ASSEMBLY, No. 3907



STATE OF NEW JERSEY

217th LEGISLATURE



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District 34 (Essex and Passaic)

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District 7 (Burlington)

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SYNOPSIS

Provides transition period of 90 days during which building service employees subject to certain building service transfers must be retained.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning building service transfers and supplementing Title 34 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Building service” means work performed in connection with the care or maintenance of an existing building and includes, but is not limited to, work performed by a watchman, guard, security officer, fire safety director, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and superintendent.

“Building service contract” means a contract for the furnishing of building services, and includes any subcontracts for those services.

“Building service employee” means any person employed to perform a building service who has been regularly assigned to a building on a full or part-time basis for at least 90 days immediately preceding any building service transfer or transition in employment subject to this act, except for:

(1) persons who are managerial, supervisory, or confidential employees, provided that this exemption shall not apply to building superintendents or residential managers;

(2) persons earning in excess of $35 per hour from a covered employer, provided that this amount shall be adjusted on January 1, 2017 and annually thereafter by the Department of Labor and Workforce Development based upon the preceding 12-month percentage increase, if any, in the consumer price index for all urban consumers for all items, as published by the Bureau of Labor Statistics of the United States Department of Labor; and

(3) persons regularly scheduled to work fewer than eight hours per week at a building.

“Building service transfer” means the termination of a building service contract, the transfer of the controlling interest in any building in which building service employees are employed, or the entering into a new building service contract.

“Covered employer” means any person who hires or retains building service employees or a building service contractor, including, but not limited to, a lessee of commercial space, housing cooperative, condominium association, building managing agent, or any other person who owns, leases, or manages real property, either on its own behalf or for another person.

“Former building service employer” means any covered employer or any person who furnishes building services pursuant to a building service contract prior to the termination of that contract.

“Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into service contracts, but does not include any municipality or local government, the State of New Jersey, the federal government or any other governmental entity, or any individual or entity managing real property for a governmental entity.

“Successor building service employer” means any covered employer or building service contractor who furnishes building services that are substantially similar to those that were provided under a terminated building service contract or to those that were provided by building service employees previously employed by a covered employer.

2. a. No less than 15 calendar days before any building service transfer, any former building service employer shall provide to the successor building service employer a full and accurate list containing the name, address, date of hire, and employment classification of each building service employee employed at the buildings. At the same time that the former building service employer provides the list, the former building service employer shall post the list in a notice to the building service employees that sets forth the rights provided by this act, in the same location and manner that other statutorily required notices to employees are posted at the affected building. The notice shall also be provided to the employees’ collective bargaining representative, if applicable.

b. Upon the transfer of any building service, any successor building service employer shall retain those building service employees employed at the building covered by the terminated contract for a 90-day transition employment period.

c. If at any time the successor building service employer determines that fewer building service employees are required to perform building services at the affected building than had been performing those services by the former building service employer, the successor building service employer shall retain the building service employees by seniority within job classification; provided, that during the 90-day transition period, the successor building service employer shall maintain a preferential hiring list of those building service employees not retained at the building who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

d. Except as provided in subsection c. of this section, during the 90-day transition period, the successor building service employer shall not discharge without cause a building service employee retained pursuant to this act.

e. At the end of the 90-day transition period, the successor building service employer shall perform a written performance evaluation for each employee retained pursuant to this section. If the employee’s performance during the 90-day transition period is satisfactory, the successor building service employer shall offer the employee continued employment under the terms and conditions established by the successor building service employer.

f. Nothing in this act shall be construed as prohibiting a successor building service employer from imposing terms and conditions of employment for building service employees that are less favorable than the terms and conditions of employment under the former building service employer.

3. a. A building service employee who has been discharged or not retained in violation of this section may bring an action against a former or successor building service employer for violation of any obligation imposed pursuant to this act.

b. A court may order preliminary and permanent equitable relief, including, but not limited to, reinstatement of any employee who has been discharged or not retained in violation of this act.

c. If the court finds that by reason of a violation of any obligation imposed pursuant to section 2 of this act, a building service employee has been discharged or not retained in violation of this act, it shall award:

(1) Back pay, and an equal amount as liquidated damages, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(a) the average regular rate of pay received by the employee during the last three years of the employee’s employment in the same occupation classification; or

(b) the final regular rate received by the employee.

Back pay shall apply to the period commencing with the date of discharge or refusal-to-retain by the successor building service through the effective date of any offer of instatement or reinstatement of the employee;

(2) Costs of benefits the successor building service employer would have incurred for the employee under the employee’s benefit plan; and

(3) The building service employee’s reasonable attorney’s fees and costs.

d. In any action based on a violation of this act, the court shall have authority to order the former building service employer to provide any information required pursuant to this act.

4. a. This act shall not apply to any:

(1) building located in a municipality with a population of less than 35,000;

(2) residential building with less than 50 units;

(3) commercial office, institutional, or retail building of less than 100,000 square feet; or

(4) lessee of commercial office space whose leasehold is less than 35,000 square feet.

b. This act shall not apply to the following collective bargaining situations, so long as the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees:

(1) Any successor building service employer that, on or before the effective date of a building service transfer, agrees to assume, or to be bound by, the collective bargaining agreement of the former building service employer that is transferring the building service.

(2) If there was no existing collective bargaining agreement as described in paragraph (1) of this subsection, any successor building service employer that agrees, on or before the effective date of a building service transfer, to enter into a collective bargaining agreement covering its building service employees.

(3) Any successor building service employer with building service employees that will be accreted to a bargaining unit with a pre-existing collective bargaining agreement.

(4) Any former building service employer that obtains a written commitment from a successor building service that the successor building service employer’s employees will be covered by a collective bargaining agreement as provided in this subsection.

5. This act shall take effect immediately.

STATEMENT

This bill provides for a transition period of 90 days during which building service employees subject to certain building service transfers must be retained, evaluated, and, if found satisfactory, offered continued employment.

Under the bill, “building service” means work performed in connection with the care or maintenance of an existing building and includes, but is not limited to, work performed by a watchman, guard, security officer, fire safety director, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and superintendent. The bill applies to building service transfers, which include the termination of a building service contract, the transfer of the controlling interest in any building in which building service employees are employed, and the entering into of a new building service contract.

The bill provides that, no less than 15 calendar days before any building service transfer, any former building service employer shall provide to the successor building service employer a full and accurate list containing the name, address, date of hire, and employment classification of each building service employee employed at the buildings. At the same time that the former building service employer provides the list, the former building service employer shall post the list in a notice to the building service employees that sets forth the rights provided by this bill, in the same location and manner that other statutorily required notices to employees are posted at the affected building. The notice shall also be provided to the employees’ collective bargaining representative, if applicable.

The bill requires any successor building service employer, upon the transfer of any building service, to retain those building service employees employed at the building covered by the terminated contract for a 90-day transition employment period. If at any time the successor building service employer determines that fewer building service employees are required to perform building services at the affected building than had been performing those services by the former building service employer, the successor building service employer shall retain the building service employees by seniority within job classification; provided, that during the 90-day transition period, the successor building service employer must maintain a preferential hiring list of those building service employees not retained at the building who are to be given a right of first refusal to any jobs within their classifications that become available during that period.

At the end of the 90-day transition period, the bill requires the successor building service employer to perform a written performance evaluation for each employee retained. If the employee’s performance during the 90-day transition period is satisfactory, the successor building service employer must offer the employee continued employment under the terms and conditions established by the successor building service employer.

A building service employee who has been discharged or not retained in violation of the bill may bring an action against a former or successor building service employer for violation of any obligation imposed pursuant to the bill. A court may order preliminary and permanent equitable relief, including, but not limited to, reinstatement of any employee who has been discharged or not retained in violation of the bill. The bill also provides for damages that may be imposed based on violations by building services, including back pay, cost of benefits, and reasonable attorney’s fees and costs.

The bill does not apply to any:

(1) building located in a municipality with a population of less than 35,000;

(2) residential building with less than 50 units;

(3) commercial office, institutional, or retail building of less than 100,000 square feet; or

(4) lessee of commercial office space whose leasehold is less than 35,000 square feet.

Additionally, the bill does not apply in certain collective bargaining situations, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees.