

## CHAPTER 101

AN ACT concerning changes in control of health care entities and supplementing P.L.1965, c.173 (C.34:11-4.1 et seq.).

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

C.34:11-4.15 Disclosure of employee information, certain; change in control, health care entity employer.

1. a. Not less than 30 days before a change in control, a former health care entity employer shall: provide the successor health care entity employer, and any collective bargaining representative the employees may have, a list containing the name, address, date of hire, phone number, wage rate, and employment classification of each eligible employee employed at the affected health care entity; inform all eligible employees of their rights provided by this section; and post, in a conspicuous location or locations accessible to all employees, a notice setting forth the rights provided by this section.

b. No change in control of a health care entity shall be made without a contract or agreement between the former health care entity employer and the successor health care entity employer which provides that:

(1) the successor health care entity employer shall offer employment during a transitional period of not less than four months following the change in control to each eligible employee, with no reduction of wages or paid time off, and no reduction of the total value of benefits, including health care, retirement, and education benefits, provided that:

(a) the offer shall be made in writing and remain open for at least 10 business days from the date of the offer;

(b) during the transition period, the successor health care entity shall offer all available employment positions to eligible employees who had previously held the positions until the available employment positions are filled or until no more eligible employees are available; and

(c) if, at the time of the change in control and throughout the transition period, the total number of employment positions is less than the total number of eligible employees, the choice of employees to be employed shall be based on seniority and experience;

(2) an eligible employee retained pursuant to this section shall not be discharged without cause during the transitional period, except that a successor employer may lay off eligible employees if the employer reduces the total number of employees, including at the time of the change in control, but only if the choice of employees to be retained is based on seniority and experience, and the laid off employees are offered any positions they had previously held that are subsequently restored during the transitional period;

(3) at the end of the transitional period, the successor employer shall perform a written performance evaluation for each retained eligible employee, and offer the employee continued employment if an employee's performance during that period was satisfactory; and

(4) a successor employer shall retain, and provide to the employee or representative of the employee upon request, a written record of each offer of employment and each evaluation made pursuant to this subsection, for not less than three years from the date of the offer or evaluation, with each record including the name, address, date of hire, phone number, wage rate, and employment classification of the employee.

c. All parties to a contract or agreement covered by this section, and all health care entities subject to a change in control pursuant to a contract or agreement covered by this section, shall comply with all provisions that are required by this section to be included in the contract or

agreement pursuant to subsection b. of this section, regardless of whether those provisions are expressly included in the contract or agreement.

d. Notwithstanding the foregoing, no action taken pursuant to and in compliance with a collective bargaining agreement entered into by an exclusive representative of employees of a health care entity subject to a change in control pursuant to a contract or agreement covered by this section shall be considered a violation of this section. Nothing in this section shall be construed as limiting, delaying, or preventing, including during the transitional period: the recognition of a collective bargaining representative of the employees by a successor health care entity employer; or collective bargaining between the successor health care entity employer and the collective bargaining representative.

e. An employer who violates the provisions of this section shall be subject to the sanctions, and an employee affected by the violation shall have the remedies, provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.). For the purposes of determining penalties and remedies imposed pursuant to section 10 of P.L.1965, c.173 (C.34:11-4.10) for violations of this section:

(1) a failure to pay an employee wages, paid time off, or the value of benefits, as required by subsection b. of this section, shall be regarded as a failure to pay the full amount of wages for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10), and the remedies for the failure to pay paid time off or the value of benefits shall be made in the same manner as remedies for unpaid wages;

(2) a discharge of an employee, or failure to offer employment or retain in employment an employee, in violation of subsection b. of this section shall be regarded as retaliation against the employee for the purposes of section 10 of P.L.1965, c.173 (C.34:11-4.10); and

(3) in a civil action brought before a court by the employee, the court shall have authority to order injunctive or other permanent equitable relief, including, but not limited to, immediate reinstatement of any employee discharged or not retained in violation of this section.

f. As used in this section:

“Change in control” means: any sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in a health care entity’s operations; or any sale, assignment, transfer, contribution or other disposition of a controlling interest in the health care entity, including by consolidation, merger, or reorganization, of the health care entity or any person who controls the health care entity; or any event or sequence of events, including a purchase, sale, or termination of a management contract or lease, that causes the identity of the health care entity employer to change, but shall not include a change in control in which both the former health care entity employer and the successor health care employer are government entities. A change in control shall be defined to occur on the date of execution of the document effectuating the change.

“Eligible employee” means: any person employed at an affected health care entity during the 90-day period immediately preceding a change in control of a health care entity; or any person formerly employed at the health care entity who retains recall rights under an agreement with the former health care entity employer, except that an “eligible employee” shall not include any managerial employee, and shall not include any person who was discharged with cause by the former health care entity or successor health care entity during that 90-day period.

“Former health care entity employer” means any employer of eligible employees who owns, controls, or operates a health care entity where the eligible employees are employed prior to a change in control of the entity.

“Government entity” means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey, and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry, or a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23). If a health care entity is part of a larger facility which includes facilities which are not licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), the portion of the facility which is not licensed shall not be regarded as a “health care entity” for the purposes of this section.

“Managerial employee” means an employee who is exempt from the overtime requirements of the New Jersey State Wage and Hour Law, P.L.1966, c.113 (C.34:11-56a et seq.), because the employee is an executive employee.

"Successor health care entity employer" means any employer of eligible employees who owns, controls, or operates a health care entity where the eligible employees are employed after a change in control of the entity.

g. The provisions of this section shall be deemed to be severable and if any subsection, paragraph, sentence or other portion of this section is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of this section shall not thereby be deemed to be unconstitutional, preempted, or invalid.

2. This act shall take effect on the 90th day after enactment and shall apply to contracts or agreements for changes in control of health care entities entered into on or after the effective date of this act.

Approved August 18, 2022.