

HHS COMMITTEE #1
May 2, 2019
Worksession

MEMORANDUM

April 30, 2019

TO: Health and Human Services Committee
FROM: Jean C Arthur, ^{JCA} Legislative Analyst
SUBJECT: **Worksession: FY20 Operating Budget: Office of Human Rights**
PURPOSE: Review and make recommendations on the FY20 Operating Budget for the Office of Human Rights

Those expected to attend this worksession include:
James Stowe, Director, Office of Human Rights
Phil Weeda, Office of Management and Budget (OMB)

Relevant pages from the FY20 Recommended Operating Budget are attached on ©1-5.

Summary

The Executive's FY20 recommendation for the Office of Human Rights retains service at its current level with the addition of \$2,500 for the biennial Hall of Fame event; all other increases are do adjustments in compensation, benefits and retirement.

Staff has included excerpts from *OLO Report 2019-2 Compliance with Select County Workplace Protection Laws* that a relevant to this office.

Council Staff Recommendation: Approve the budget for the Office of Human Rights as recommended by the County Executive.

Background

The Human Rights Commission enforces anti-discrimination laws in housing, commercial real estate, employment, and public accommodations. The Commission promotes, monitors, and enforces fair housing laws relating to access and treatment. It provides training and technical assistance in civil rights laws and addresses community conflict motivated by prejudice, intolerance, and bigotry based on race, ethnicity, religion, disability, and sexual orientation, and promotes increased understanding and tolerance among diverse groups.

OVERVIEW

For FY20, the County Executive recommends a total of \$1,288,037 for the Office of Human Rights, an increase of 40,900 or 3.29 percent from the FY19 Approved Budget of \$1,247,047. The budget funds eight full-time positions for a total of 8.60 FTEs.

	<i>FY18 Actual</i>	<i>FY19 Approved</i>	<i>FY20 Recommended</i>
<i>Expenditures by fund</i>			
General Fund	\$1,187,035	\$1,247,047	\$1,288,037
<i>Expenditures by type</i>			
Personnel Cost	\$1,065,761	\$1,086,410	\$1,144,961
Operating Expenses	\$121,274	\$160,637	\$143,076
<i>Total Expenditures</i>	\$1,187,035	\$1,247,047	\$1,288,037
<i>Positions</i>			
Full-Time	8	8	8
Part-Time	0	0	0
<i>FTEs</i>	8.6	8.6	8.6

DISCUSSION ISSUES

Bill 60-14, Human Rights and Civil Liberties - Earned Sick and Safe Leave

Bill 60-14, Human Rights and Civil Liberties - Earned Sick and Safe Leave – requires certain employers in the County to provide earned sick and safe leave to certain employees working in the County. It went into effect on October 1, 2016 and is to be enforced by OHR and the Human Rights Commission.

Attached at ©6-17 an excerpt from an *OLO Report 2019-2, Compliance with Select County Workplace Protection Laws*, which was release to the Council in January 2019. In the report, OLO outlines, Human Rights’ Implementation and Enforcement Activities. Circles 12-13.

The Office of Human Rights engaged in outreach and education activities to educate employers as well as workers about the law. It continues to hear from businesses about implementing the law. It has information on its website including Frequently Asked Questions and the Maryland law concerning sick and safe leave.

The Office of Human Rights has received some Sick and Safe Leave complaints; some of which have resulted in mediation sessions.

Council staff comments. Council staff applauds the Office of Human Right’s ongoing effort to assist employers and workers with implementing this law, however, staff recommends that the complaint form be more visible.

In the current website, one must know to find a link to the Compliance Section and scroll through that page to find a form called “Compliance Intake Form.” That might be a challenge for the general public to locate this form.

Other Legislation

The Office of Human Rights also is responsible for enforcing the following County laws:

- Bill 24-15, Minimum wage – Tipped employee. Among other provisions, Bill 24-15:
 - modifies the amount of the tip credit an employer can use to calculate the minimum wage for a tipped employee working in the County;
 - requires an employer of a tipped employee to submit quarterly wage reports; and
 - requires the Executive to establish an online reporting system for quarterly wage reports.
 - OHR manages the reporting function of the law; Maryland Department of Labor, Licensing and Regulation manages the penalty process of the general minimum wage law.

In recent years, the Council approved funding in the Human Rights and Department of Technology Services budgets to develop an application for an electronic reporting system for compliance with the law.

The electronic reporting system went live in April 2018. Human Rights does not have a reporting system in place to compile data received from the quarterly wage reports. See OLO Report excerpt on circles 6-9.

- Bill 19-12, Human Rights and Civil Liberties – Displaced Service Workers – requires certain contractors to retain service workers for a transition period. That bill became effective on December 1, 2012 and provides for enforcement by OHR and the Human Rights Commission.
- Bill 36-14, Human Rights and Civil Liberties – Fair Criminal Records Screening Standards – among other things, prohibits certain employers from performing a criminal background check or otherwise inquiring into an applicant’s criminal record before the conclusion of a first interview and provides for enforcement by OHR and the Human Rights Commission. That bill became effective on January 1, 2015.

The Office of Human Rights is working with the Department of Corrections and Rehabilitation to educate returning citizens on the “Ban the Box” effort. Additionally, Human Rights is planning training with human resources managers to educate them on the requirements of the law.

- Bill 51-14, Discriminatory Employment Practices - Retaliation for Wage Disclosure – Prohibited. This bill prohibits an employer from retaliating against an employee for certain disclosures of an employee or another employee. This law went into effect on May 13, 2015 and is being enforced by OHR and the Human Rights Commission.

Testing

The Office of Human Rights has engaged in testing for civil right violations, particularly in housing, for many years. That program recently was suspended because of budget limitations. Human Rights staff expects to resume the testing program in calendar year 2020.

Biennial Hall of Fame event

The first Human Rights Hall of Fame induction was held in March 2001. It is held biennially. The Hall of Fame honors individuals who have made contributions to human and civil rights in Montgomery County.

The next Human Rights Hall of Fame induction will be held in fall, 2020.

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Human Rights

RECOMMENDED FY20 BUDGET

\$1,288,037

FULL TIME EQUIVALENTS

8.60

✦ JAMES STOWE, DIRECTOR

MISSION STATEMENT

The mission of the Office of Human Rights is to enforce Federal, State, and County anti-discrimination laws in housing, commercial real estate, employment, public accommodations and intimidation; and promote increased understanding and tolerance among diverse groups.

BUDGET OVERVIEW

The total recommended FY20 Operating Budget for the Office of Human Rights is \$1,288,037, an increase of \$40,990 or 3.29 percent from the FY19 Approved Budget of \$1,247,047. Personnel Costs comprise 88.89 percent of the budget for eight full-time position(s) and no part-time position(s), and a total of 8.60 FTEs. Total FTEs may include seasonal or temporary positions and may also reflect workforce charged to or from other departments or funds. Operating Expenses account for the remaining 11.11 percent of the FY20 budget.

COUNTY PRIORITY OUTCOMES

While this program area supports all seven of the County Executive's Priority Outcomes, the following are emphasized:

- ❖ **Thriving Youth and Families**
- ❖ **Effective, Sustainable Government**

DEPARTMENT PERFORMANCE MEASURES

Performance measures for this department are included below (where applicable), with multi-program measures displayed at the front of this section and program-specific measures shown with the relevant program. The FY19 estimates reflect funding based on the FY19 Approved Budget. The FY20 and FY21 figures are performance targets based on the FY20 Recommended Budget and funding for comparable service levels in FY21.

ACCOMPLISHMENTS

- Held the One-Stop Fair housing workshop for housing providers, realtors, rental agents, and real estate professionals with a focus on local, State, and Federal fair housing laws and the 50th Anniversary of the Federal Fair Housing Act of 1968, and 51st Anniversary of the Montgomery County Open Housing Law of 1967.

- Held the One-Stop Fair Employment workshop for County private and public employers with a focus on new local laws and State and Federal employment case law.
- Planned and coordinated the Sixth Annual Friendship Unity Picnic with the Committee on Hate Violence, advocating for community unity across racial, religious, and cultural lines; building awareness of the Partnership Fund, which supports victims of hate violence incidents. This event was very important as the Office continued to see an increase of reported incidents of hate and violence.
- Successfully mediated and conciliated complaints in excess of \$1.5 million. Other cases were investigated and closed consistent with performance measure requirements.

PROGRAM CONTACTS

Contact James Stowe of the Office of Human Rights at 240.777.8490 or Phil Weeda of the Office of Management and Budget at 240.777.2780 for more information regarding this department's operating budget.

PROGRAM DESCRIPTIONS

☼ Compliance

This program investigates and resolves formal complaints of discrimination in employment, housing, commercial and residential real estate transactions, public accommodations, and intimidations through a formal complaint process or mediation.

Program Performance Measures	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
Percent of cases that have completed their investigation within 15 months	95%	95%	100%	100%	100%
Percent of cases that have a Letter of Determination issued within 30 days of completed investigation by investigator	100%	100%	100%	100%	100%
Percent of referred cases that are mediated successfully	50%	65%	50%	50%	50%
Percent reduction (or increase) in the average closeout time of cases (formal complaints) over the prior year	5%	5%	5%	5%	5%
Percent of cases in backlog status (cases not closed within 15 months)	5%	5%	5%	5%	5%

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	886,626	6.00
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	19,438	0.00
FY20 Recommended	906,064	6.00

☼ Community Mediation and Public Affairs

This program supports and promotes the Human Rights Commission and Committee on Hate Violence on their outreach and education efforts. Participate in, or in partnership with other local/State/Federal offices, conduct various forums to promote increased understanding and tolerance among diverse groups.

Program Performance Measures	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
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Program Performance Measures	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
Overall satisfaction of the Commissioners with the HRC's advocacy for human and civil rights issues (scale of 1-5)	4.7	4.8	4.8	4.8	4.8

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	43,448	0.50
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	2,883	0.00
FY20 Recommended	46,331	0.50

☀ **Fair Housing**

This program monitors the County's Fair Housing Ordinance through the Interagency Fair Housing Work Group in order to coordinate the activity of County departments, offices, and agencies to prevent housing discrimination and to perform testing of housing providers. The Office investigates and seeks to resolve housing discrimination complaints.

Program Performance Measures	Actual FY17	Actual FY18	Estimated FY19	Target FY20	Target FY21
Percent of housing providers in full compliance with Fair Housing Laws based on the Office of Human Rights-selected matched pair testing ¹	90%	N/A	95%	95%	95%

¹ Testing was suspended to Complete Report Summary for the Previous Testing Period Budget Considerations.

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	60,957	1.10
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	3,717	0.00
FY20 Recommended	64,674	1.10

☀ **Administration**

This program provides overall direction of the office, administration of the budget, personnel, procurement, automation, and support services. Also provided in this program is funding for human relations awards and programs.

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	256,016	1.00
Decrease Cost: Contract Services	(20,932)	0.00
Decrease Cost: Part-time Salaries	(28,950)	0.00
Multi-program adjustments, including negotiated compensation changes, employee benefit changes, changes due to staff turnover, reorganizations, and other budget changes affecting multiple programs.	64,834	0.00
FY20 Recommended	270,968	1.00

BUDGET SUMMARY

	Actual FY18	Budget FY19	Estimate FY19	Recommended FY20	%Chg Bud/Rec
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COUNTY GENERAL FUND

BUDGET SUMMARY

	Actual FY18	Budget FY19	Estimate FY19	Recommended FY20	%Chg Bud/Rec
EXPENDITURES					
Salaries and Wages	830,572	849,218	863,989	884,276	4.1 %
Employee Benefits	235,189	237,192	237,401	260,685	9.9 %
County General Fund Personnel Costs	1,065,761	1,086,410	1,101,390	1,144,961	5.4 %
Operating Expenses	121,274	160,637	135,982	143,076	-10.9 %
County General Fund Expenditures	1,187,035	1,247,047	1,237,372	1,288,037	3.3 %
PERSONNEL					
Full-Time	8	8	8	8	—
Part-Time	0	0	0	0	—
FTEs	8.60	8.60	8.60	8.60	—
REVENUES					
EEOC Reimbursement	121,540	55,000	59,200	59,200	7.6 %
Miscellaneous Revenues	99	0	829	0	—
County General Fund Revenues	121,639	55,000	60,029	59,200	7.6 %

FY20 RECOMMENDED CHANGES

	Expenditures	FTEs
COUNTY GENERAL FUND		
FY19 ORIGINAL APPROPRIATION	1,247,047	8.60
<u>Other Adjustments (with no service impacts)</u>		
Increase Cost: FY20 Compensation Adjustment	36,687	0.00
Increase Cost: Restore One-Time Lapse Increase	28,950	0.00
Increase Cost: Annualization of FY19 Personnel Costs	20,158	0.00
Increase Cost: Biennial Hall of Fame Event	2,500	0.00
Increase Cost: Retirement Adjustment	1,706	0.00
Increase Cost: Motor Pool Adjustment	871	0.00
Decrease Cost: Contract Services [Administration]	(20,932)	0.00
Decrease Cost: Part-time Salaries [Administration]	(28,950)	0.00
FY20 RECOMMENDED	1,288,037	8.60

PROGRAM SUMMARY

Program Name	FY19 APPR Expenditures	FY19 APPR FTEs	FY20 REC Expenditures	FY20 REC FTEs
Compliance	886,626	6.00	906,064	6.00
Community Mediation and Public Affairs	43,448	0.50	46,331	0.50
Fair Housing	60,957	1.10	64,674	1.10

PROGRAM SUMMARY

Program Name	FY19 APPR Expenditures	FY19 APPR FTEs	FY20 REC Expenditures	FY20 REC FTEs
Administration	256,016	1.00	270,968	1.00
Total	1,247,047	8.60	1,288,037	8.60

FUTURE FISCAL IMPACTS CE RECOMMENDED (\$000S)

Title	FY20	FY21	FY22	FY23	FY24	FY25
COUNTY GENERAL FUND						
EXPENDITURES						
FY20 Recommended	1,288	1,288	1,288	1,288	1,288	1,288
No inflation or compensation change is included in outyear projections.						
Labor Contracts	0	8	8	8	8	8
These figures represent the estimated annualized cost of general wage adjustments, service increments, and other negotiated items.						
Subtotal Expenditures	1,288	1,296	1,296	1,296	1,296	1,296

B. The County's Minimum Wage Law including Minimum Wages for Tipped Employees

Minimum wage laws establish wage standards that can replace standards found in federal or state wage laws. In 2013, the Council joined several other jurisdictions that had recently enacted higher state or local minimum wage rates.

Bill 27-13 adopted a schedule that increased wage rates over a three-year period from an initial rate of \$8.40 per hour which took effect October 1, 2014 to a final rate of \$11.50 per hour which took effect July 1, 2017. The higher wage rates cover County Government employees and private sector employees who work at business establishments in the County.

The law is intended “to promote the health and welfare of County residents; safeguard employers and employees against unfair competition; increase the stability of industry in the County; increase the buying power of employees in the County; and decrease the need for the County to spend public money for the relief of employees who also live in the County.”¹⁴⁹

Bill 24-15, Minimum Wage Law for Tipped Employees, defines tipped employees as individuals who earn more than \$30 per month in tips. The law establishes a base wage rate of \$4.00 per hour and a tip credit. Together the base wage rate and the tip credit must be equal to or higher than the County minimum wage rate. This law was enacted to reconcile the wage rate with increases in the State's minimum wage rate.

Bill 28-17, passed in November 2017, instituted a new set of scheduled rate increases. These provisions and the County's implementation practices are described below.

1. Legal Provisions of Bill 28-17

Wage Rates. The current law phases in wage rate increases that vary the amount of the increase based on employer size. Table 5-7 shows the schedule of annual rate increases by employer size. Under the definitions in the law, a large employer employs 51 or more employees; a mid-size employer employs between eleven and 50 employees and a small employer has 10 or fewer employees. In addition, the mid-sized employer group also includes a tax-exempt employer who employs eleven or more employees and provides home health services and receives at least 75% of gross revenue through the state or federal Medicaid programs.

¹⁴⁹ Bill 27-13

Table 5-7. Minimum Wage Required Under Transition Provisions of Enacted Bill 28-17

Effective date	Large employer (51+)	Mid-size employer (11-50) ¹⁵⁰	Small employer (0-10)
July 1, 2018	\$12.25	\$12.00	\$12.00
July 1, 2019	\$13.00	\$12.50	\$12.50
July 1, 2020	\$14.00	\$13.25	\$13.00
July 1, 2021	\$15.00	\$14.00	\$13.50
July 1, 2022	\$15.00 + CPI-W ¹⁵¹	\$14.50	\$14.00
July 1, 2023	Increased annually by	\$15.00	\$14.50
July 1, 2024	CPI-W	\$15.00 + CPI-W + 1%**	\$15.00
July 1, 2025		Increased annually by CPI-W + up to 1%, until equal to large employers	\$15.00 + CPI-W + 1%***
July 1, 2026 and beyond			Increased annually by CPI-W + up to 1% until equal to large employers

Source: http://www.montgomerycountymd.gov/humanrights/Resources/Files/Minimum_Wage_Transition_Table.pdf

The law’s provisions for different wage rate schedules reflects Council efforts to balance the interests of minimum wage workers with those of County businesses that must accommodate the effects of higher wage rates. These effects can pose challenges for smaller business establishments and non-profits.

Table 5-8 shows the number of private sector establishments in Montgomery County grouped by size and based on the number of jobs. While there is not a one to one correspondence between jobs and the number of employees, if jobs are used as a proxy for employees, the data show that large employers account for roughly 4% of establishments and nearly 55% of jobs while small employers account for over 80% of establishments and less than 20% of private sector jobs.

Table 5-8. Estimates of Establishments and Jobs Subject to County Minimum Wage by Establishment Size

Establishment Size	Number of Establishments	Percent of Total	Number of Jobs	Percent of Total
10 or fewer jobs	26,457	81.1%	63,069	17.1%
11 to 25 jobs	3,384	10.4%	54,874	14.9%
26 to 50 jobs	1,408	4.3%	49,702	13.5%
51 to 99 jobs	752	2.3%	52,240	14.2%
100 to 499 jobs	568	1.7%	100,723	27.4%
Greater than 500 jobs	43	0.1%	47,361	12.9%

Source: 2017Q1 QCEW; County, private establishments only¹⁵²

¹⁵⁰ This group also includes tax-exempt, home health service providers as defined by 42 C.F.R. § 440.180. and receives at least 75% of gross revenue through state and federal Medicaid programs.

¹⁵¹ For large employers, as of July 1, 2022, the minimum wage required under County Code Section 27-68 must be adjusted annually to the nearest five cents, according to the average increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for Washington-Baltimore, or a successor index, for the previous calendar year. For mid-sized employers, as of July 1, 2024, and for small employers, as of July 1, 2025, the rate must be adjusted annually to the nearest five cents, by the annual average increase, if any in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for Washington-Baltimore, or a successor index, for the previous calendar year plus, if the CPI-W increase is less than \$0.50, by one percent of the minimum wage required for the prior year, up to a total increase of \$.50.

¹⁵² Josh Hamlin, Legislative Attorney, and Gene Smith, Legislative Analyst, to the Montgomery County Council, Nov. 7, 2017, 11, https://www.montgomerycountymd.gov/council/resources/files/lims/bill/2017/Action/pdf/3302_1454_Action_11062017.pdf



Indexing. As shown in Table 5-7, Bill 28-17 expands the scope of protections included in the original law by adding a provision that indexes the wage rate to inflation. Increases will be based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for Washington-Baltimore.

Coverage and Exemptions. Bill 28-17 recognized new classes of employers by size as the basis for phased-in rate increases, but it did not change the coverage and exemption provisions that were in the law as originally enacted.¹⁵³ The law continues to cover employees of County government and private sector businesses located in Montgomery County; it exempts: individuals who are exempt from State or Federal minimum wage requirements; individuals subject to a State or Federal opportunity wage; and youth workers, defined as individuals under 19 years of age employed for fewer than 20 hours per week.

Authorizing a Temporary Suspension of the Scheduled Annual Increase. The law gives the Executive the authority to temporarily suspend scheduled minimum wage increases if the Director of Finance determines that there have been specified decreases in private employment, the Gross Domestic Product of the U.S. has had negative growth, and the National Bureau of Economic Research has determined that the U.S. economy is in recession.

Designation of Enforcement Authority. During its discussion of the original minimum wage law, the Council decided to assign authority to investigate complaints about the County's minimum wage law to the Maryland Department of Labor, Licensing and Regulation (DLLR). The Council based its decision on staffing limitations in the Office of Human Rights and the complexity and special training required to conduct wage hour investigations. Maryland House Bill 579, which was enacted in the 2014 Session, requires the State Commissioner of Labor and Industry to enforce a local minimum wage law. The law took effect on June 1, 2014.

2. County Implementation Practices

Human Rights' General Education and Outreach Practices. Human Rights undertook education and outreach to all employers to promote compliance. In the Fall of 2015, Human Rights held an initial employer seminar to explain the County's new minimum wage laws. The message Human Rights conveyed was that it wanted County employers to pay their employees at the correct rate of pay. Human Rights did not conduct any worker outreach sessions or educational efforts.

Because its business outreach efforts were well-received, Human Rights now offers seminars to County businesses twice a year. One session focuses on County anti-discrimination and worker protection laws. A second session invites representatives from federal and state agencies such as the federal Equal Employment Opportunity Commission (EEOC) and the Maryland Department of Labor, Licensing and Regulation (DLLR) to attend. Human Rights reports about 30 employers attended the initial session and 30 to 60 employers have attended subsequent sessions.

Requirement for Quarterly Wage Reports from Tipped Employee Employers. In 2015, the Council adopted Bill 24-15E, Human Rights – Minimum Wage – Tipped Employee – Amendments to add provisions for tipped employees to the Council's original minimum wage law (Bill 27-13). Bill 24-15E established a requirement that County employers of tipped employees send a quarterly payroll report to the Office of Human Rights that certifies that each tipped employee was paid the County minimum wage. Bill 24-15E required the Executive to establish an internet-based reporting system so that an employer of a tipped employee would have an option to complete and submit these reports online. The bill took effect on July 1, 2015.

¹⁵³ Bill 43-15 extends coverage to sole employees. It was enacted in November 2018 and will take effect on July 1, 2019.

Human Rights' Implementation of the Online Reporting Form for Employers of Tipped Employees.

The provisions in County law included one mandate that required employers with tipped employees to submit quarterly payroll reports and a second provision that required the Executive to establish an online reporting system. In 2017, the Director of Human Rights expressed the view that initially these provisions plus ongoing questions and discussion about Human Rights' progress in instituting an online reporting form conflated the reporting requirement with the method of reporting. As a result, employers of tipped employees were confused about when the reporting requirements took effect.

In the three plus years since the law took effect, Human Rights has received a handful of payroll reporting forms from employers of tipped employees. Human Rights reported that it received a few dozen forms shortly after the law was enacted in 2015. Two years later, in the fall of 2017, Human Rights confirmed that it had received only a trickle of reporting forms. At that time, Human Rights attributed this low volume to the fact that it had posted a prototype online and that posting had created an expectation that the reporting requirements were temporarily delayed. In April 2018, Human Rights went live with its online reporting form.¹⁵⁴ As of early 2019, Human Rights has yet to tally information about the forms, such as the number of forms received, since the online form was launched. Currently, Human Rights does not actively monitor the submission of the payroll forms and it does not have a reporting system in place to compile these data.

The Practices of the Office of Human Rights' to Detect, Monitor and Report Noncompliance. The enforcement authority for the County's minimum wage laws rests with the State Commissioner of Labor and Industry. When Human Rights receives an inquiry, it refers complainants to the Employment Standards Service ("Employment Standards") in the Maryland Department of Labor, Licensing and Regulation (DLLR). As described in Chapter IV, Employment Standards promotes compliance through a complaint-based compliance and enforcement system.

During the discussion of Bill 24-15, the Council recognized that Human Right's ability to follow-up on any issues it identified through its monitoring of these reports was limited because DLLR only accepts requests to initiate an investigation of an employer from an affected employee. This means that if Human Rights' review of a payroll record were to indicate a violation, the County would have to either investigate the employer itself or ask an affected employee to file a complaint with the State directly. Human Rights reports that based on its experiences to date with both the general minimum wage law and the law for tipped employees it has not found this limitation to be a problem.

Human Rights does not conduct any routine monitoring to detect noncompliance beyond its outreach activities. It does not routinely monitor or review the online payroll submissions it receives; however, the Manager of Enforcement Programs reports these submissions are useful because businesses must certify them. This means that if Human Rights receives an inquiry or a complaint, Human Rights can access the necessary payroll data to conduct an informal investigation. In the nine months since the activation of the online form, Human Rights reports it has not yet received an inquiry or complaint that has required its review a certified payroll report.

Human Rights does not maintain or report data about businesses' compliance with the County's minimum wage laws because Employment Standards administers these activities. As described in Chapter IV, DLLR collects and reports data about Employment Standards' activities, including the number of wage hour claims it receives for each county. DLLR does not report data about businesses' compliance levels.

¹⁵⁴ <http://www.montgomerycountymd.gov/humanrights/min-wage.html>



C. The County's Earned Sick and Safe Leave Law

In 1993, adoption of the federal Family Medical Leave Act (FMLA) set a national baseline for unpaid job-protected leave so that workers could attend to medical issues and care for family members.¹⁵⁵ According to an evaluation by Abt Associates, the unpaid job protected leave available under the federal FMLA covers 59% of the workforce and not all covered employees can afford to take the leave that is offered.¹⁵⁶

Since the FMLA was adopted, states and local jurisdictions have enacted employment laws that establish employer mandates for sick and safe leave. Many of these laws, including Montgomery County's Earned Sick and Safe Leave Law, enacted in October 2015, and the Maryland Healthy Working Families Act, enacted in February 2018, establish employer mandates for paid or unpaid leave. This section summarizes the provisions in the County's law and describes the County's implementation practices.

1. Legal Provisions

The Montgomery County Council passed the Earned Sick and Safe Leave Law, (Bill 60-14) on June 23, 2015 with an effective date of October 1, 2016. The law requires most employers to provide their employees who have regular work schedules with paid leave or paid time off. The Office of Human Rights states the law is intended to provide support to "our lowest income and most vulnerable workers."¹⁵⁷ The law also states that minimum earned leave standards are necessary to promote the health and welfare of County residents; safeguard employers and employees against unfair competition; and stabilize industry.¹⁵⁸

Coverage. The law covers most employees, including domestic workers and County government workers; however, it excludes other local governments' employees, state government employees and federal government employees. It also does not cover independent contractors, and part-time employees who regularly work only 8 hours or less each week.

Use of Leave. An employee can use earned leave for self-care for an illness or injury; to obtain preventive care; or to care for a family member. An employee can also use leave to provide care for a family member if a school or child care center is closed for an emergency. An employee may also use earned leave for a work absence due to a domestic violence incidence for oneself or a family member.

The law requires an employee to request leave from their employer as soon as practical. An employer may not request specific details about an employee's or family member's injury or illness; however, an employer may require an employee who uses more than three consecutive days of leave to provide reasonable documentation to verify appropriate use of the leave.

¹⁵⁵ "Raising Expectations: A State-by-State Analysis of Laws That Help Working Family Caregivers," (National Partnership for Women & Families, (August 19, 2018): X, retrieved from <http://www.nationalpartnership.org/research-library/work-family/raising-expectations-2018.pdf>.

¹⁵⁶ According to the Abt Report, to be covered by the FMLA, a worker must be an eligible employee at a covered worksite. A covered worksite must be part of a firm with at least 50 employees. To be an eligible employee, a worker must work for a firm with 50 employees within 75 miles of the employee's worksite; have 12 months of tenure and have 1250 service hours within the past year (about 24 hours per week). Roughly 59% of employees report meeting all three of these conditions. (Jacob Alex Kerman, Kelly Daley and Alyssa Pozniak, "Family and Medical Leave in 2012: Technical Report," *ABT Associates Inc.*, Cambridge, MA, (September 7, 2012, revised April 18, 2014): i, retrieved from <https://www.dol.gov/asp/evaluation/fmla/fmla-2012-technical-report.pdf>.

¹⁵⁷ Montgomery County, Maryland Office of Human Rights website (<https://www.montgomerycountymd.gov/humanrights/divisions/compliance.html>) . Accessed June 6, 2018.

¹⁵⁸ §27-76(a)(3)

An employer may not require an employee who has requested leave to find a replacement worker; however, if an employer and employee mutually agree an employee may work additional hours or trade shifts during a pay period to make up work hours instead of using earned leave.

Accrual Rates. Under the law, all employees accrue leave at the rate of one hour for every 30 hours worked; however, the mix of paid and unpaid leave an employee accrues varies by employer size. As shown in Table 5-9, the law provides that small employers, defined as those with fewer than five employees, can limit an employee’s accrual of leave to 32 hours of paid leave and 24 hours unpaid leave.

Table 5-9. Montgomery County Leave Accrual Rates by Employer Size

Employer Size	Accrual Rate	Calendar Year Limit for Leave Earned	Calendar Year Limit for Use of Leave
1 to 4 employees	1 hour per 30 hours	32 hours paid leave 24 hours unpaid leave	Up to 80 hours
5 or more employees	1 hour per 30 hours	56 hours of paid leave	Up to 80 hours

Source: OLO and Chapter 27 of the Montgomery County Code.

http://www.montgomerycountymd.gov/humanrights/Resources/Files/Clean_Art_XIII_EarnedSafeandSickLeave.pdf
_ Accessed June 6, 2018.

Notice and Record Requirements. The law requires an employer to notify employees that they are entitled to earned leave, including information about how it is accrued and how it is permitted to be used. An employer must provide an employee with a written statement of earned leave that is available for use with each wage statement. The law also requires an employer to keep three years of employee records; and gives the Director of Human Rights the authority to inspect a record for the purposes of determining compliance, after giving an employer notice.

Enforcement. The County’s Earned Sick and Safe Leave Law was codified as Article XIII in Chapter 27, Human Rights and Civil Liberties. By amending Section 27-7, Bill 60-14 incorporated the administration and enforcement of the law into the Office of Human Rights’ existing administration and enforcement procedures. This complaint-based enforcement process includes the following steps:

- An employee may file a written complaint with the Director stating the particulars of the alleged violation;
- The Director must conduct an investigation and make a determination whether reasonable grounds exist to believe a violation occurred; and the Director must notify the employee and the employer of the determination;
- If there are reasonable grounds to believe a violation occurred, the Director must attempt to conciliate the matter; and
- If the Director determines there are not reasonable grounds and the employee files an appeal, the Director must certify the complaint to the Commission.

2. Office of Human Rights' Implementation and Enforcement Activities.

Human Rights undertook an extensive outreach and education process before and after implementation of the County's Sick and Safe Leave Law. Human Rights worked closely with the Council's attorney during this process. Altogether, Human Rights estimates that they have had contact with 75% of County employers subject to the law. This section provides details about Human Rights' implementation of the law.

During the consideration of Bill 60-14, the Council delayed enforcement for a year to give employers time to comply. This delay also gave Human Rights time to build its inventory of resource materials for the website and to develop the necessary posting notices.

Human Rights' direction from the County Executive was to do what was needed to enable voluntary compliance among County employers. Human Rights reports that they researched other places around the country to find examples of other jurisdictions' implementation experiences; however, they did not find a lot of examples.

Initial Outreach and Education Activities. Human Rights spent the year before the law became effective conducting workshops throughout the County. Human Rights held meetings with the Wheaton Chamber of Commerce and the Apartment and Building Owners Association. Human Rights made sure to have the Council's attorney available to provide advice on the law's intent whenever possible. Education was spread informally, primarily by word of mouth.

Human Rights reported that its approach to outreach and education was to lend support to people who raised questions to help businesses comply with the law's new standards. Human Rights advised businesses to continue their usual business practices and to view the law's provisions as guidelines that were intended to set a floor, not a ceiling. Human Rights advised that the law's intent was not to establish restrictions on an employers' benefits.

Outstanding Issues List. Human Rights reported that an outcome of their education and outreach work was a list of issues that needed to be addressed or clarified. Since Human Rights was charged with implementing the law's complaint and enforcement process, Human Rights undertook to maintain a working list of these questions and issues. Human Rights indicated a lot of questions came from employers with fewer than five employees and payroll agencies were another common source of questions.

In some cases, Human Rights felt comfortable providing an interpretation of the law; however, in other cases Human Rights was more reticent about providing advice because of the potential for a conflict of interest created by its statutory charge to enforce the law. To minimize these situations, the Director of Human Rights took the lead in explaining the law and providing technical assistance and that the Manager of Enforcement Programs took the lead on any complaints or complex enforcement issues.

In the Fall of 2018, a Business Liaison Officer was hired in the Office of the County Executive to provide outreach to businesses. Now, Human Rights provides an initial explanation of the law and copies the Business Liaison Officer in case a business has follow-up questions or needs more assistance.

Examples of some of the technical issues Human Rights has addressed are highlighted below:

- One issue that generated questions from agencies that administer payrolls for multiple small businesses concerned whether there were rules that specified how employers should calculate how sick leave is earned. Human Rights advised employers that an explanation of the calculation was something that should appropriately be included in an employee manual, but Human Rights intentionally did not provide advice about the substance of the calculation itself. Human Rights' view was that it was not its role or intent to dictate to employers the specifics of their business operations.
- Another question from some businesses concerned the treatment of employees who work on commission. Human Rights' interpretation is that the law did not intend to cover this class of employees.
- Another area that raised questions concerned the treatment of employees who work at different sites throughout the region within a given work week. Since the law only applies to employees who work in the County, Human Rights advised that an employee who works a portion of their week in different jurisdictions will likely accrue their hours worked over the course of several weeks.
- A fourth source of questions was from large businesses such as big box retailers who have employees nationwide.
- Another outstanding issue was the definition of a regular work week. A significant percentage of hourly wage workers work a regular work week defined as a 40-hour week of five eight-hour days, but this practice is not as prevalent as it used to be. This issue is relevant because as currently defined the County's Sick and Safe Leave Law excludes employees who do not work a regular work schedule.

Ongoing Practices. The Director of Human Rights reports that they continue to hear from businesses about the difficulties they face in making the law work. He continues to field follow-up emails and phone calls. He refers outside-the-box questions to the Council's attorneys and the Office of the County Attorney.

Human Rights notes that it is helpful that they are one of the few County offices that still has a front desk presence and a customer service phone option that is advertised on its website. This allows businesses that have questions to reach out to Human Rights directly instead of having their call handled through the 311 system.

When someone contacts Human Rights with a question, a Human Rights investigator will provide links to the law or to the Human Rights website where the law is posted online. Human Rights has also posted a list of Frequently Asked Questions on the website that were culled from the list of outstanding issues. If there is a follow-up call or email after that step, Human Rights' Manager of Enforcement Programs responds. Per the Manager, most calls and emails with questions about the law are received via the Human Rights' phone line and website; fewer calls are received via 311.

Compliance and Complaint Data. The Director of Human Rights observed a drop-off in phone calls in the Fall of 2017 and viewed this as an indication that businesses were now aware of the law and adjusting their practices to come into compliance. Over a year later, the Manager of Enforcement Programs reports that some employers continue to call with questions, especially after the state passed its own sick leave law. The Manager estimates that Human Rights' receives three to six inquiries per week, especially from small employers.

Human Rights reports that in some instances they have seen companies reducing benefits to comply with the law although they caution it is not clear whether this is an employee's perception or has in fact occurred. For example, instead of adding sick leave to existing benefits, some employers complied with the law by pooling benefits, e.g. vacation and paid sick leave, that had previously been treated separately. For some employees, converting leave previously allocated only for vacation leave into pooled leave instead of increasing leave overall was perceived as a benefit reduction.

Human Rights' Monitoring Data and Actions in Response to Complaints. Human Rights does not collect data about businesses' compliance with the law. As of Fall 2018, Human Rights reports they have received about a dozen Sick and Safe Leave complaints which have resulted in a few mediation sessions and one retaliation claim

Enactment of the Maryland Healthy Working Family's Act. House Bill 1 (HB1), the Maryland Healthy Working Families Act, was introduced during the 2017 session of the Maryland General Assembly. The General Assembly voted to pass the bill but the Governor vetoed it. When the General Assembly convened for the 2018 session it voted to override the Governor's veto. The law took effect 30 days after the vote on February 11, 2018.

State law provisions in HB1 do not preempt County law, except where the HB1 provisions are more generous. For example, the list of allowable uses in state law include a provision for maternity or paternity leave that is not specified in County law. Human Rights prepared a document, *Sick & Safe Leave Guidance for Employers with Workers in Montgomery County*, that highlights provisions in State law that are more generous than those in County law.¹⁵⁹

D. Summary Chart of Recent County Workplace Protection Laws

Since 2002, Montgomery County has enacted several laws (with amendments) to extend statutory protections to employees of firms and businesses located in the County or protections to County service contractor workers. The County was one of the first local jurisdictions (along with Baltimore City) to adopt a living wage law. Besides the four laws that are the focus of this OLO Report, two laws provide protections for domestic workers and displaced service workers and another regulates employers' use of criminal records during the hiring process. Table 5-10 (on the next page) provides a summary list of these laws.

¹⁵⁹ The document is available online at [https://www.montgomerycountymd.gov/humanrights/Resources/Files/Sick Safe Leave Guidance Aug2018.pdf](https://www.montgomerycountymd.gov/humanrights/Resources/Files/Sick_Safe_Leave_Guidance_Aug2018.pdf)

Table 5-10. List of County Workplace Protection Laws Enacted Since 2002

Code Chap.	Law	What it does...	Took Effect	Years in effect as of 7/ 2018	Implementing Entity/ Enforcing Entity
CH11B-33A	Wage Requirements Law (Bill 5-02) "Living Wage Law"	Requires certain County service contractors and subcontractors to pay certain level of wages. Excludes goods and construction contracts.	July 1 2003	15 years	Director of Procurement
CH11B-33A	Wage Requirements - Amendments (Bill 43-15)	Requires submission of payroll records. Specifies remedies for violations. Amends causes for debarment. Prohibits certain paycheck deductions.	May 2016	2+ years	Director of Procurement
CH11-4B	Domestic Workers – Employment Contracts (Bill 2-08)	Requires employers to negotiate and offer written contracts disclosing information about job conditions and benefits to workers employed in their homes.	Jan. 2009	10.5 years	Office of Consumer Protection
CH27	Displaced Service Workers (Bill 19-12)	Requires building services contractors to retain staff following change in contract.	Dec 2012	6 years	County Office of Human Rights and County's Human Rights Commission
CH 27	Minimum Wage (Bill 27-13)	Establishes schedule to phase in minimum wage increases to reach \$11.50 by 2017: Oct 2015 to \$9.55 in Oct. 2015; \$10.75 in July 2016; \$11.50 in July 2017.	July 2014	4 years	Maryland Department of Labor and Licensing Regulation (DLLR) – Employment Standards Service (ESS)
CH 27	Minimum Wage – Annual Adjustment (Bill 28-17)	Establishes schedule of minimum wage increases by firm size to reach \$15 for all by 2024.	July 2018	0 years	DLLR (ESS)
CH 27	County Minimum Wage – Definitions – Employer (Bill 34-18)	Modifies the definition of an employer required to pay the minimum wage to include sole employees.	July 2019	Pending	DLLR (ESS)
CH 27	Ban the Box (Bill 36-14)	Regulates use of criminal records in the hiring process by certain employers.	Jan 2015	3.5 years	County Office of Human Rights
CH 27	Discriminatory Employment Practices – Retaliation for Wage Disclosure Prohibited (Bill 51-14)	Prohibits employer retaliation against an employee who discloses wage information to another employee.	May 2015	3+ years	County Office of Human Rights
CH 27	Minimum Wage Law for Tipped Employees (Bill 24-15)	Sets base pay for tipped employee at \$4 to reconcile wage amount with increases in State minimum wage increases.	July 2015	3 years	County Office of Human Rights and DLLR (ESS)
CH 27	Earned Sick and Safe Leave (Bill 60-14)	Mandates sick and safe leave benefits for employees of County businesses and allows leave use for adoption.	Oct 2016+	2 years	County Office of Human Rights
CH27	Use of Earned Sick and Safe Leave – Parental Leave (32-16E)	Provides sick and safe leave may be used for parental leave.	Nov. 2016	2 years	County Office of Human Rights
CH 11B- & CH27	Contracts – Labor Peace Agreements – Displaced Service Workers – Amendments (Bill 6-18)	Requires certain County contractors to enter into a labor peace agreement with a labor organization. Adds County residential solid waste collection contract workers to County's Displaced Service Workers Act.	Jan. 2019	Pending	Director of Procurement

Source: OLO.



C. How County Departments Promote Compliance and Enforce Workplace Protection Laws

13. The Offices of Procurement and Human Rights use different practices to detect noncompliance with worker protection laws. Human Rights relies on workers who make inquiries. Procurement screens and reviews payroll reports and responds to issues raised by contract administrators and others.

Procurement and Human Rights are responsible for compliance and enforcement of four laws that OLO reviewed. OLO found differences in their compliance and enforcement practices. Specifically:

- Procurement's implementation of the **Wage Requirements Law** uses the most comprehensive set of monitoring, compliance and enforcement practices and these have been strengthened since 2014. Specifically, Procurement has:
 - Instituted regular screening and review of vendor payroll reports to detect noncompliance while it continues to respond to issues raised by contract administrators and others; and
 - Established in-house auditors under contract who conduct in-depth investigations.

When Procurement finds noncompliance, it offers vendors an opportunity to cure their violations, followed by more formal enforcement actions.

- Human Rights' administration of the **Minimum Wage Law** and the **Minimum Wage Law for Tipped Employees** emphasizes persuasion and information to encourage voluntary compliance. Since the enforcement authority for these laws rests with the state, Human Rights refers complainants to Employment Standards in DLLR. Human Rights does not conduct any routine monitoring to detect noncompliance. Specifically, since these laws were enacted:
 - Human Rights undertook education and outreach to businesses to convey the message that it wants County businesses to pay people at the correct rate of pay.
 - In April 2018, Human Rights launched an online form for businesses with tipped employees to submit certified payrolls but it has yet to tally the submissions its received.
 - Human Rights does not regularly review the certified payrolls that businesses with tipped employees submit to detect noncompliance, but it maintains them in case they are needed for a complaint inquiry.
- Human Rights conducted workshops throughout the County for a year before the **Earned Sick and Safe Leave Law** took effect to explain the law and help businesses comply. Human Rights accepts complaints. It does not conduct routine monitoring. Since the law was enacted, the office has:
 - Posted a list of Frequently Asked Questions; and,
 - Received a few complaints, held a few mediation sessions and handled a retaliation claim.

14. Neither Procurement nor Human Rights routinely reports data about businesses' compliance rates. Procurement tracks outcomes from contractor audits. Human Rights collects (but does not review) payroll data for establishments with tipped employees.

OLO's review of Procurement and Human Rights' practices found neither office has a system for routinely collecting or reporting data about rates of businesses' compliance with worker protection laws. OLO identified the following data that each office collects for each of the four laws OLO examined:

- **The County's Wage Requirements Law.** Procurement does not routinely collect or report data about businesses' compliance with the County's Wage Requirements law.

As part of its administration of the County's Wage Requirements Law, Procurement maintains an internal spreadsheet of the County Government service contractors it has audited to track audit outcomes. This spreadsheet tracks: contractor names, total amount of back pay awarded, number of affected employees, audit cost and whether the County was reimbursed, and the close out date of the inquiry. Also, CountyStat's website has a headline performance measure for Procurement that reports the annual number of instances that employees/workers are found to be underpaid by year.

- **The County's Minimum Wage and Minimum Wage for Tipped Employee Laws.** Human Rights does not routinely collect or report data about businesses' compliance with either the County's Minimum Wage or the Minimum Wage for Tipped Employee Laws.

As of April 2018, Human Rights launched an online reporting form for employers with tipped employees to submit quarterly payrolls but it has yet to tally information from these submissions.

- **The County's Earned Sick and Safe Leave Law.** Human Rights does not routinely collect or report data about businesses' compliance with the County's Sick and Safe Leave Law.

D. Recommended Discussion Issues

Many local communities, including Montgomery County, have enacted employment laws that mandate wage and leave protections for workers. OLO's review of the workplace regulation systems that enforce these laws identified gaps that suggest that these systems are least likely to benefit low-wage workers who are most at-risk and most in need of these protections.

How well the existing workplace regulation systems work to ensure County businesses' compliance with the new minimum wage and safe and sick leave laws is unknown. Specifically, for the minimum wage laws (and the safe and sick leave law to a lesser extent), the agencies charged with enforcement report a minimal number of claims filed and wages recovered by workers in the County; but, labor standards research suggests worker claims and complaints are not a useful proxy measure for compliance.

Minimum wage compliance research based on census data show that the overall rate of businesses' compliance is estimated at over 95%. The research also shows businesses' noncompliance rates in certain low-wage industries can reach 14% to 25%. Estimated rates vary widely by area and industry segment.

More specifics are available to track County service contractors' ongoing compliance with the County's Wage Requirements Law because the Office of Procurement routinely monitors vendor payrolls and conducts follow-up audits when it suspects noncompliance.

Research suggests that most businesses will comply voluntarily with the County's higher wage standards. **OLO recommends that the Council adopt a strategic oversight approach that focuses both on those workers most at-risk of experiencing a violation and on those businesses most at-risk of noncompliance.** This dual focus will help the Council address compliance and enforcement issues within a broader context that balances the goal of creating a welcoming business environment, including support for small business startups, with the goal of strong workplace protections, including quality jobs for vulnerable workers.