

SENATE, No. 2518

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2016

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

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.



1 **AN ACT** concerning building service transfers and supplementing
2 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 “Building service” means work performed in connection with the
9 care or maintenance of an existing building and includes, but is not
10 limited to, work performed by a watchman, guard, security officer,
11 fire safety director, doorman, building cleaner, porter, handyman,
12 janitor, gardener, groundskeeper, stationary fireman, elevator
13 operator and starter, window cleaner, and superintendent.

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

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

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

25 (2) persons earning in excess of \$35 per hour from a covered
26 employer, provided that this amount shall be adjusted on January 1,
27 2017 and annually thereafter by the Department of Labor and
28 Workforce Development based upon the preceding 12-month
29 percentage increase, if any, in the consumer price index for all
30 urban consumers for all items, as published by the Bureau of Labor
31 Statistics of the United States Department of Labor; and

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

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

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

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

47 “Person” means any individual, proprietorship, partnership, joint
48 venture, corporation, limited liability company, trust, association, or
49 other entity that may employ persons or enter into service contracts,

1 but does not include any municipality or local government, the State
2 of New Jersey, the federal government or any other governmental
3 entity, or any individual or entity managing real property for a
4 governmental entity.

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

11

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

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

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

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

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

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

6
7 3. a. A building service employee who has been discharged or
8 not retained in violation of this section may bring an action against
9 a former or successor building service employer for violation of any
10 obligation imposed pursuant to this act.

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

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

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

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

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

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

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

32 (3) The building service employee's reasonable attorney's fees
33 and costs.

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

37
38 4. a. This act shall not apply to any:

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

41 (2) residential building with less than 50 units;

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

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

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

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

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

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

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

17
18 5. This act shall take effect immediately.
19

20 STATEMENT

21
22 This bill provides for a transition period of 90 days during which
23 building service employees subject to certain building service
24 transfers must be retained, evaluated, and, if found satisfactory,
25 offered continued employment.

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

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

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

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

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

33 The bill does not apply to any:

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

36 (2) residential building with less than 50 units;

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

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

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