

Introduced 1-4-2022
Public Hearing 1-18-2022
Council Action 2-7-2022
Executive Action 2-9-2022
Effective Date 2-9-2022

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 1

Bill No. 10 -2022

Introduced by: Liz Walsh

AN ACT requiring certain employers to recall certain employees who have been laid-off after the imposition of the COVID-19 state of emergency; specifying the procedures by which the recall would operate; establishing certain procedures for filing, investigating, and adjudicating a complaint; prohibiting retaliation against employees for filing a certain complaint or participating in certain proceedings; declaring that this Act is an Emergency Bill necessary to meet a public emergency affecting life, health or property; providing for a certain termination date; and generally relating to a right of recall for Covid-19 laid-off employees.

Introduced and read first time Jan 4, 2022. Ordered posted and hearing scheduled.

By order Michelle Harrod
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Jan 18, 2022.

By order Michelle Harrod
Michelle R. Harrod, Administrator

This Bill was read the third time on Feb 7, 2022 and Passed , Passed with amendments , Failed .

By order Michelle Harrod
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 9 day of Feb, 2022 at 2⁰⁰ a.m./p.m.

By order Michelle Harrod
Michelle R. Harrod, Administrator

Approved/Vetoed by the County Executive Feb 9, 2022

Calvin Ball
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Hundreds of Howard County residents remain laid off from jobs in the hospitality
2 industry due to the effects of the COVID 19 pandemic; and

3 **WHEREAS**, The hospitality industry is not expected to make a full recovery until 2023; and

4 **WHEREAS**, Rehiring for the hospitality industry is expected to begin picking up in early 2022,
5 allowing some openings for rehiring in the industry; and

6 **WHEREAS**, Ensuring workers return to jobs they held prior to the pandemic will provide economic
7 security for hundreds of Black and Brown Howard County workers, prevent implicit discrimination of
8 workers due to their age, race, and health status, and ensure that the Howard County hotel industry is
9 staffed by experienced personnel best able to protect the public health; and

10 **WHEREAS**, Making this bill an emergency measure ensures that as many workers as possible will
11 be benefited as the hospitality industry re-staffs.

12 *Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County*
13 *Code is hereby amended as follows:*

14 *By adding:*

15 *Title 12. Health and Social Services.*

16 ~~*Subtitle 2. Human Rights.*~~ *Subtitle 23. COVID-19 Laid-Off Employees; Right of Recall*

17 ~~*Section 2.217A. Covid-19 Laid-Off Employees; Right of Recall.*~~

18

19

HOWARD COUNTY CODE

20

Title 12. Health and Social Services

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~~Subtitle 2. Human Rights.~~ SUBTITLE 23. COVID-19 LAID-OFF EMPLOYEES.

22

~~Sec. 12.217A.~~ Sec. 12.2300. COVID-19 LAID-OFF EMPLOYEES; RIGHT OF RECALL.

23

(A) DEFINITIONS. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

24

(1) COMMERCIAL PROPERTY EMPLOYER MEANS AN OWNER, OPERATOR, OR MANAGER, ~~OR~~

25

LESSEE, INCLUDING A CONTRACTOR, SUBCONTRACTOR, OR SUBLESSEE, OF A NON-RESIDENTIAL

26

PROPERTY IN THE COUNTY THAT EMPLOYS 25 OR MORE JANITORIAL, MAINTENANCE, OR SECURITY

27

SERVICE EMPLOYEES.

1 (2) *CONFIDENTIAL EMPLOYEE* MEANS AN EMPLOYEE WHO IN THE REGULAR COURSE OF THE
2 EMPLOYEE'S DUTIES:

3 (i) ASSISTS AND ACTS IN A CONFIDENTIAL CAPACITY TO PERSONS WHO FORMULATE,
4 DETERMINE, AND EFFECTUATE MANAGEMENT POLICIES WITH REGARD TO LABOR RELATIONS; OR

5 (ii) HAS AUTHORIZED ACCESS TO INFORMATION RELATING TO THE EFFECTUATION OR
6 REVIEW OF THE EMPLOYER'S COLLECTIVE BARGAINING POLICIES.

7 (3) *CUSTOMARY SEASONAL WORK* MEANS WORK PERFORMED BY AN EMPLOYEE DURING
8 APPROXIMATELY THE SAME SEASON OF A CALENDAR YEAR, SUCH AS SUMMER OR WINTER.

9 (4) (i) *EMPLOYER* MEANS A PERSON THAT IS ANY OF THE FOLLOWING, AS DEFINED IN THIS
10 SECTION:

11 1. A COMMERCIAL PROPERTY EMPLOYER;

12 2. AN EVENT CENTER EMPLOYER; OR

13 3. A HOTEL EMPLOYER.

14 (ii) *EMPLOYER* DOES NOT INCLUDE A HOSPITAL, AS DEFINED IN THE HEALTH-GENERAL
15 ARTICLE, § 19-301 OF THE MARYLAND ANNOTATED CODE.

16 (5) (i) *EVENT CENTER EMPLOYER* MEANS AN OWNER, OPERATOR, OR MANAGER OF A
17 PUBLICLY OR PRIVATELY-OWNED STRUCTURE WITHIN THE COUNTY THAT:

18 1. IS USED FOR PUBLIC PERFORMANCES, SPORTING EVENTS, BUSINESS MEETINGS, OR
19 SIMILAR EVENTS; AND

20 2. EITHER:

21 A. IS 50,000 SQUARE FEET OR MORE IN TOTAL AREA; OR

22 B. HAS A SEATING CAPACITY OF 1,000 SEATS OR MORE.

23 (iii) AN *EVENT CENTER EMPLOYER* INCLUDES A CONCERT HALL.

24 ~~(ii) AN *EVENT CENTER EMPLOYER* ALSO INCLUDES ANY CONTRACTED, LEASED, OR~~
25 ~~SUBLET PREMISES CONNECTED TO OR OPERATED IN CONJUNCTION WITH THE EVENT CENTER'S~~

1 ~~PURPOSE, SUCH FOOD PREPARATION FACILITIES, CONCESSIONS, RETAIL STORES, RESTAURANTS,~~
2 ~~BARs, AND STRUCTURED PARKING FACILITIES.~~

3 (6) *HOTEL* HAS THE MEANING STATED IN § 20.402(C) OF THIS CODE.

4 (7) (I) *HOTEL EMPLOYER* MEANS THE OWNER, OPERATOR, OR MANAGER OF A HOTEL.

5 (II) *HOTEL EMPLOYER* INCLUDES THE OWNER, OPERATOR, OR MANAGER, ~~OR LESSEE~~ OF
6 ANY FOOD SERVICE FACILITY, AS DEFINED IN SECTION 12-107(A)(3) OF SUBTITLE 1 OF THIS TITLE,
7 THAT IS PHYSICALLY LOCATED IN THE HOTEL EMPLOYER'S PREMISES.

8 (8) *LENGTH OF SERVICE* MEANS THE AGGREGATE TOTAL PERIOD OF TIME DURING WHICH A
9 LAID-OFF EMPLOYEE HAD BEEN IN ACTIVE SERVICE TO AN EMPLOYER, INCLUDING PERIODS OF TIME
10 WHEN THE LAID-OFF EMPLOYEE WAS ON LEAVE OR ON VACATION.

11 (9) *PERSON* MEANS:

12 (I) AN INDIVIDUAL;

13 (II) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, LIMITED LIABILITY
14 COMPANY, OR OTHER ENTITY OF ANY KIND; OR

15 (III) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
16 REPRESENTATIVE OF ANY KIND.

17 (B) *APPLICATION OF SECTION*. THIS SECTION APPLIES TO A LAID-OFF EMPLOYEE:

18 (1) WHO HAD A LENGTH OF SERVICE WITH AN EMPLOYER OF 90 DAYS OR MORE IN THE 12
19 MONTHS PRECEDING THEIR MOST RECENT SEPARATION FROM ACTIVE SERVICE OR FAILURE TO BE
20 SCHEDULED FOR CUSTOMARY SEASONAL WORK FROM THAT EMPLOYER;

21 (2) WHO PERFORMED, PRIOR TO THEIR MOST RECENT SEPARATION FROM ACTIVE
22 EMPLOYMENT OR FAILURE TO BE SCHEDULED FOR CUSTOMARY SEASONAL WORK, AN AVERAGE OF
23 AT LEAST TWO HOURS OF WORK WITHIN HOWARD COUNTY FOR THAT EMPLOYER DURING A
24 WORK WEEK; AND

25 (3) WHOSE MOST RECENT SEPARATION FROM ACTIVE EMPLOYMENT WITH THAT EMPLOYER
26 OR FAILURE TO BE SCHEDULED FOR CUSTOMARY SEASONAL WORK OCCURRED ON OR AFTER

1 MARCH 5, 2020, AS A RESULT OF A LACK OF BUSINESS, A REDUCTION IN WORKFORCE, OR ANY
2 OTHER ECONOMIC AND NON-DISCIPLINARY REASON.

3 (C) EXCEPTIONS TO *APPLICATION OF SECTION*. THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL
4 WHO, IMMEDIATELY BEFORE HIS OR HER SEPARATION, WAS A MANAGERIAL, SUPERVISORY, OR
5 CONFIDENTIAL EMPLOYEE.

6 (D) *LAID-OFF EMPLOYEES OF COMMERCIAL PROPERTY OWNERS*. WITH RESPECT TO A COMMERCIAL
7 PROPERTY EMPLOYER, AN INDIVIDUAL WHO IS A LAID-OFF EMPLOYEE IS LIMITED TO ONLY THE
8 SEPARATED JANITORIAL, MAINTENANCE, OR SECURITY SERVICE EMPLOYEES OF THE COMMERCIAL
9 PROPERTY EMPLOYER.

10 (E) *RIGHT OF RECALL*. AN EMPLOYER SHALL OFFER TO A LAID-OFF EMPLOYEE ANY POSITION WHICH IS
11 AVAILABLE OR BECOMES AVAILABLE FOR WHICH THE LAID-OFF EMPLOYEE IS QUALIFIED AS
12 DESCRIBED IN SUBSECTION (F) OF THIS SECTION.

13 (F) *IMPLEMENTATION*. (1) A LAID-OFF EMPLOYEE IS QUALIFIED AND MUST BE OFFERED A POSITION WITH
14 THE EMPLOYER UNDER THIS SECTION IF THE LAID-OFF EMPLOYEE:

15 (I) HELD THE SAME OR SIMILAR POSITION AT THE SAME SITE OF EMPLOYMENT AT THE TIME OF THE
16 LAID-OFF EMPLOYEE'S MOST RECENT SEPARATION FROM EMPLOYMENT OR FAILURE TO BE
17 SCHEDULED FOR CUSTOMARY SEASONAL WORK; OR

18 (II) COULD BECOME QUALIFIED FOR THE POSITION WITH THE SAME TRAINING THAT WOULD BE
19 PROVIDED TO A NEW WORKER HIRED INTO THE POSITION.

20 (2) IF MORE THAN ONE LAID-OFF EMPLOYEE IS ENTITLED TO PREFERENCE FOR A POSITION, THE
21 EMPLOYER SHALL FIRST OFFER THE POSITION, IN ORDER OF SENIORITY BY LENGTH OF SERVICE, TO
22 THOSE LAID-OFF EMPLOYEES DESCRIBED IN PARAGRAPH (1)(I) OF THIS SUBSECTION; ~~AND~~

23 ~~(II) THEN OFFER THE POSITION, IN ORDER OF SENIORITY BY LENGTH OF SERVICE, TO THOSE LAID-~~
24 ~~OFF EMPLOYEES DESCRIBED IN PARAGRAPH (1)(II) OF THIS SUBSECTION.~~

25 (3) AN EMPLOYER MAY MAKE SIMULTANEOUS, CONDITIONAL OFFERS OF EMPLOYMENT TO MULTIPLE
26 LAID-OFF EMPLOYEES, WITH ANY FINAL OFFERS OF EMPLOYMENT CONDITIONED ON APPLICATION OF
27 THE PRIORITY SET FORTH IN PARAGRAPH (2) OF THIS SUBSECTION.

28 (4) A LAID-OFF EMPLOYEE WHO IS OFFERED A POSITION UNDER THIS SECTION SHALL BE GIVEN ~~AT~~
29 ~~LEAST~~ FIVE BUSINESS DAYS TO ACCEPT OR DECLINE THE OFFER.

1 (5) AN EMPLOYER SHALL CONTACT THE LAID-OFF EMPLOYEE AT THE LAST KNOWN PHONE NUMBER
2 OR EMAIL ADDRESS WITH AN OFFER.

3 (6) THE EMPLOYER IS NOT REQUIRED TO OFFER A LAID-OFF EMPLOYEE SUBSEQUENT POSITIONS FOR
4 WHICH THEY ARE QUALIFIED IF THE EMPLOYEE HAS BEEN GIVEN AN OFFER OF EMPLOYMENT
5 PURSUANT TO SUBSECTION (E) AND DID NOT ACCEPT THE EMPLOYER'S OFFER.

6 (G) *RETALIATION PROHIBITED.* AN EMPLOYER MAY NOT DISCHARGE OR REDUCE THE COMPENSATION
7 OF ANY EMPLOYEE FOR:

8 (1) MAKING A COMPLAINT ~~TO THE HUMAN RIGHTS ADMINISTRATOR~~ ALLEGING A VIOLATION OF THIS
9 SECTION; OR

10 (2) PARTICIPATING IN ANY OF THE ~~HUMAN RIGHTS ADMINISTRATOR'S~~ PROCEEDINGS CONCERNING AN
11 ALLEGED VIOLATION OF THIS SECTION.

12 **SEC. 12.2301. ENFORCEMENT.**

13 THIS SUBTITLE SHALL BE ENFORCED BY THE APPROPRIATE COUNTY OR STATE AGENCY AS BASED ON THE
14 SPECIFIC EXPERTISE NEEDED TO INVESTIGATE COMPLAINTS AND ADMINISTER THIS SUBTITLE.

15 ***Section 2. Be it further enacted by the County Council of Howard County, Maryland, that an employer***
16 ***may not terminate an employee hired or a contract for services entered prior to the effective date of***
17 ***this Act in an effort to meet the requirements of this Act.***

18 ***Section 2. 3. Be it further enacted by the County Council of Howard County, Maryland, that this Act is***
19 ***adopted as an emergency measure to address an immediate emergency affecting public health, safety,***
20 ***or welfare and having been passed by two-thirds of its members, this Act shall be effective immediately***
21 ***after its enactment. It shall remain effective for 270 days after the local State of Emergency ends in***
22 ***Howard County until the end of December 31, 2022, and with no further action required by the County***
23 ***Council, shall be abrogated and of no further force and effect.***

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on Feb 9, 2022.

Michelle Harrod
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2022.

Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2022.

Michelle Harrod, Administrator to the County Council