor Councilmember Friedson and Co-Sponsors Councilmember Rice, Council President Katz, Councilmembers Glass, Navarro and Council Vice President Hucker, was introduced on September 29, 2020. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.<sup>1</sup>

Bill 43-20 would prohibit severance pay for a County employee unless authorized by law. The general limitation in Bill 43-20 would expressly exclude:

- (1) the payout of unused leave at termination of employment;
- (2) a discontinued retirement pension authorized under Section 33-45(d); or
- (3) severance pay under Sections 33-139 and 33-140.

Bill 43-20 would also prohibit all severance pay for an employee who admits to or is found to have violated the Ethics Law in the 12 months prior to separation from County employment.

In past years, some employees received severance payments as they left County employment under an unregulated and undisclosed manner. Bill 43-20 is intended to end this process and require any severance payments to be made in an open and equitable manner. Lead Sponsor Councilmember Friedson explained his reasons for introducing Bill 43-20 at ©5.

Bill 43-20 would apply to any County employee who separates from County employment on or after the date the Act takes effect. The County Attorney's Office concluded that to the extent the Bill applies retroactively to invalidate an existing agreement, the Bill is likely to violate Article I, §10, clause 1 of the United States Constitution by impairing the obligation of contracts (©8-10). However, this conclusion relies on the assumption that there are County employees who have a reasonable

---

<sup>1</sup>#SeveringSeverance

expectation of receiving severance payments upon separation that is not expressly authorized in law. Council staff does not know if there are County employees in that position.<sup>2</sup>

This packet contains:	<u>Circle #</u>
Bill 43-20	1
Legislative Request Report	4
Councilmember Friedson Memorandum	5
Economic Impact statement	6
County Attorney Bill Review Memorandum	8
Racial Equity and Social Justice Impact statement	11

F:\LAW\BILLS\2043 Non-Merit Employees - Severance Pay - Amendments\PH Memo.Docx

---

<sup>2</sup> Bill 42-20, also scheduled for a public hearing on October 20, would require the Executive to disclose each employment contract with a non-merit employee to the Council.

Bill No. 43-20  
Concerning: Non-merit Employees –  
Merit System Employees – Severance  
Pay - Limited  
Revised: 9/29/2020 Draft No. 2  
Introduced: September 29, 2020  
Expires: March 29, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

Lead Sponsor: Councilmember Friedson  
Co-Sponsors: Councilmember Rice, Council President Katz, Councilmembers Glass and Navarro,  
and Council Vice President Hucker

---

**AN ACT** to:

- (1) prohibit severance pay for a County employee unless authorized by law;
- (2) prohibit severance pay for certain employees who violate the Ethics Law;
- (3) provide for certain exceptions; and
- (4) generally amend the law governing severance pay for County employees.

By amending

Montgomery County Code  
Chapter 1A, Structure of County Government  
Section 1A-104

Chapter 33, Personnel and Human Resources  
Section 33-140

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-26

<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                   (2)    a discontinued retirement pension authorized under Section 33-  
29                                   45(d); or

30                   (3)    severance pay under Sections 33-139 and 33-140.

31   **33-140. Plan administration.**

32           (a)    The County Executive must establish a severance pay plan in Executive  
33                   Regulations under method (2). The plan must:

34                   (1)    prohibit severance pay for an employee who admits to or is found  
35                                   to have violated the Ethics Law in the 12 months prior to separation  
36                                   from County employment; and

37                   (2)    qualify as a severance pay plan under Section 457 of the Internal  
38                                   Revenue Code.

39   \*                   \*                   \*

40   **33-26. Severance pay limits.**

41                   The Executive must not authorize any payment of money or paid administrative  
42                                   leave to a merit employee upon separation from County employment unless the  
43                                   payment is expressly authorized by law. This Section must not be interpreted  
44                                   to prohibit:

45                   (a)    the payout of unused leave at termination of employment;

46                   (b)    a discontinued retirement pension authorized under Section 33-45(d); or

47                   (c)    severance pay under Sections 33-139 and 33-140.

48   **Sec. 2. Transition.**

49                   The amendments in Section 1 must apply to any County employee who  
50                   separates from County employment on or after the date this Act takes effect.

## LEGISLATIVE REQUEST REPORT

Bill 43-20

*Non-merit Employees – Merit System Employees – Severance Pay – Limited*

<b>DESCRIPTION:</b>	Bill 43-20 would prohibit severance pay for a County employee unless authorized by law, prohibit severance pay for an employee who violates the Ethics Law. Bill 43-20 would expressly exclude: <ol style="list-style-type: none"><li>(1) the payout of unused leave at termination of employment;</li><li>(2) a discontinued retirement pension authorized under Section 33-45(d); or</li><li>(3) severance pay under Sections 33-139 and 33-140.</li></ol> The Bill would also prohibit severance pay for an employee who admits to or is found to have violated the Ethics Law in the 12 months prior to separation from County employment.
<b>PROBLEM:</b>	In the past, some employees have received severance pay under an unregulated and undisclosed system.
<b>GOALS AND OBJECTIVES:</b>	Improve transparency in employee compensation.
<b>COORDINATION:</b>	Human Resources, County Attorney, Retirement
<b>FISCAL IMPACT:</b>	Office of Management and Budget
<b>ECONOMIC IMPACT:</b>	OLO
<b>EVALUATION:</b>	To be determined.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable.
<b>PENALTIES:</b>	None.



MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

September 22, 2020

**FROM:** Councilmember Andrew Friedson *Andrew Friedson*  
**TO:** Council colleagues  
**SUBJECT:** Bill 42-20, Public Accountability and County Transparency (PACT) Act  
Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited

Dear colleagues,

Our only currency in public life is public trust. The residents we're so fortunate to represent deserve and expect County officials to follow the highest ethical standards. The work of local government depends on it. On September 29, I will introduce two bills to strengthen trust, accountability, and transparency in County government by improving the County's Ethics Law, requiring the disclosure of all compensation for County leaders, and ending the practice of discretionary severance pay for public employees.

Bill 42-20, the Public Accountability and County Transparency (PACT) Act, would more effectively guard against County employees using their positions of public service for private gain. The Bill would:

- Define the sale or promotion of intellectual property such as books, videos, and artwork as other employment in County Ethics Law, requiring financial disclosure;
- Prohibit the Chief Administrative Officer from other employment;
- Prohibit a County employee who in the previous year was compensated by a company seeking to do business with the County from participating in any way in that procurement process;
- Require a County employee involved in the procurement process who before the previous year was compensated by a company seeking to do business with the County to disclose that prior relationship to the procurement supervisor;
- Require non-merit employees and elected officials to include in financial disclosures sources of fees of more than \$1,000 in other employment;
- Require the disclosure of proposed contracts for appointed non-merit positions to Council at time of appointment; and
- Require the disclosure of contracts for current non-merit employees in Council-confirmed positions.

Bill 43-20, Non-merit Employees – Merit System Employees – Severance Pay – Limited, would end the practice of using taxpayer dollars to compensate public employees in an unregulated and often undisclosed fashion. The bill would prohibit discretionary severance pay for all County employees and prohibit separation pay for an employee who admits to violating or was found to have violated the Ethics Law in the year prior to separation.

I would welcome your co-sponsorship of this legislation and any questions you may have. Thank you for your consideration and commitment to government accountability and transparency.

STELLA B. WERNER OFFICE BUILDING • 100 MARYLAND AVENUE, 6<sup>TH</sup> FLOOR, ROCKVILLE, MARYLAND 20850  
240-777-7828 OR 240-777-7900, TTY 240-777-7914, FAX 240-777-7989  
[WWW.MONTGOMERYCOUNTYMd.GOV](http://WWW.MONTGOMERYCOUNTYMd.GOV)

# Economic Impact Statement

Office of Legislative Oversight

## **BILL 43-20      Non-Merit Employees – Merit System Employees – Severance Pay – Limited**

### **SUMMARY**

The Office of Legislative Oversight (OLO) expects Bill 43-20 to have an insignificant impact on economic conditions in Montgomery County.

---

### **BACKGROUND**

The goal of Bill 43-20 is to enhance transparency in County employee compensation. As Robert Drummer, Senior Legislative Attorney with the Montgomery County Council, writes, “In past years, some employees received severance payments as they left County employment under an unregulated and undisclosed manner. Bill 43-20 is intended to end this process and require any severance payments to be made in an open and equitable manner.”<sup>1</sup> If enacted, the Bill would prohibit severance pay for County employees unless authorized by law and for those employees who violate Ethics law.<sup>2</sup> The Bill would exclude: “the payout of unused leave at termination of employment,” “a discontinued retirement pension authorized under Section 33-45(d),” and “severance pay under Sections 33-139 and 33-140.”<sup>3</sup>

---

### **METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES**

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

---

### **VARIABLES**

Not applicable.

---

<sup>1</sup> Memorandum, Bill 43-20, Non-Merit Employees – Merit System Employees – Severance Pay – Limited, September 24, 2020, Montgomery County Council, 1.

<sup>2</sup> Montgomery County Council, Bill 43-20, Non-Merit Employees – Merit System Employees – Severance Pay – Limited, Introduced on September 29, 2020, Montgomery County, Maryland, 1.

<sup>3</sup> Ibid, 2-3.

# 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

OLO believes that Bill 43-20 would have little to no impact on private organizations in the County in terms of the Council's priority indicators, namely workforce, operating costs, capital investments, property values, taxation policy, economic development and competitiveness.<sup>4</sup>

### Residents

OLO believes that Bill 43-20 would have little to no impact on County residents in terms of the Council's priority indicators.

---

## WORKS CITED

Drummer, Robert. Memorandum: Bill 43-20, Non-Merit Employees – Merit System Employees – Severance Pay – Limited. September 24, 2020. Montgomery County Council.

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Bill 43-20, Non-Merit Employees – Merit System Employees – Severance Pay - Limited. Introduced on September 29, 2020. Montgomery County, Maryland.

---

## 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) drafted this economic impact statement.

---

<sup>4</sup> For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Berke Attila, Director  
Office of Human Resources

FROM: Edward B. Lattner, Chief *Edward B. Lattner*  
Division of Government Operations

DATE: October 9, 2014

RE: **Bill 43-20, Non-merit Employees - Merit System Employees - Severance Pay - Limited**

Current law, § 1A-104(e) requires the County Executive to propose, and the County Council to approve, a salary schedule for heads of departments, principal offices, and other non-merit employees in the Executive Branch. Bill 43-20 would add a new subsection (f) to prohibit severance pay for a non-merit employee unless authorized by law and prohibit severance pay for certain employees who violate the Ethics Law.

The Bill likely violates the U.S. Constitution's Contract Clause to the extent it would retroactively invalidate any existing contractual agreement an employee has negotiated with the County for severance pay.

Article I, § 10, clause 1 of the United States Constitution provides that "No State shall . . . pass any Law impairing the Obligations of Contracts . . .". It is well settled that, despite the absolutist nature of the Clause, the Constitutional prohibition against impairing the obligation of contracts is not to be read literally. *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 502 (1987). The Contract Clause does not prohibit governments from impairing contracts but limits a government's right to do so.

The courts employ a three-part test for harmonizing the command of the Contract Clause with the necessarily reserved sovereign power of the government to provide for the welfare of its citizens. *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012, 1015 (4<sup>th</sup> Cir. 1993). A reviewing court must determine: (1) whether there has been an impairment of the contract; (2) whether that impairment was substantial; and (3) if so, whether the impairment was nonetheless a legitimate exercise of the police power. *FOP Lodge No. 89 v. Prince George's Cty.*, 608 F.3d 183, 188 (4<sup>th</sup> Cir. 2010).

As to the first factor, impairment, the government does not impair the obligation of contracts merely by breaching one of its contracts or by otherwise modifying its contractual obligation. *Cherry v. Baltimore City*, 762 F.3d 366, 371 (4<sup>th</sup> Cir. 2014). The line between mere breach and unconstitutional impairment is crossed where the state or local government action forecloses the possibility of damages or an equivalent remedy. *Crosby v. City of Gastonia*, 635 F.3d 634, 642 n.7 (4<sup>th</sup> Cir. 2011).

In addition, for purposes of the Contract Clause, there is impairment only if the challenged legislative action operates with retrospective or retroactive effect. *Md. State Teachers Assoc. v. Hughes*, 594 F. Supp. 1353, 1360-61 (D. Md. 1984). Legislation with purely prospective effect is not considered an “impairment” within the meaning of the Contract Clause. *Howell v. Anne Arundel Cty.*, 14 F. Supp. 2d 752, 755 (D. Md. 1998).

As to the second factor, a contract violation occurs only if the government substantially impairs a party’s right under the contract. Legitimate expectations of the parties determine whether the impairment was substantial. In *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012 (4<sup>th</sup> Cir. 1993) the court noted that the Supreme Court provided little guidance as to what constitutes substantial impairment, but assumes that a substantial impairment occurs “where the right abridged was one that induced the parties to contract in the first place or where the impaired right was on which there had been reasonable and especial reliance.” “Total destruction of contractual expectations is not necessary for a finding of substantial impairment.” *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411 (1983).

As to the third factor, a government may substantially impair a contract if reasonable and necessary to serve a legitimate public purpose. Reasonableness is determined in light of whether the contract had “effects that were unforeseen and unintended by the legislature”. Necessity means that the government did not have a less drastic modification available and the government could not achieve its goals without altering the contractual terms. Courts generally defer to the government in determining the reasonableness and necessity of a particular measure, unless a government seeks to impair its own contracts. But even where the government acts to impair its own contracts some degree of deference is appropriate. *United States Trust of New York v. New Jersey*, 431 U.S. 1 (1977); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234. In gauging the substantiality of the impairment, the court also considers whether the particular sector at issue has been regulated in the past. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983). For example, in *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012 (4<sup>th</sup> Cir. 1993), the court held that a city salary reduction plan adopted to meet immediate budgetary shortfalls was reasonable and necessary and, therefore, did not violate the Contract Clause.

The invalidation of severance agreements proposed by the Bill likely violates the Contract Clause. The Bill clearly operates retroactively and invalidates any pre-existing severance agreement the County has entered into with an employee.

The Supreme Court has upheld state laws that retroactively impaired the contractual obligations when necessary to remedy an important and general social problem. *See, e.g., Keystone Bituminous Coal Assoc. v. DeBenedictis*, 480 U.S. 470 (1987) (Court upheld state statute that prohibited types of coal mining that would cause substantial damage to a variety of publicly and privately owned properties). But here, the County is acting to invalidate the contract of a limited number of employees. *See, e.g., Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) (Court struck down a state law that required certain employers to increase pension benefits for prior service because, in part, the law was not necessary to remedy an “important and general social problem,” but rather focused on a limited number of employees who “had in the past been sufficiently enlightened as voluntarily to agree to establish pension plans.” *Id.* at 250.) A court would likely conclude that the Bill’s retroactive invalidation of existing severance agreements is not a reasonable and narrowly tailored means of promoting a significant public purpose but rather an attempt by the government to repudiate its obligation to private parties.<sup>1</sup>

To avoid the Contract Clause issue, application of the Bill should be prospective only.

Finally, the Council should consider identifying § 33-45(e) in line 29 as an additional law that authorizes a discontinued service pension (specifically for an elected or appointed member of the employee retirement system who “is not reappointed or reelected.”)<sup>2</sup>

ebl

cc: Robert H. Drummer, Senior Legislative Attorney  
Marc P. Hansen, County Attorney  
Dale Tibbitts, Special Assistant to the CE  
Tammy J. Seymour, OCA

20-005794  
C:\Users\LATTNE\Documents\zzzzmemo (embedded seal).docx

---

<sup>1</sup> This situation differs from the one presented by Bill 27-20E, which modified the scope of collective bargaining. First, that Bill did not have a retroactive effect. Second, public sector collective bargaining has always been dependent upon specific authorization in the law.

<sup>2</sup> County Attorney Marc Hansen has recused himself from this matter and did not participate in the preparation of this memorandum.

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## BILL 43-20: NON-MERIT EMPLOYEES - MERIT SYSTEM EMPLOYEES - SEVERANCE PAY - LIMITED

### SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 43-20 to have a minimal impact on racial equity and social justice among Montgomery County Government (MCG) employees and the County at large.

### BACKGROUND

The County Council introduced Bill 43-20 on September 29, 2020. The bill intends to "end the practice of using taxpayer dollars to compensate public employees in an unregulated and often undisclosed fashion."<sup>1</sup> If enacted, the bill would:

- Prohibit severance pay for a County employee unless authorized by law;
- Prohibit severance pay for certain employees who violate the Ethics Law;
- Provide for certain exceptions; and
- Generally, amend the law governing severance pay for County employees.<sup>2</sup>

### DEMOGRAPHIC DATA

Understanding the impact of Bill 43-20 on racial equity and social justice in the County requires understanding the demographics of the County's workforce as compared to residents. There are four major categories of MCG employees:

- **Seasonal and temporary employees** that include lifeguards, camp counselors, cashiers and front-desk staff. Seasonal employees earn the minimum wage; temporary employees can work for up to 1,040 hours annually.
- **Permanent merit employees** covered by the Merit Protection Board, including administrative support, service/maintenance, technicians, paraprofessionals, protective service workers and professionals.
- **Management Leadership Service employees** that represent the subset of permanent, merit employees that serve as managers and administrators in the Legislative and Executive Branches.
- **Non-merit, appointed employees** who account for the senior-most positions in the Montgomery County government. They include department directors, senior advisors, and confidential aides.

An analysis of data (Table 1) comparing the demographics of County residents to MCG personnel shows that:

- Black employees are over-represented among permanent merit employees and among employees who left County government compared to their residents' share, but they are proportionately represented in the MLS.
- White employees are under-represented among permanent merit employees and among employees who left County government compared to their resident share,<sup>3</sup> but over-represented in the MLS.

# RESJ Impact Statement

## Bill 43-20

- Latinx and especially Asian employees are under-represented among every MCG employee group and among employees who left County government compared to their resident populations.<sup>4</sup>

**Table 1: Montgomery County Residents, Government Workforce, and Turnover by Race and Ethnicity**

Race and Ethnicity	County Residents	Permanent Merit Employees	Management Leadership Service	Non-Merit (Appointed) Employees	Merit Employee Turnover
White	55%	48%	64%	37%	46%
Black	21%	27%	19%	9%	32%
Latinx	20%	11%	6%	6%	10%
Asian	17%	7%	6%	3%	6%
Other/Non-Reported	11%	8%	5%	46%	6%
<b>Total Number</b>	<b>1,050,688</b>	<b>9,381</b>	<b>396</b>	<b>89</b>	<b>661</b>

Sources: American Community Survey, 2019; Montgomery County Personnel Management Review, 2020; and Montgomery County Office of Human Resources Unpublished Data on Non-Merit Positions, 2020

The over-representation of Black employees among non-managerial positions and the over-representation of White employees among managerial positions are consistent with the occupational segregation that characterizes the U.S. workforce.<sup>5</sup> It's unclear whether occupational segregation by race and ethnicity characterizes non-merit, appointed positions in the County because nearly half of employees in these positions (46%) did not disclose their race or ethnicity or selected "Other." However, the racial and ethnic makeup of MLS employees suggests that White employees are also over-represented among the 89 non-merit positions that would most be impacted by Bill 43-20 if enacted.

---

## ANTICIPATED RESJ IMPACTS

**Montgomery County Employees:** Since the racial and ethnic makeup of non-merit employees remains unknown, the RESJ impact of Bill 43-20 remains undetermined. An analysis of MLS demographics, however, suggests that White employees are likely to be disproportionately impacted by the proposed changes to County law under Bill 43-20 because they likely account for a majority of non-merit employees.<sup>6</sup> Yet, since non-merit employees account for less than one percent of MCG's overall workforce, the overall impact of Bill 43-20 on the MCG workforce is negligible.

---

## METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis relies on several sources of information, including: the American Community Survey;<sup>7</sup> Montgomery County Management Personnel Management Review;<sup>8</sup> Montgomery County Non-Merit Demographics;<sup>9</sup> and OLO economic impact statement Bill 43-20.<sup>10</sup>

---

# RESJ Impact Statement

## Bill 43-20

### RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequalities are warranted in developing RESJ impact statements.<sup>11</sup> If the goal of Bill 43-20 was to limit disparities in permanent employment, OLO could offer such amendments. The purpose of Bill 43-20, however, is not to decrease racial and social inequities in the County. As such, this RESJ impact statement does not offer recommended amendments for Bill 43-20.

---

### 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 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.

---

### CONTRIBUTIONS

OLO staffers Dr. Theo Holt and Dr. Elaine Bonner-Tompkins drafted this racial equity and social justice impact statement.

---

<sup>1</sup> Memorandum, Bill 43-20, Non-Merit Employees – Merit System Employee – Severance Pay – Limited, September 24, 2020, Montgomery County Council.

<sup>2</sup> Montgomery County Council, Bill 43-20, Non-merit Employees-merit System Employees, Severance Pay-Limited, Introduced on September 29, 2020, Montgomery County, Maryland.

<sup>3</sup> White MCG employees, however, are proportionately represented among those leaving County government compared to their share of permanent merit employees (46% v. 48%).

<sup>4</sup> Latinx MCG employees, however, are proportionately represented among those leaving County government compared to their share of permanent merit employees (10% v. 11%).

<sup>5</sup> Equitable Growth, U.S. Occupational Segregation by Race, Ethnicity, and Gender, July 2020 <https://equitablegrowth.org/wp-content/uploads/2020/07/063020-occup-seg-fs.pdf>

<sup>6</sup> Montgomery County Personnel Management Review, April 2020

<https://www.montgomerycountymd.gov/HR/Resources/Files/Classification/Compensation%20Documents/PMR%202020%2004072020.pdf>

<sup>7</sup> American Community Survey Demographic and Housing Estimates, Montgomery County, Maryland, 2019 (1 Year Estimates) Table DP05 <https://data.census.gov/cedsci/table?q=montgomery%20county%20maryland&tid=ACSDP1Y2019.DP05&hidePreview=true>

<sup>8</sup> Montgomery County Personnel Management Review, April 2020

<sup>9</sup> Unpublished data from Office of Human Resources shared with OLO on October 10, 2020

<sup>10</sup> Stephen Roblin, Bill 43-20 Legislative Branch- Economic Impact Statement, Office of Legislative Oversight, October 2020.

<sup>11</sup> Montgomery County Council, Bill No. 27-19 Racial Equity and Social Justice, Effective on March 2, 2020, Montgomery County, Maryland.