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District 27 (Essex and Morris)
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District 14 (Mercer and Middlesex)

Co-Sponsored by:
Senators Diegnan, Gopal, Stack, Ruiz and Assemblywoman Tucker-

SYNOPSIS
Requires contracts for sale of certain health care entities to preserve employee wages and benefits and to honor collective bargaining agreements.

CURRENT VERSION OF TEXT
As amended by the Senate on March 24, 2022.

(Sponsorship Updated As Of: 6/29/2022)
AN ACT concerning \( \text{changes in control of} \) health care entities
and \( \text{collective bargaining} \) and supplementing \( \text{chapter 12 of Title 34 of the Revised Statutes} \) 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:

1. a. \( \text{As used in this section, "health care entity" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a staffing registry, or a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23) \) 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. \( \text{Any contract or agreement that provides for the sale or transfer of ownership of} \) No change in \( \text{control of a health care entity shall be made without a contract or agreement between the former health care entity employer and the successor health care entity employer which provides that} \):

   (1) \( \text{if employees of the health care entity are covered by an unexpired collective bargaining agreement, that the provisions of the collective bargaining agreement shall remain in effect until the existing expiration date of the agreement or a date six months after the full effectuation of the sale or transfer, whichever is later; and} \)

   (2) \( \text{that wages and benefits, including health care, paid time off, retirement, and education benefits, of all eligible employees of the health care entity who are not covered by an unexpired collective bargaining agreement shall not be reduced or diminished during the transitional period ending six months after the full effectuation of the sale or transfer} \) the successor health care entity employer shall offer employment during a transitional period of not less than six 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:

EXPLANATION – Matter enclosed in bold-faced brackets \( \text{thus} \) in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined \( \text{thus is new matter.} \)
Matter enclosed in superscript numerals has been adopted as follows:
Senate SHH committee amendments adopted February 3, 2022.
Senate floor amendments adopted March 24, 2022.
(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. ¹

e. ¹An employee who has been affected by a violation of this
section may bring an action in any court of competent jurisdiction
against any party to a contract or agreement covered by this section
and any health care entity sold or transferred pursuant to a contract
or agreement covered by this section for violation of any obligation
imposed by this section. The court shall have authority to order
injunctive relief to prevent or remedy a violation of any obligation
imposed by this section. If the court finds that, by reason of a
violation of any obligation imposed by this section, a plaintiff has
suffered a loss of wages or benefits, the court shall award back pay
for all losses of wages and benefits, the costs of benefits the health
care entity or other defendant would have incurred for benefits lost
by the plaintiff, expenses incurred by the plaintiff as a result of the
lost benefits, and an amount equal to back pay as liquidated
damages.

f. The court shall award a plaintiff prevailing in an action
brought pursuant to subsection e. of this section reasonable
attorneys’ fees.] 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.), ²For 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. ²

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...
1 facility is held invalid, the remainder of this section shall not
2 thereby be deemed to be unconstitutional, preempted, or invalid.¹
3
4 2. This act shall take effect ¹[immediately] on the 90th day
5 after enactment¹ and shall apply to contracts or agreements for
6 ¹[the sale or transfer] changes in control¹ of health care entities
7 entered into on or after the effective date of this act.