# SENATE, No. 2810

# STATE OF NEW JERSEY

## 219th LEGISLATURE

INTRODUCED AUGUST 13, 2020

**Sponsored by:**
**Senator VIN GOPAL**
**District 11 (Monmouth)**

**SYNOPSIS**

Provides certain employment protections for working parents due to school closure during state of emergency and public health emergency.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning employment protections for parents of school aged children and supplementing Title 34 of the Revised Statutes and P.L.1945, c.169 (C.10:5-1 et seq.).

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. a. Notwithstanding any other law to the contrary, it shall be an unlawful employment practice for an employer to require an employee who is the parent or legal guardian of a school aged child to be physically present for work, when that work can be performed remotely, during the public health emergency and state of emergency declared by the Governor pursuant to P.L.2005, c.222 (C.26:13-1 e seq.) and state of emergency declared by the governor pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.) concerning the coronavirus disease 2019 pandemic, any subsequent extensions of that public health emergency and state of emergency, or any other public health emergency or state of emergency requiring school closure and virtual or remote instruction, unless the employer can demonstrate that allowing the employee to work remotely would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting to work remotely or working remotely in accordance with this act.

b. There is a rebuttable presumption that an employee can perform work remotely if that employee has already performed work remotely for two consecutive pay periods, or two weeks, whichever is less time. The presumption may be rebutted by a preponderance of the evidence showing that the employee cannot perform essential duties remotely.

c. As used in this act, “school aged child” means a child enrolled in Kindergarten through Twelfth grade.

d. (1) Any employer who violates this section shall be liable for a civil penalty in an amount not to exceed $1,000 for the first violation, $5,000 for the second violation, and $10,000 for each subsequent violation collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(2) If, in violation of P.L. , c. (C. )(pending before the Legislature as this bill), an employer requires an employee to be physically present at work on the basis of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of the employee, or because of the liability for service in the Armed Forces of the United States or the nationality of the employee, or because of the refusal to submit to a genetic test or

make available the results of a genetic test to an employer, an employer shall be subject to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), for any violation of this section.

2. a. In addition to the civil penalties mandated by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), it shall be an unlawful employment practice in violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of the employee, or because of the liability for service in the Armed Forces of the United States or the nationality of the employee, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to require an employee who is the parent or legal guardian of a school aged child to be physically present for work, when that work can be performed remotely, during the public health emergency and state of emergency declared by the Governor pursuant to P.L.2005, c.222 (C.26:13-1) and state of emergency declared by the governor pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.) concerning the coronavirus disease 2019 pandemic, any subsequent extensions of that public health emergency and state of emergency, or any other public health emergency or state of emergency requiring school closure and virtual or remote instruction, unless the employer can demonstrate that allowing the employee to work remotely would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting to work remotely or working remotely in accordance with this act.

b. There is a rebuttable presumption that an employee can perform work remotely if that employee has already performed work remotely for two consecutive pay periods, or two weeks, whichever is less time. The presumption may be rebutted by a preponderance of the evidence showing that the employee cannot perform essential duties remotely.

c. As used in this act, "school aged child" means a child enrolled in Kindergarten through Twelfth grade.

3. This act shall take effect immediately.

STATEMENT

This bill makes it an unlawful employment practice for an employer to require an employee who is the parent or legal guardian

of a school aged child to be physically present for work, when that work can be performed remotely, during a public health emergency and state of emergency that requires the closure of the child's school and virtual or remote instruction, unless the employer can demonstrate that allowing the employee to work remotely would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting to work remotely or working remotely under the bill.

An employer who violates this bill will be liable for a civil penalty in an amount not to exceed $1,000 for the first violation, $5,000 for the second violation, and $10,000 for each subsequent violation collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

If the employer requires an employee who is the parent or legal guardian of a school aged child to be physically present for work on the basis of that employee falling under one of the enumerated protected classes in section 2 of the bill, a violation of the employer constitutes a violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), in addition to the civil penalties for any violation.

Although the parental responsibilities of educating and caring for a child may fall on a man or woman, the remote learning that occurred during the 2019-2020 school year revealed that women were disparately impacted by remote learning requirements. Additionally, analyses of the pandemic suggest that the economic impacts of the pandemic have disproportionately affected minorities, including blacks and Hispanics. Requiring members of vulnerable populations to choose between educating their children and maintaining employment will only compound the economic impact of the pandemic on these populations.

While many parents rose to the challenge of educating their children while working remotely during the shutdown of the State, the reopening of businesses has coincided with employers requiring employees to be physically present at the workplace. This is so even in circumstances in which an employee's job may be performed remotely. As the 2020-2021 school year is about to commence, countless working parents, and in particular women and minorities, will be faced with the difficult choice of retaining employment or educating their children.

This legislation would require employers to allow working parents to continue to work remotely, if feasible, so that parents do not have to decide between educating their children and maintaining employment.