

[Third Reprint]

SENATE, No. 2389

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 24, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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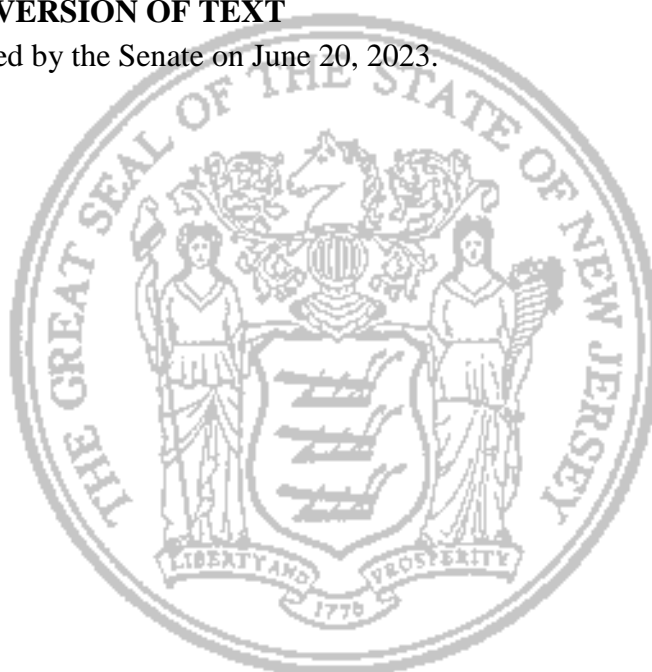
**Senators Johnson, Stack, Cruz-Perez, Codey, Ruiz, Burgess, Cryan,
Diegnan, Greenstein, Gopal, Gill, Turner, Vitale and Lagana**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2023.



(Sponsorship Updated As Of: 5/18/2023)

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.

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:

¹Senate SLA committee amendments adopted December 1, 2022.

²Senate floor amendments adopted February 27, 2023.

³Senate floor amendments adopted June 20, 2023.

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

4 “Service employee” means an individual employed or assigned to
5 a covered location on a full or part-time basis for at least ³[90] 60³
6 days and who is not a managerial or professional employee or
7 regularly scheduled to work less than 16 hours per week in:

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

14 (2) passenger related security services, cargo related and ramp
15 services, in-terminal and passenger handling and cleaning services
16 at an airport; or

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

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

23 “Successor employer” means an employer that:

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

27 (2) has purchased or acquired control of a property where
28 service employees were employed at any time during the previous
29 90 days; or

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

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

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

- 1 (2) give the successor employer a list containing the name, date
2 of hire, job classification of each service employee currently
3 performing the work to be performed pursuant to the service
4 contract and name and contact information of the employee's
5 collective bargaining representative, if any;
- 6 (3) provide written notice to any collective bargaining
7 representative of the affected service employees of the decision to
8 terminate the service contract, enter into a new service contract, or
9 sell or transfer the property;
- 10 (4) ensure that a written notice to all affected service employees
11 describing the pending termination of the service contract, entrance
12 into a service contract, or sale or transfer of the property, including
13 the name and address of the awardee, purchaser, or transferee, and
14 the employees' rights provided by this section, are conspicuously
15 posted at any affected work site; and
- 16 (5) provide the affected service employees and their collective
17 bargaining representative with the name and address of any
18 successor employer or the purchaser or transferee of the property.
- 19 b. A successor employer shall take reasonable steps to
20 ascertain the identity of the affected service employee.
- 21 c. Subject to subsection e. of this section, a successor employer
22 shall retain an affected service employee at a covered location for
23 ³[90] 60³ days or until its service contract is terminated,
24 whichever is earlier. No successor employer shall reduce any
25 affected service employee's work hours in order to circumvent the
26 protections provided by P.L. , c. (C.) (pending before the
27 Legislature as this bill). No successor employer shall be required to
28 retain any employee based upon the provisions of
29 P.L. , c. (C.) (pending before the Legislature as this bill)
30 beyond ³[90] 60³ days¹[;].¹
- 31 d. A successor employer shall give an affected service
32 employee a written offer of employment and send a copy to the
33 employee's collective bargaining representative, if any. The offer
34 shall state the date by which the service employee is required to
35 accept the offer, and the date shall be at least 10 days after the
36 notice is delivered. An offer shall state the name, address, and
37 telephone number of the successor employer and the name of the
38 individual who is authorized by the successor employer to make the
39 employment offer. The written offer required by this section shall
40 be substantially in the form set forth in section 4 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill) in a
42 language in which at least 10 percent of the employees are fluent.
43 The department shall provide translations in the five most common
44 languages spoken in New Jersey apart from English. A written
45 offer may be sent via electronic mail.

1 e. A successor employer may retain less than all of the affected
2 service employees during the ³~~90-day~~ 60-day³ transition period
3 only if the successor employer:

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

6 (2) retains service employees by seniority within each job
7 classification;

8 (3) maintains a preferential hiring list of those employees not
9 retained; and

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

13 f. Except as provided in subsection e. of this section, a
14 successor employer shall not discharge a service employee retained
15 pursuant to this section without just cause during the ³~~90-day~~ 60-
16 day³ transition period.

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

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

26
27 3. a. A service employee who has been discharged or
28 otherwise not retained in violation of P.L. , c. (C.)
29 (pending before the Legislature as this bill) may bring an action in a
30 court of competent jurisdiction against a successor employer for any
31 violation of ¹~~subsection b. of~~¹ section 2 of P.L. , c. (C.)
32 (pending before the Legislature as this bill), and against an
33 awarding authority for any violation of subsection a. of section 2 of
34 P.L. , c. (C.) (pending before the Legislature as this bill).

35 b. The court may impose ¹, for a first violation of P.L. ,
36 c. (C.) (pending before the Legislature as this bill),¹ a fine
37 not exceeding ¹~~\$2,000~~ \$2,500, and, for a second and each
38 subsequent violation, a fine not exceeding \$5,000 ³,¹ or
39 imprisonment for any term not ¹less than 10 days and not¹
40 exceeding 90 days, or ¹a period of community service not
41 exceeding 90 days for a violation of P.L. , c. (C.) (pending
42 before the Legislature as this bill)] both the fine and
43 imprisonment¹³. ²Each week, in any day of which a violation
44 occurs, shall constitute a separate offense.²

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

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

6 ¹ [(3)] (2) ¹ The court may require the violator to pay restitution
 7 to an employee deprived of wages or benefits due to the violation of
 8 P.L. , c. (C.) (pending before the Legislature as this bill).

9 ¹ [(4)] (3) ¹ The court may require the violator to pay
 10 consequential damages arising due to the violation of P.L. ,
 11 c. (C.) (pending before the Legislature as this bill).

12 ¹ [(5)] (4) ¹ The court may issue injunctive relief requiring a
 13 successor employer to employ employees in compliance with
 14 P.L. , c. (C.) (pending before the Legislature as this bill)
 15 and for the provision of any information required pursuant to
 16 section 2 of P.L. , c. (C.) (pending before the Legislature
 17 as this bill).

18

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

23

24 DATE:

25 TO: (name of employee)

26 IMPORTANT INFORMATION REGARDING YOUR
 27 EMPLOYMENT

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

34

35 We are (name of successor contractor) and have been hired by the
 36 owners of (address of worksite) to provide the same (or janitorial,
 37 building maintenance) service. We are offering you a job with us
 38 for a ³ [90] ³ 60 day probationary period starting (first day of
 39 successor contract) to perform the same type of work that you have
 40 already been doing for (name of predecessor contractor) under the
 41 following terms:

42

43 Pay rate (per hour): \$

44 Hours per shift:

45 Total Hours Per Week: ____

46 Benefits:

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

9
10 The Service Worker Retention Law, of the Laws of New Jersey
11 gives you the following rights:

12 1. You have the right, with certain exceptions, to be hired by our
13 company for the first ninety days that we begin to provide services
14 at (address of worksite).

15 2. During this ³~~90-day~~ 60-day³ period, you cannot be fired
16 without just cause.

17 3. If you believe that you have been fired or laid off in violation of
18 the Service Worker Retention Law, you have the right to institute
19 legal action, and if successful may be awarded back pay,
20 reinstatement, liquidated damages, attorney's fees and court costs.

21
22 FROM: (³Name³ of successor contractor) (³Name³ of authorized
23 representative) (Address of successor contractor)
24 (Telephone # of successor contractor)

25
26 5. P.L. , c. (C.) (pending before the Legislature as this
27 bill) shall supersede and preempt all rules, regulations, codes, or
28 ordinances of any county or municipality with regard to worker
29 retention for service employees, but shall not preempt any county or
30 municipality from regulating worker retention for non-service
31 employees.

32
33 6. This act shall take effect on the 90th day next following
34 enactment, and apply to contracts entered into or renewed after that
35 date.