

STATE OF NEW YORK

4645

2017-2018 Regular Sessions

IN SENATE

February 23, 2017

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to displaced building service workers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature hereby
2 finds that the volatility of the real estate industry coupled with new
3 trends in the service economy are undermining stable employment
4 relationships and creating a drain on an already over-burdened social
5 services system. At a time of great uncertainty, it is the policy of the
6 state to promote stability in employment for building service workers,
7 which will reduce the need for social services resulting from unemploy-
8 ment, and promote stability in the service industry.

9 § 2. The labor law is amended by adding a new section 202-n to read as
10 follows:

11 § 202-n. Displaced building service workers. 1. For purposes of this
12 section, the following terms shall have the following meanings:

13 (a) "Building service" means work performed in connection with the
14 care or maintenance of an existing building and includes, but is not
15 limited to, work performed by a watchman, guard, doorman, building
16 cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary
17 fireman, elevator operator and starter, window cleaner, and superinten-
18 dents.

19 (b) "Building service contract" means a contract let to any covered
20 employer for the furnishing of building services, and includes any
21 subcontracts for such services.

22 (c) "Building service contractor" means any person who enters into a
23 building service contract.

24 (d) "Building service employee" means any person employed as a build-
25 ing service employee by a covered employer who has been regularly

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 assigned to a building on a full or part-time basis for at least ninety
2 days immediately preceding any transition in employment subject to this
3 section except for: (i) persons who are managerial, supervisory, or
4 confidential employees, provided that this exemption shall not apply to
5 building superintendents or resident managers, (ii) persons earning in
6 excess of twenty-five dollars per hour from a covered employer, and
7 (iii) persons regularly scheduled to work fewer than eight hours per
8 week at a building.

9 (e) "Covered employer" means any person who owns or manages real prop-
10 erty, either on its own behalf or for another person, within the state,
11 including, but not limited to, housing cooperatives, condominium associ-
12 ations, building managing agents, and any building service contractor,
13 provided, however, that the requirements of this section shall not apply
14 to: (i) residential buildings of less than fifty units, (ii) commercial
15 office, institutional or retail buildings of less than one hundred thou-
16 sand square feet, (iii) any building in which any governmental entity,
17 the head or majority of members of which are appointed by one or more
18 officers of the state, occupies fifty percent or more of the rentable
19 square footage, or (iv) to the extent that such requirements conflict
20 with section one hundred sixty-two of the state finance law.

21 (f) "Person" means any individual, proprietorship, partnership, joint
22 venture, corporation, limited liability company, trust, association, or
23 other entity that may employ persons or enter into service contracts,
24 but shall not include any municipality, the state of New York, and the
25 federal government or any other governmental entity, or any individual
26 or entity managing real property for a governmental entity.

27 (g) "Successor employer" means a covered employer that: (i) has been
28 awarded a building service contract to provide, in whole or in part,
29 building services that are substantially similar to those provided under
30 a service contract that has recently been terminated, or (ii) has
31 purchased or acquired control of a property in which building service
32 employees were employed.

33 2. (a) No less than fifteen calendar days before terminating any
34 building service contract, any covered employer shall request the termi-
35 nated contractor to provide to the successor employer a full and accu-
36 rate list containing the name, address, date of hire, and employment
37 occupation classification of each building service employee currently
38 employed at the site or sites covered by the terminated contract.

39 (b) No less than fifteen calendar days before transferring a control-
40 ling interest in any covered building in which building services employ-
41 ees are employed, any covered employer shall provide to the successor
42 employer a full and accurate list containing the name, address, date of
43 hire, and employment occupation classification of each building service
44 employee currently employed at the site or sites covered by the transfer
45 of controlling interest.

46 (c) No more than seven calendar days after notice that its building
47 service contract has been terminated, any covered employer shall provide
48 to the successor employer a full and accurate list containing the name,
49 address, date of hire, and employment occupation classification of each
50 building service employee employed on the notice date at the site or
51 sites covered by the terminated building service contract.

52 (d) When providing the notice required under this subdivision, each
53 covered employer shall ensure that a notice to building service employ-
54 ees is posted setting forth the rights provided under this section and
55 which includes a copy of the list provided under the preceding para-
56 graphs, and that such notice is also provided to the employees' collec-

1 tive bargaining representative, if any. The notice and list shall be
2 posted in the same location and manner that other statutorily required
3 notices to employees are posted at the affected building or buildings.

4 (e) A successor employer shall retain for a ninety day transition
5 employment period at the affected building or buildings those building
6 service employee or employees of the terminated building service
7 contractor (and its subcontractors), or other covered employer, employed
8 at the building or buildings covered by the terminated building service
9 contract or owned or operated by the former covered employer.

10 (f) If at any time the successor employer determines that fewer build-
11 ing service employees are required to perform building services at the
12 affected building or buildings than had been performing such services
13 under the former employer, the successor employer shall retain the pred-
14 ecessor building service employees by seniority within job classifica-
15 tion; provided, that during such ninety day transition period, the
16 successor employer shall maintain a preferential hiring list of those
17 building service employees not retained at the building or buildings who
18 shall be given a right of first refusal to any jobs within their classi-
19 fications that become available during that period.

20 (g) Except as provided in paragraph (f) of this subdivision, during
21 such ninety day period, the successor contractor shall not discharge
22 without cause an employee retained pursuant to this section.

23 (h) At the end of the ninety day transition period, the successor
24 employer shall perform a written performance evaluation for each employ-
25 ee retained pursuant to this section. If the employee's performance
26 during such ninety day period is satisfactory, the successor contractor
27 shall offer the employee continued employment under the terms and condi-
28 tions established by the successor employer or as required by law.

29 3. (a) A building service employee who has been discharged or not
30 retained in violation of this section may bring an action in supreme
31 court against a successor contractor and/or covered employer for
32 violation of any obligation imposed pursuant to this section.

33 (b) The court shall have authority to order injunctive relief to
34 prevent or remedy a violation of any obligation imposed pursuant to this
35 section.

36 (c) If the court finds that by reason of a violation of any obligation
37 imposed pursuant to subdivision two of this section, a building service
38 employee has been discharged or not retained in violation of this
39 section, it shall award:

40 (i) Back pay for each day during which the violation continues, which
41 shall be calculated at a rate of compensation not less than the higher
42 of: (1) the average regular rate of pay received by the employee during
43 the last three years of the employee's employment in the same occupation
44 classification; or (2) the final regular rate received by the employee.

45 (ii) Costs of benefits the successor employer would have incurred for
46 the employee under the successor contractor's or employer's benefit plan
47 or plans.

48 (iii) The building service employee's reasonable attorneys fees and
49 costs.

50 (d) In any such action, the court shall have authority to order the
51 terminated contractor or former employer to provide the successor
52 employer with the information required pursuant to subdivision two of
53 this section.

54 4. The provisions of this section shall not apply: (a) to any succes-
55 sor employer that, on or before the effective date of the transfer of
56 control from a predecessor covered employer to the successor employer or

1 the commencement of services by a successor building service contractor,
2 agrees to assume, or to be bound by, the collective bargaining agreement
3 of the predecessor covered employer covering building service employees,
4 provided that the collective bargaining agreement provides terms and
5 conditions for the discharge or laying off of employees; or (b) where
6 there is no existing collective bargaining agreement as described in
7 paragraph (a) of this subdivision, to any successor employer that
8 agrees, on or before the effective date of the transfer of control from
9 a predecessor covered employer to the successor employer or the
10 commencement of services by a successor building service contractor, to
11 enter into a new collective bargaining agreement covering its building
12 service employees, provided that the collective bargaining agreement
13 provides terms and conditions for the discharge or laying off of employ-
14 ees; or (c) to any successor employer whose building service employees
15 will be accreted to a bargaining unit with a pre-existing collective
16 bargaining agreement, provided that the collective bargaining agreement
17 provides terms and conditions for the discharge or laying off of employ-
18 ees; or (d) to any covered employer that obtains a written commitment
19 from a successor employer that the successor employer's building service
20 employees will be covered by a collective bargaining agreement falling
21 within paragraphs (a), (b), or (c) of this subdivision.

22 § 3. This act shall take effect immediately.