

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2389

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 2022

The Senate Labor Committee reports without recommendation and with committee amendments Senate Bill No. 2389.

This bill establishes employment protections for certain service employees during changes of ownership.

The bill applies to contractors, including subcontractors, who enter into a service contract or subcontract if the contractor employs more than four service employees anywhere in the United States. As amended, the bill does not apply to health care entities which are covered by P.L.2022, c.101.

Service employees are individuals employed assigned to a covered location on a full or part-time basis for at least 90 days who are not managerial or professional employees or regularly scheduled to work less than 16 hours per week in connection with:

1. the care or maintenance of a building or property;
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 at a tertiary educational institution.

As amended, service employees covered by the bill do not include employees performing work on certain projects requiring local permits.

The bill covers any location that is: a multi-family residential building with more than 50 units; a commercial center or complex or an office building or complex occupying more than 100,000 square feet; a primary and secondary school, tertiary educational institution; a cultural center or complex; an industrial site or pharmaceutical lab; an airport and train station; a hospital, nursing care facility, senior care centers or other health care provider location; a State court; or a warehouse or distribution center.

As amended, the bill requires an authority awarding a service contract, 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 to:

1. request certain information from any terminated contractors regarding service employees;
2. give successor employers information regarding service employees;
3. provide written notice to collective bargaining representatives of the affected service employees of actions affecting their employment; and
4. provide written notice of the actions at the affected work site.

The bill requires successor employers to take reasonable steps to ascertain the identity of affected service employees.

The bill requires a successor employer to retain an affected service employee at a covered location for 90 days or until its service contract is terminated, whichever is earlier. A successor employer may not reduce any affected service employee's work hours in order to circumvent the protections of the bill.

The bill requires a successor employer to give an affected service employee a written offer of employment and send a copy to the employee's collective bargaining representative, if any.

A successor employer may retain less than all of the affected service employees during the 90-day transition period only if the successor employer: finds that fewer service employees are required to perform the work than the predecessor employer had employed; retains service employees by seniority within each job classification; maintains a preferential hiring list of those employees not retained; and hires any additional service employees from the list, in order of seniority, until all affected service employees have been offered employment.

Except as provided above, a successor employer is prohibited from discharging a service employee retained pursuant to the bill without just cause during the 90-day transition period.

These provisions of the bill do 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.

A service employee who has been discharged or otherwise not retained in violation of the provisions of the bill may bring an action in a court of competent jurisdiction against a successor employer or an awarding authority. As amended, for a first violation, the court may impose a fine not exceeding \$2,500 and, for second and subsequent violations, a fine not exceeding \$5,000 or imprisonment for a term not less than 10 days or more than 90 days, and may order restitution and injunctive relief.

The bill provides that an offer of employment required to be provided to an incumbent worker must be substantially similar to a form provided in the bill.

The amendments adopted by the committee:

1. Exclude from the provisions of the bill health care entities which are already subject to similar provisions under P.L.2022, c.101;
2. Exclude from the provisions of the bill 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;
3. Omit from the circumstances which trigger the responsibility of an awarding authority to take actions required by the bill “entering into a service contract for work that its own employees had been performing” and adding to the triggering circumstances “contracting out services previously performed by the covered entity”; and
4. Change the penalties by having the option of imprisonment apply only to second and subsequent offenses, having no minimum fines, and raising the maximum fines to \$2,500 for a first offense and \$5,000 for a second and each subsequent offense.