

Bill No. 32-21
Concerning: Personnel – Employee
Settlement Agreements with No-
Rehire Clause – Prohibited
Revised: 12/13/21 Draft No. 3
Introduced: July 20, 2021
Enacted: January 11, 2022
Executive: January 20, 2022
Effective: April 21, 2022
Sunset Date: None
Ch. 1, Laws of Mont. Co. 2022

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Hucker

AN ACT to:

- (1) prohibit the County from entering into an employee settlement agreement with a County employee in a personnel dispute that includes a “no-rehire” clause under certain circumstances;
- (2) provide the Chief Administrative Officer or agency head the authority to include a no-rehire clause under certain circumstances; and
- (3) establish a right to appeal the inclusion of a no-rehire clause.

By amending

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 33-22 is added as follows:**

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

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

6 Employment dispute means any grievance ~~[[claim or lawsuit]]~~ or appeal
 7 filed by the employee against the County where a dismissal action
 8 under COMCOR 33.07.01.33 or 33.07.01.35, is challenged.

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

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

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

15 (1) the provision is mutually agreed upon to end the current
 16 employment relationship; ~~[[or]]~~

17 (2) the employee voluntarily resigns after a formal disciplinary
 18 action has been initiated by an agency head; or

19 (3) the Chief Administrative Officer or agency head has made a
 20 finding that there are sufficient grounds to ~~[[terminate the~~
 21 employment]] dismiss the employee for cause.

22 (d) ~~[[Appeal. If an employee disagrees with the decision to include a no-~~
 23 rehire clause, within ten days from the receipt of the decision, the
 24 aggrieved employee may in writing, appeal to the County's Merit
 25 System Protection Board.]] Appeal of No-Rehire Clause. An aggrieved
 26 employee may file an appeal with the County's Merit System
 27 Protection Board to challenge the decision of the Chief Administrative

28 Officer or agency head to include a no-rehire clause in a proposed
29 settlement agreement under subsection (c)(3). The appeal must:

30 (1) be in writing; and

31 (2) filed within 10 working days from the employee's receipt of the
32 proposed settlement agreement which included a no-rehire
33 clause.

34 (e) *Burden of Proof.* The County, upon appeal, has the burden of proof by a
35 preponderance of evidence to provide a legitimate, nondiscriminatory
36 reason for its decision.

37 **Sec. 2. Transition.**

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