

SENATE, No. 2389

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 24, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Senators Johnson, Stack, Cruz-Perez and Codey

SYNOPSIS

Establishes employment protections for certain service employees during changes of ownership.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/1/2022)

1 AN ACT concerning service employees and employment protections
2 and supplementing 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 “Awarding authority” means any person that awards or enters
9 into a service contract or subcontract, except that the Port Authority
10 of New York and New Jersey shall not be an awarding authority.

11 “Contractor” means any person, including a subcontractor, who
12 enters into a service contract or subcontract to be performed,
13 provided the contractor employs more than four service employees
14 anywhere in the United States.

15 “Covered location” means one of the following locations,
16 whether publicly or privately owned:

17 (1) multi-family residential building with more than 50 units;

18 (2) commercial center or complex or an office building or
19 complex occupying more than 100,000 square feet;

20 (3) primary and secondary school, or tertiary educational
21 institution;

22 (4) cultural center or complex, such as a museum, convention
23 center, arena or performance hall;

24 (5) industrial site or pharmaceutical lab;

25 (6) airport and train station;

26 (7) hospital, nursing care facility, senior care centers or other
27 health care provider location;

28 (8) State courts; or

29 (9) warehouse or distribution center or other facility whose
30 primary purpose is the storage or distribution of general
31 merchandise, refrigerated goods, or other products.

32 “Employer” means any person who employs service employees
33 at a covered location.

34 “Person” means any individual, proprietorship, partnership, joint
35 venture, corporation, limited liability company, trust, association, or
36 other entity that may employ persons or enter into a service
37 contract.

38 “Service contract” means a contract between an awarding
39 authority and a contractor to provide services performed by a
40 service employee at a covered location.

41 “Service employee” means an individual employed or assigned
42 to a covered location on a full or part-time basis for at least 90 days
43 and who is not a managerial or professional employee or regularly
44 scheduled to work less than 16 hours per week in:

45 (1) connection with the care or maintenance of a building or
46 property, and includes but is not limited to work performed by a
47 security guard; a front desk worker; a janitor; a maintenance
48 employee; building superintendent; grounds maintenance worker;

- 1 a stationary fireman; elevator operator and starter; or window
2 cleaner;
- 3 (2) passenger related security services, cargo related and ramp
4 services, in-terminal and passenger handling and cleaning services
5 at an airport; or
- 6 (3) food preparation services at a primary or secondary school, or
7 a tertiary educational institution.
- 8 “Successor employer” means an employer that:
- 9 (1) is awarded a service contract to provide, in whole or in part,
10 services that are substantially similar to those provided at any time
11 during the previous 90 days;
- 12 (2) has purchased or acquired control of a property where
13 service employees were employed at any time during the previous
14 90 days; or
- 15 (3) terminates a service contract and hires service employees as
16 its direct employees to perform services that are substantially
17 similar within 90 days after a service contract is terminated or
18 cancelled.
- 19
- 20 2. a. At least 15 days before terminating any service contract
21 or entering into a service contract for work that its own
22 employees had been performing, or selling or transferring any
23 property where service employees are employed, an awarding
24 authority shall:
- 25 (1) request the terminated contractor to give the successor
26 employer a list containing the name, date of hire, and job
27 classification of each service employee working on the service
28 contract and name and contact information of the employee's
29 collective bargaining representative, if any;
- 30 (2) give the successor employer a list containing the name, date
31 of hire, job classification of each service employee currently
32 performing the work to be performed pursuant to the service
33 contract and name and contact information of the employee's
34 collective bargaining representative, if any;
- 35 (3) provide written notice to any collective bargaining
36 representative of the affected service employees of the decision to
37 terminate the service contract, enter into a new service contract, or
38 sell or transfer the property;
- 39 (4) ensure that a written notice to all affected service employees
40 describing the pending termination of the service contract, entrance
41 into a service contract, or sale or transfer of the property, including
42 the name and address of the awardee, purchaser, or transferee, and
43 the employees' rights provided by this section, are conspicuously
44 posted at any affected work site; and
- 45 (5) provide the affected service employees and their collective
46 bargaining representative with the name and address of any
47 successor employer or the purchaser or transferee of the property.

- 1 b. A successor employer shall take reasonable steps to
2 ascertain the identity of the affected service employee.
- 3 c. Subject to subsection e. of this section, a successor employer
4 shall retain an affected service employee at a covered location for
5 90 days or until its service contract is terminated, whichever is
6 earlier. No successor employer shall reduce any affected service
7 employee's work hours in order to circumvent the protections
8 provided by P.L. , c. (C.) (pending before the Legislature
9 as this bill). No successor employer shall be required to retain any
10 employee based upon the provisions of P.L. , c. (C.)
11 (pending before the Legislature as this bill) beyond 90 days;
- 12 d. A successor employer shall give an affected service
13 employee a written offer of employment and send a copy to the
14 employee's collective bargaining representative, if any. The offer
15 shall state the date by which the service employee is required to
16 accept the offer, and the date shall be at least 10 days after the
17 notice is delivered. An offer shall state the name, address, and
18 telephone number of the successor employer and the name of the
19 individual who is authorized by the successor employer to make the
20 employment offer. The written offer required by this section shall
21 be substantially in the form set forth in section 4 of P.L. , c. (C.
22) (pending before the Legislature as this bill) in a language in which
23 at least 10 percent of the employees are fluent. The department
24 shall provide translations in the five most common languages
25 spoken in New Jersey apart from English. A written offer may be
26 sent via electronic mail.
- 27 e. A successor employer may retain less than all of the affected
28 service employees during the 90-day transition period only if the
29 successor employer:
- 30 (1) finds that fewer service employees are required to perform
31 the work than the predecessor employer had employed;
- 32 (2) retains service employees by seniority within each job
33 classification;
- 34 (3) maintains a preferential hiring list of those employees not
35 retained; and
- 36 (4) hires any additional service employees from the list, in order
37 of seniority, until all affected service employees have been offered
38 employment.
- 39 f. Except as provided in subsection e. of this section, a
40 successor employer shall not discharge a service employee retained
41 pursuant to this section without just cause during the 90-day
42 transition period.
- 43 g. The provisions of this section shall not apply if any
44 successor employer, on or before the termination of the service
45 contract, agrees to assume, and to be bound by, the collective
46 bargaining agreement of the awarding authority or contractor,
47 provided that the collective bargaining agreement provides terms
48 and conditions for the discharge or laying off of employees.

1 h. Any agreement that restricts or hinders the ability of a
2 successor employer to fulfill its obligations pursuant to this section
3 is hereby declared to be contrary to public policy and void.

4
5 3. a. A service employee who has been discharged or
6 otherwise not retained in violation of P.L. , c. (C.)
7 (pending before the Legislature as this bill) may bring an action in a
8 court of competent jurisdiction against a successor employer for any
9 violation of subsection b. of section 2 of P.L. , c. (C.)
10 (pending before the Legislature as this bill), and against an
11 awarding authority for any violation of subsection a. of section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this bill).

13 b. The court may impose a fine not exceeding \$2,000 or
14 imprisonment for any term not exceeding 90 days, or a period of
15 community service not exceeding 90 days for a violation
16 of P.L. , c. (C.) (pending before the Legislature as this
17 bill).

18 (1) The minimum fine shall be \$100 for each violation of
19 P.L. , c. (C.) (pending before the Legislature as this bill).

20 (2) The court may deem each day that an employee was not
21 employed in violation of P.L. , c. (C.) (pending before the
22 Legislature as this bill) a separate violation of P.L. , c. (C.)
23 (pending before the Legislature as this bill), and may award the
24 employee reasonable attorney's fees and costs.

25 (3) The court may require the violator to pay restitution to an
26 employee deprived of wages or benefits due to the violation of
27 P.L. , c. (C.) (pending before the Legislature as this bill).

28 (4) The court may require the violator to pay consequential
29 damages arising due to the violation of P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31 (5) The court may issue injunctive relief requiring a successor
32 employer to employ employees in compliance with
33 P.L. , c. (C.) (pending before the Legislature as this bill)
34 and for the provision of any information required pursuant to
35 section 2 of P.L. , c. (C.) (pending before the Legislature
36 as this bill).

37
38 4. The offer of employment required to be provided to an
39 incumbent worker by subsection b. of section 2 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 shall be substantially in the form below:

42
43 DATE:

44 TO: (name of employee)

45 IMPORTANT INFORMATION REGARDING YOUR
46 EMPLOYMENT

1 We have received information that you are employed by (name of
2 predecessor contractor or employer) and are currently performing
3 work at (address of worksite). (name of predecessor contractor) has
4 lost its contract with the owners of (address of worksite) and will no
5 longer be providing (type of service or employment) as of (last day
6 of predecessor contract).

7
8 We are (name of successor contractor) and have been hired by the
9 owners of (address of worksite) to provide the same (or janitorial,
10 building maintenance) service. We are offering you a job with us
11 for a 90 day probationary period starting (first day of successor
12 contract) to perform the same type of work that you have already
13 been doing for (name of predecessor contractor) under the
14 following terms:

15
16 Pay rate (per hour): \$
17 Hours per shift:
18 Total Hours Per Week: ___
19 Benefits:

20
21 You must respond to this offer within the next ten (10) days. If you
22 want to continue working at (address of worksite), you must let us
23 know by (mm/dd/yyyy - no later than five days prior to the
24 expiration of the predecessor contract or 10 days after the date of
25 this letter if the predecessor contract has already expired). If we do
26 not receive your response by the end of business that day, we will
27 not hire you and you will lose your job. We can be reached at
28 (successor contractor phone number).

29
30 The Service Worker Retention Law, of the Laws of New Jersey
31 gives you the following rights:

- 32 1. You have the right, with certain exceptions, to be hired by our
33 company for the first ninety days that we begin to provide services
34 at (address of worksite).
- 35 2. During this 90-day period, you cannot be fired without just
36 cause.
- 37 3. If you believe that you have been fired or laid off in violation of
38 the Service Worker Retention Law, you have the right to institute
39 legal action, and if successful may be awarded back pay,
40 reinstatement, liquidated damages, attorney's fees and court costs.

41
42 FROM: (of successor contractor) (of authorized representative)
43 (Address of successor contractor)
44 (Telephone # of successor contractor)

45
46 5. P.L. , c. (C.) (pending before the Legislature as this
47 bill) shall supersede and preempt all rules, regulations, codes, or
48 ordinances of any county or municipality with regard to worker

1 retention for service employees, but shall not preempt any county or
2 municipality from regulating worker retention for non-service
3 employees.

4

5 6. This act shall take effect on the 90th day next following
6 enactment, and apply to contracts entered into or renewed after that
7 date.

8

9

10 STATEMENT

11

12 This bill establishes employment protections for certain service
13 employees during changes of ownership.

14 The bill applies to contractors, including subcontractors, who
15 enter into a service contract or subcontract to be performed,
16 provided the contractor employs more than four service employees
17 anywhere in the United States.

18 Service employees are individuals employed assigned to a
19 covered location on a full or part-time basis for at least 90 days and
20 who are not a managerial or professional employee or regularly
21 scheduled to work less than 16 hours per week in:

22 (1) connection with the care or maintenance of a building or
23 property;

24 (2) passenger related security services, cargo related and ramp
25 services, in-terminal and passenger handling and cleaning services
26 at an airport; or

27 (3) food preparation services at a primary or secondary school,
28 or at a tertiary educational institution.

29 The bill covers any location that is a:

30 (1) multi-family residential building with more than 50 units;

31 (2) commercial center or complex or an office building or
32 complex occupying more than 100,000 square feet;

33 (3) primary and secondary school, tertiary educational institution;

34 (4) cultural center or complex;

35 (5) industrial site or pharmaceutical lab;

36 (6) airport and train station;

37 (7) hospital, nursing care facility, senior care centers or other
38 health care provider location;

39 (8) state courts; or

40 (9) warehouse or distribution center.

41 The requires an authority awarding a service contract, at least 15
42 days before terminating any service contract or entering into a
43 service contract for work that its own employees had been
44 performing, or selling or transferring any property where service
45 employees are employed to:

46 (1) request certain information from any terminated contractors
47 regarding service employees;

1 (2) give successor employers information regarding service
2 employees;

3 (3) provide written notice to collective bargaining
4 representatives of the affected service employees of actions
5 affecting their employment; and

6 (4) require written notice of the actions at the affected work site.

7 The bill requires successor employers to take reasonable steps to
8 ascertain the identity of affected service employees.

9 The bill requires a successor employer to retain an affected
10 service employee at a covered location for 90 days or until its
11 service contract is terminated, whichever is earlier. No successor
12 employer may reduce any affected service employee's work hours
13 in order to circumvent the protections by the bill.

14 The bill requires a successor employer to give an affected
15 service employee a written offer of employment and send a copy to
16 the employee's collective bargaining representative, if any.

17 A successor employer may retain less than all of the affected
18 service employees during the 90-day transition period only if the
19 successor employer:

20 (1) finds that fewer service employees are required to perform
21 the work than the predecessor employer had employed;

22 (2) retains service employees by seniority within each job
23 classification;

24 (3) maintains a preferential hiring list of those employees not
25 retained; and

26 (4) hires any additional service employees from the list, in order
27 of seniority, until all affected service employees have been offered
28 employment.

29 Except as provided above, a successor employer is prohibited
30 from discharging a service employee retained pursuant to the bill
31 without just cause during the 90-day transition period.

32 These provisions of the bill do not apply if any successor
33 employer, on or before the termination of the service contract,
34 agrees to assume, and to be bound by, the collective bargaining
35 agreement of the awarding authority or contractor, provided that the
36 collective bargaining agreement provides terms and conditions for
37 the discharge or laying off of employees.

38 A service employee who has been discharged or otherwise not
39 retained in violation of the provisions of the bill may bring an
40 action in a court of competent jurisdiction against a successor
41 employer or an awarding authority. The court may impose a fine
42 not exceeding \$2,000 or imprisonment for any term not exceeding
43 90 days, or a period of community service not exceeding 90 days,
44 and may order restitution and injunctive relief.

45 The bill provides that an offer of employment required to be
46 provided to an incumbent worker must be substantially similar to a
47 form provided in the bill.