

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.



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

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. a. Notwithstanding any other law to the contrary, it shall be
9 an unlawful employment practice for an employer to require an
10 employee who is the parent or legal guardian of a school aged child
11 to be physically present for work, when that work can be performed
12 remotely, during the public health emergency and state of
13 emergency declared by the Governor pursuant to P.L.2005, c.222
14 (C.26:13-1 e seq.) and state of emergency declared by the governor
15 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.) concerning the
16 coronavirus disease 2019 pandemic, any subsequent extensions of
17 that public health emergency and state of emergency, or any other
18 public health emergency or state of emergency requiring school
19 closure and virtual or remote instruction, unless the employer can
20 demonstrate that allowing the employee to work remotely would be
21 an undue hardship on the business operations of the employer. The
22 employer shall not in any way penalize the employee in terms,
23 conditions or privileges of employment for requesting to work
24 remotely or working remotely in accordance with this act.

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

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

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

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

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

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

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

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

42
43 3. This act shall take effect immediately.

44 45 46 STATEMENT

47
48 This bill makes it an unlawful employment practice for an
49 employer to require an employee who is the parent or legal guardian

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

10 An employer who violates this bill will be liable for a civil
11 penalty in an amount not to exceed \$1,000 for the first violation,
12 \$5,000 for the second violation, and \$10,000 for each subsequent
13 violation collectible by the Commissioner of Labor and Workforce
14 Development in a summary proceeding pursuant to the "Penalty
15 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

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