

SENATE, No. 3017

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 19, 2020

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

SYNOPSIS

Concerns work accommodations during COVID-19 pandemic.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning telework and work-from-home arrangements
2 and other work accommodations during the coronavirus disease
3 2019 pandemic and supplementing Title 34 of the Revised
4 Statutes.

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

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9 1. a. It shall be, during the public health emergency and state
10 of emergency declared by the Governor pursuant to P.L.2005, c.222
11 (C.26:13-1 et seq.) and state of emergency declared by the governor
12 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.) concerning the
13 coronavirus disease 2019 pandemic and any subsequent extensions
14 of those emergencies, an unlawful employment practice for any
15 employer in the State, including any businesses or non-profit
16 employer, to require an employee to be physically present for work,
17 when that work can be performed remotely. All employers in the
18 State, whether closed or open to the public, shall accommodate their
19 employees, wherever practicable, for telework or work-from-home
20 arrangements. As used in this section, “telework” means the
21 practice of working from home or alternative locations closer to
22 home which, through the use of technology that equips the
23 individual to access necessary materials, permit an employee to
24 avoid direct proximity to other employees and members of the
25 public.

26 b. To the extent an employer has both employees who can and
27 employees who cannot perform their essential functions via
28 telework or work-from-home arrangements, the employer shall
29 make best efforts to reduce staff on site to the minimal number
30 necessary to ensure that essential operations can continue.
31 Examples of employees who need to be physically present at their
32 work site in order to perform their duties include, but are not
33 limited to, law enforcement officers, fire fighters, and other first
34 responders, cashiers or store clerks, construction workers, utility
35 workers, repair workers, warehouse workers, lab researchers,
36 information technology maintenance workers, janitorial and
37 custodial staff, and certain administrative staff.

38 c. If an employee’s essential duties cannot be performed
39 remotely, an employer shall make accommodations for the
40 employee, to the extent the accommodations are feasible based on
41 the duties of the employee and the worksite environment, and in
42 accordance with any guidance issued by the federal Centers for
43 Disease Control and Prevention, and any guidance issued by State
44 health authorities, with respect to the coronavirus disease 2019
45 pandemic. The employer shall not be required to make an

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 accommodation under this subsection if the employer can
2 demonstrate that the accommodation would create an undue
3 hardship on the business operations of the employer.

4 d. The employer shall not in any way penalize the employee in
5 terms, conditions or privileges of employment for:

6 (1) requesting or using telework or work-from-home
7 arrangements in accordance with this section; or

8 (2) making a complaint to the employer, the Department of
9 Labor and Workforce Development, or a representative of the
10 employee, regarding any violation by the employer of the
11 provisions of this section.

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

18 f. Any failure of an employer to comply with the provisions of
19 this subsection regarding the provision of telework or work-from-
20 home arrangements, reductions of onsite staff, accommodations of
21 remaining onsite employees, or refraining from penalizing
22 employees from requesting or using telework or work-at-home
23 arrangements or making a complaint about a violation by the
24 employer, shall be regarded as a failure to meet requirements of the
25 “New Jersey State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-
26 56a et seq.), and remedies, penalties, and other measures provided
27 by that act or article 3 of chapter 11 of Title 34 and any supplement
28 to that article, for violations of that act, shall be applicable,
29 including, but not limited to, penalties provided pursuant to sections
30 23 and 25 of that act (C.34:11-56a22 and 34:11-56a24), and civil
31 actions by employees pursuant to section 26 of that act (C.34:11-
32 56a25) for any losses incurred by the employee because of
33 employer noncompliance.

34 g. The Commissioner of Labor and Workforce Development
35 shall promulgate rules and regulations necessary to effectuate the
36 purposes of this section.

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38 2. This act shall take effect immediately.

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STATEMENT

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43 This bill, during the current emergency concerning the
44 coronavirus disease 2019 pandemic and any subsequent extensions
45 of that emergency, makes it an unlawful employment practice for
46 any employer to require an employee to be physically present for
47 work when that work can be performed remotely. All employers

1 are required to accommodate their employees, wherever practicable,
2 for telework or work-from-home arrangements.

3 To the extent an employer has both employees who can and
4 employees who cannot perform their essential functions via
5 telework or work-from-home arrangements, the bill requires the
6 employer to make best efforts to reduce staff on site to the minimal
7 number necessary to ensure that essential operations can continue.
8 If an employee's essential duties cannot be performed remotely, the
9 bill requires the employer to make appropriate accommodations for
10 the safety of the employee consistent with the guidance to
11 employers issued by the federal CDC and any guidance issued by
12 State health authorities, to the extent feasible based on the duties of
13 the employee and the worksite environment. The employer is not
14 required to make an accommodation if the accommodation would
15 create an undue hardship on the employer's business.

16 The employer is prohibited from in any way penalizing the
17 employee in terms, conditions or privileges of employment for:
18 requesting or using telework or work-from-home, or making any
19 complaint regarding an employer violation of the provisions the
20 bill.

21 The bill stipulates that there is a rebuttable presumption that an
22 employee can perform work remotely if that employee has already
23 performed work remotely for two consecutive pay periods, or two
24 weeks, whichever is less time.

25 An employer's failure to comply with the requirements of the bill
26 is regarded as a violation of the "New Jersey State Wage and Hour
27 Law," P.L.1966, c.113 (C.34:11-56a et seq.), and subject to the
28 remedies, penalties, and other measures provided by that act.