

ASSEMBLY, No. 886

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

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

Introduced Pending Technical Review by Legislative Counsel.



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

1 other entity that may employ persons or enter into service contracts,
2 but does not include any municipality or local government, the State
3 of New Jersey, the federal government or any other governmental
4 entity, or any individual or entity managing real property for a
5 governmental entity.

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

12

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

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

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

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

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

1 employee continued employment under the terms and conditions
2 established by the successor building service employer.

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

8

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

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

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

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

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

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

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

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

34 (3) The building service employee's reasonable attorney's fees
35 and costs.

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

39

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

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

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

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

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

48 b. This act shall not apply to the following collective
49 bargaining situations, so long as the collective bargaining

1 agreement provides terms and conditions for the discharge or laying
2 off of employees:

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

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

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

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

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20 5. This act shall take effect immediately.

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STATEMENT

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

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

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

1 to employees are posted at the affected building. The notice shall
2 also be provided to the employees' collective bargaining
3 representative, if applicable.

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

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

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

36 The bill does not apply to any:

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

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

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

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

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