

[First Reprint]

ASSEMBLY, No. 4682

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2022

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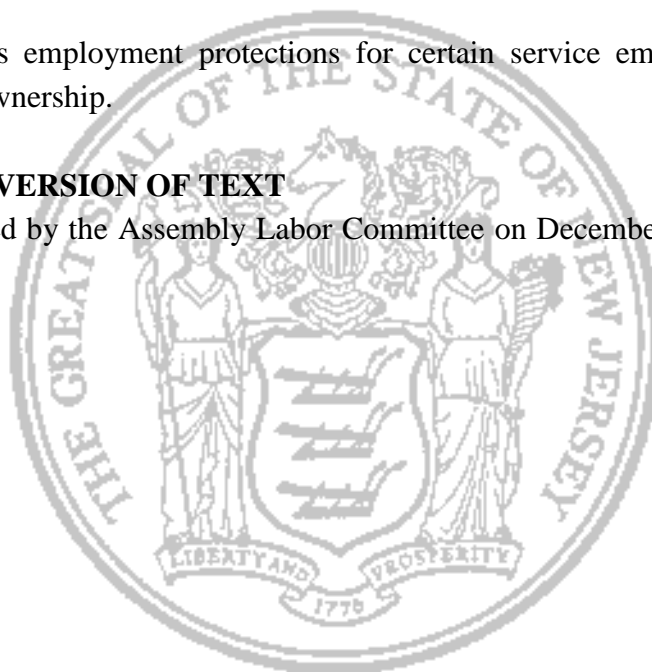
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SYNOPSIS

Establishes employment protections for certain service employees during changes of ownership.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on December 8, 2022, with amendments.



(Sponsorship Updated As Of: 3/9/2023)

1 AN ACT concerning service employees and employment protections
 2 and supplementing Title 34 of the Revised Statutes.

3
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 5 *of New Jersey:*

6
 7 1. As used in this act:

8 “Awarding authority” means any person that awards or enters
 9 into a service contract or subcontract, except that the Port Authority
 10 of New York and New Jersey shall not be an awarding authority.

11 “Contractor” means any person, including a subcontractor, who
 12 enters into a service contract or subcontract to be performed,
 13 provided the contractor employs more than four service employees
 14 anywhere in the United States.

15 “Covered location” means one of the following locations,
 16 whether publicly or privately owned:

17 (1) multi-family residential building with more than 50 units;

18 (2) commercial center or complex or an office building or
 19 complex occupying more than 100,000 square feet;

20 (3) primary and secondary school, or tertiary educational
 21 institution;

22 (4) cultural center or complex, such as a museum, convention
 23 center, arena or performance hall;

24 (5) industrial site or pharmaceutical lab;

25 (6) airport and train station;

26 (7) hospital, nursing care facility, senior care centers or other
 27 health care provider location¹, except that the provisions of
 28 P.L. , c. (C.) (pending before the Legislature as this bill)
 29 shall not apply to any change in control of a “health care entity,” as
 30 defined in section 1 of P.L.2022, c.101 (C.34:11-4.15), which
 31 change in control falls within the scope of P.L.2022, c.101
 32 (C.34:11-4.15 et seq.)¹;

33 (8) State courts; or

34 (9) warehouse or distribution center or other facility whose
 35 primary purpose is the storage or distribution of general
 36 merchandise, refrigerated goods, or other products.

37 “Employer” means any person who employs service employees
 38 at a covered location.

39 “Person” means any individual, proprietorship, partnership, joint
 40 venture, corporation, limited liability company, trust, association, or
 41 other entity that may employ persons or enter into a service
 42 contract.

43 “Service contract” means a contract between an awarding
 44 authority and a contractor to provide services performed by a
 45 service employee at a covered location.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted December 8, 2022.

1 “Service employee” means an individual employed or assigned to
2 a covered location on a full or part-time basis for at least 90 days
3 and who is not a managerial or professional employee or regularly
4 scheduled to work less than 16 hours per week in:

5 (1) connection with the care or maintenance of a building or
6 property, and includes but is not limited to work performed by a
7 security guard; a front desk worker; a janitor; a maintenance
8 employee; building superintendent; grounds maintenance worker;
9 a stationary fireman; elevator operator and starter; or window
10 cleaner;

11 (2) passenger related security services, cargo related and ramp
12 services, in-terminal and passenger handling and cleaning services
13 at an airport; or

14 (3) food preparation services at a primary or secondary school, or
15 a tertiary educational institution.

16 ¹“Service employee” does not include any individual who
17 performs work on any building, structural, electric, HVAC, or
18 plumbing project, if the work requires a permit to be issued by a
19 municipal building or construction department.¹

20 “Successor employer” means an employer that:

21 (1) is awarded a service contract to provide, in whole or in part,
22 services that are substantially similar to those provided at any time
23 during the previous 90 days;

24 (2) has purchased or acquired control of a property where
25 service employees were employed at any time during the previous
26 90 days; or

27 (3) terminates a service contract and hires service employees as
28 its direct employees to perform services that are substantially
29 similar within 90 days after a service contract is terminated or
30 cancelled.

31

32 2. a. ¹**[At least]** Not less than¹ 15 days before terminating
33 any service contract or ¹**[entering into a service contract for**
34 **work that its own employees had been performing,]** contracting
35 out services previously performed by the covered entity.¹ or selling
36 or transferring any property where service employees are employed,
37 an awarding authority shall:

38 (1) request the terminated contractor to give the successor
39 employer a list containing the name, date of hire, and job
40 classification of each service employee working on the service
41 contract and name and contact information of the employee's
42 collective bargaining representative, if any;

43 (2) give the successor employer a list containing the name, date
44 of hire, job classification of each service employee currently
45 performing the work to be performed pursuant to the service
46 contract and name and contact information of the employee's
47 collective bargaining representative, if any;

1 (3) provide written notice to any collective bargaining
2 representative of the affected service employees of the decision to
3 terminate the service contract, enter into a new service contract, or
4 sell or transfer the property;

5 (4) ensure that a written notice to all affected service employees
6 describing the pending termination of the service contract, entrance
7 into a service contract, or sale or transfer of the property, including
8 the name and address of the awardee, purchaser, or transferee, and
9 the employees' rights provided by this section, are conspicuously
10 posted at any affected work site; and

11 (5) provide the affected service employees and their collective
12 bargaining representative with the name and address of any
13 successor employer or the purchaser or transferee of the property.

14 b. A successor employer shall take reasonable steps to
15 ascertain the identity of the affected service employee.

16 c. Subject to subsection e. of this section, a successor employer
17 shall retain an affected service employee at a covered location for
18 90 days or until its service contract is terminated, whichever is
19 earlier. No successor employer shall reduce any affected service
20 employee's work hours in order to circumvent the protections
21 provided by P.L. , c. (C.) (pending before the Legislature
22 as this bill). No successor employer shall be required to retain any
23 employee based upon the provisions of P.L. , c. (C.)
24 (pending before the Legislature as this bill) beyond 90 days¹; ~~1~~¹

25 d. A successor employer shall give an affected service
26 employee a written offer of employment and send a copy to the
27 employee's collective bargaining representative, if any. The offer
28 shall state the date by which the service employee is required to
29 accept the offer, and the date shall be at least 10 days after the
30 notice is delivered. An offer shall state the name, address, and
31 telephone number of the successor employer and the name of the
32 individual who is authorized by the successor employer to make the
33 employment offer. The written offer required by this section shall
34 be substantially in the form set forth in section 4 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill) in a
36 language in which at least 10 percent of the employees are fluent.
37 The department shall provide translations in the five most common
38 languages spoken in New Jersey apart from English. A written
39 offer may be sent via electronic mail.

40 e. A successor employer may retain less than all of the affected
41 service employees during the 90-day transition period only if the
42 successor employer:

43 (1) finds that fewer service employees are required to perform
44 the work than the predecessor employer had employed;

45 (2) retains service employees by seniority within each job
46 classification;

47 (3) maintains a preferential hiring list of those employees not
48 retained; and

(4) hires any additional service employees from the list, in order of seniority, until all affected service employees have been offered employment.

f. Except as provided in subsection e. of this section, a successor employer shall not discharge a service employee retained pursuant to this section without just cause during the 90-day transition period.

g. The provisions of this section shall not apply if any successor employer, on or before the termination of the service contract, agrees to assume, and to be bound by, the collective bargaining agreement of the awarding authority or contractor, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees.

h. Any agreement that restricts or hinders the ability of a successor employer to fulfill its obligations pursuant to this section is hereby declared to be contrary to public policy and void.

3. a. A service employee who has been discharged or otherwise not retained in violation of P.L. , c. (C.) (pending before the Legislature as this bill) may bring an action in a court of competent jurisdiction against a successor employer for any violation of ¹["subsection b. of"] section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), and against an awarding authority for any violation of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The court may impose¹, for a first violation of P.L. , c. (C.) (pending before the Legislature as this bill),¹ a fine not exceeding ¹["\$2,000"] \$2,500, and, for a second and each subsequent violation, a fine not exceeding \$5,000,¹ or imprisonment for any term not ¹less than 10 days and not¹ exceeding 90 days, or ¹[a period of community service not exceeding 90 days for a violation of P.L. , c. (C.) (pending before the Legislature as this bill)] both the fine and imprisonment¹.

(1) ¹["The minimum fine shall be \$100 for each violation of P.L. , c. (C.) (pending before the Legislature as this bill)."]

(2) ¹["The court may deem each day that an employee was not employed in violation of P.L. , c. (C.) (pending before the Legislature as this bill) a separate violation of P.L. , c. (C.) (pending before the Legislature as this bill), and may award the employee reasonable attorney's fees and costs."]]

¹["(3) (2)¹ The court may require the violator to pay restitution to an employee deprived of wages or benefits due to the violation of P.L. , c. (C.) (pending before the Legislature as this bill)."]

¹["(4) (3)¹ The court may require the violator to pay consequential damages arising due to the violation of P.L. , c. (C.) (pending before the Legislature as this bill)."]

1 ¹[(5)] (4)¹ The court may issue injunctive relief requiring a
2 successor employer to employ employees in compliance with
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 and for the provision of any information required pursuant to
5 section 2 of P.L. , c. (C.) (pending before the Legislature
6 as this bill).

7
8 4. The offer of employment required to be provided to an
9 incumbent worker by ¹[subsection b.]¹ of section 2 of P.L. ,
10 c. (C.) (pending before the Legislature as this bill) shall be
11 substantially in the form below:

12
13 DATE:

14 TO: (name of employee)

15 IMPORTANT INFORMATION REGARDING YOUR
16 EMPLOYMENT

17 We have received information that you are employed by (name of
18 predecessor contractor or employer) and are currently performing
19 work at (address of worksite). (name of predecessor contractor) has
20 lost its contract with the owners of (address of worksite) and will no
21 longer be providing (type of service or employment) as of (last day
22 of predecessor contract).

23
24 We are (name of successor contractor) and have been hired by the
25 owners of (address of worksite) to provide the same (or janitorial,
26 building maintenance) service. We are offering you a job with us
27 for a 90 day probationary period starting (first day of successor
28 contract) to perform the same type of work that you have already
29 been doing for (name of predecessor contractor) under the
30 following terms:

31
32 Pay rate (per hour): \$

33 Hours per shift:

34 Total Hours Per Week: ____

35 Benefits:

36
37 You must respond to this offer within the next ten (10) days. If you
38 want to continue working at (address of worksite), you must let us
39 know by (mm/dd/yyyy - no later than five days prior to the
40 expiration of the predecessor contract or 10 days after the date of
41 this letter if the predecessor contract has already expired). If we do
42 not receive your response by the end of business that day, we will
43 not hire you and you will lose your job. We can be reached at
44 (successor contractor phone number).

45
46 The Service Worker Retention Law, of the Laws of New Jersey
47 gives you the following rights:

- 1 1. You have the right, with certain exceptions, to be hired by our
2 company for the first ninety days that we begin to provide services
3 at (address of worksite).
4 2. During this 90-day period, you cannot be fired without just
5 cause.
6 3. If you believe that you have been fired or laid off in violation of
7 the Service Worker Retention Law, you have the right to institute
8 legal action, and if successful may be awarded back pay,
9 reinstatement, liquidated damages, attorney's fees and court costs.
10
11 FROM: (of successor contractor) (of authorized representative)
12 (Address of successor contractor)
13 (Telephone # of successor contractor)
14
15 5. P.L. , c. (C.) (pending before the Legislature as this
16 bill) shall supersede and preempt all rules, regulations, codes, or
17 ordinances of any county or municipality with regard to worker
18 retention for service employees, but shall not preempt any county or
19 municipality from regulating worker retention for non-service
20 employees.
21
22 6. This act shall take effect on the 90th day next following
23 enactment, and apply to contracts entered into or renewed after that
24 date.