

CHAPTER 128

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

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

C.34:21-16 Definitions.

1. As used in this act:

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

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

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

- (1) multi-family residential building with more than 50 units;
- (2) commercial center or complex or an office building or complex occupying more than 100,000 square feet;
- (3) primary and secondary school, or tertiary educational institution;
- (4) cultural center or complex, such as a museum, convention center, arena or performance hall;
- (5) industrial site or pharmaceutical lab;
- (6) airport and train station;
- (7) hospital, nursing care facility, senior care centers or other health care provider location, except that the provisions of P.L.2023, c.128 (C.34:21-16 et seq.) shall not apply to any change in control of a “health care entity,” as defined in section 1 of P.L.2022, c.101 (C.34:11-4.15), which change in control falls within the scope of P.L.2022, c.101 (C.34:11-4.15 et seq.);
- (8) State courts; or
- (9) warehouse or distribution center or other facility whose primary purpose is the storage or distribution of general merchandise, refrigerated goods, or other products.

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

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

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

“Service employee” means an individual employed or assigned to a covered location on a full- or part-time basis for at least 60 days and who is not a managerial or professional employee or regularly scheduled to work less than 16 hours per week in:

- (1) connection with the care or maintenance of a building or property, and includes but is not limited to work performed by a security guard; a front desk worker; a janitor; a maintenance employee; building superintendent; grounds maintenance worker; a stationary fireman; elevator operator and starter; or window cleaner;
- (2) passenger-related security services, cargo-related and ramp services, in-terminal and passenger handling and cleaning services at an airport; or
- (3) food preparation services at a primary or secondary school, or a tertiary educational institution.

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

“Successor employer” means an employer that:

- (1) is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days;
- (2) has purchased or acquired control of a property where service employees were employed at any time during the previous 90 days; or
- (3) terminates a service contract and hires service employees as its direct employees to perform services that are substantially similar within 90 days after a service contract is terminated or cancelled.

C.34:21-17 Actions required by awarding authority prior to terminating service contract, contracting out services previously performed by covered entity, selling, transferring property, timeline.

2. a. Not less than 15 days before terminating any service contract or contracting out services previously performed by the covered entity, or selling or transferring any property where service employees are employed, an awarding authority shall:

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

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

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

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

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

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

c. Subject to subsection e. of this section, a successor employer shall retain an affected service employee at a covered location for 60 days or until its service contract is terminated, whichever is earlier. No successor employer shall reduce any affected service employee's work hours in order to circumvent the protections provided by P.L.2023, c.128 (C.34:21-16 et seq.). No successor employer shall be required to retain any employee based upon the provisions of P.L.2023, c.128 (C.34:21-16 et seq.) beyond 60 days.

d. A successor employer shall give an affected service employee a written offer of employment and send a copy to the employee's collective bargaining representative, if any. The offer shall state the date by which the service employee is required to accept the offer, and the date shall be at least 10 days after the notice is delivered. An offer shall state the name, address, and telephone number of the successor employer and the name of the individual who is authorized by the successor employer to make the employment offer. The written offer required by this section shall be substantially in the form set forth in section 4 of P.L.2023, c.128 (C.34:21-19) in a language in which at least 10 percent of the employees are fluent. The

department shall provide translations in the five most common languages spoken in New Jersey apart from English. A written offer may be sent via electronic mail.

e. A successor employer may retain less than all of the affected service employees during the 60-day transition period only if the successor employer:

- (1) finds that fewer service employees are required to perform the work than the predecessor employer had employed;
- (2) retains service employees by seniority within each job classification;
- (3) maintains a preferential hiring list of those employees not 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 60-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.

C.34:21-18 Discharged service employee, bring action in court, successor employer, awarding authority, violations,

3. a. A service employee who has been discharged or otherwise not retained in violation of P.L.2023, c.128 (C.34:21-16 et seq.) may bring an action in a court of competent jurisdiction against a successor employer for any violation of section 2 of P.L.2023, c.128 (C.34:21-17), and against an awarding authority for any violation of subsection a. of section 2 of P.L.2023, c.128 (C.34:21-17).

b. The court may impose, for a first violation of P.L.2023, c.128 (C.34:21-16 et seq.), a fine not exceeding \$2,500, and, for a second and each subsequent violation, a fine not exceeding \$5,000. Each week, in any day of which a violation occurs, shall constitute a separate offense.

- (1) The court may award the employee reasonable attorney's fees and costs.
- (2) The court may require the violator to pay restitution to an employee deprived of wages or benefits due to the violation of P.L.2023, c.128 (C.34:21-16 et seq.).
- (3) The court may require the violator to pay consequential damages arising due to the violation of P.L.2023, c.128 (C.34:21-16 et seq.).
- (4) The court may issue injunctive relief requiring a successor employer to employ employees in compliance with P.L.2023, c.128 (C.34:21-16 et seq.) and for the provision of any information required pursuant to section 2 of P.L.2023, c.128 (C.34:21-17).

C.34:21-19 Offer of employment, form.

4. The offer of employment required to be provided to an incumbent worker by of section 2 of P.L.2023, c.128 (C.34:21-17) shall be substantially in the form below:

DATE:

TO: (name of employee)

IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

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

We are (name of successor contractor) and have been hired by the owners of (address of worksite) to provide the same (or janitorial, building maintenance) service. We are offering you a job with us for a 60-day probationary period starting (first day of successor contract) to perform the same type of work that you have already been doing for (name of predecessor contractor) under the following terms:

Pay rate (per hour): \$

Hours per shift:

Total Hours Per Week: ____

Benefits:

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

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

1. You have the right, with certain exceptions, to be hired by our company for the first ninety days that we begin to provide services at (address of worksite).
2. During this 60-day period, you cannot be fired without just cause.
3. If you believe that you have been fired or laid off in violation of the Service Worker Retention Law, you have the right to institute legal action, and if successful may be awarded back pay, reinstatement, liquidated damages, attorney's fees and court costs.

FROM: (Name of successor contractor) (Name of authorized representative) (Address of successor contractor)

(Telephone # of successor contractor)

C.34:21-20 Supersede, preempt, rules, regulations, codes, ordinances, worker retention, service employees.

5. P.L.2023, c.128 (C.34:21-16 et seq.) shall supersede and preempt all rules, regulations, codes, or ordinances of any county or municipality with regard to worker retention for service employees, but shall not preempt any county or municipality from regulating worker retention for non-service employees.

6. This act shall take effect on the 90th day next following enactment and apply to contracts entered into or renewed after that date.

Approved July 24, 2023.