SPONSOR: Sen. Walsh & Rep. Osienski
Sens. Gay, Hoffner, Lockman, Mantzavinos; Reps. Heffernan, Lambert, Morrison

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 233
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE SERVICE WORKER PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part I, Title 19 of the Delaware Code by creating a new Chapter 20 and making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 20. Service Worker Protection Act.

§ 2001. Definitions.

For purposes of this chapter:

(1) "Awarding authority" means a person that awards, enters into, or assumes a service contract or subcontract.

(2) "Contractor" means a person, including a subcontractor, who enters into a service contract or subcontract to be performed, if the person employs more than 4 service employees anywhere in the United States.

(3) "Covered location" means any of the following:

a. A multi-family residential building with more than 50 units.

b. If occupying more than 100,000 square feet, a commercial center, commercial complex, office building, or office complex.

c. A cultural center or complex, including museums, convention centers, arenas, or performance halls.

d. An industrial site.

e. A pharmaceutical lab.

f. An airport.

g. A train station.

h. A health-care provider.

i. A warehouse, distribution center, or other facility for which the primary purpose is the storage or distribution of general merchandise, refrigerated goods, or any other products.

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j. A building operated or managed by an agency as defined in § 6902 of Title 29.

(4) "Employer" means a person who employs service employees at a covered location.

(5) "Health-care provider" means a facility that provides long-term, acute, or outpatient health-care services as these services are defined in § 7971 of Title 29.

(6) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that employs service employees or enters into a service contract.

(7) "Service contract" means a contract between an awarding authority and a contractor to provide services performed by a service employee at a covered location.

(8)a. "Service employee" means an individual employed or assigned to a covered location on a full or part-time basis for at least 60 days in connection with any of the following:

1. The care or maintenance of a building or property, including work performed by a security guard, front desk worker, janitor, maintenance employee, concierge, door attendant, building superintendent, grounds maintenance worker, stationary fireman, elevator operator, or window cleaner.

2. In addition to paragraph (8)a.1. of this section, any of the following in an airport: passenger-related security services, cargo-related and ramp services, in-terminal passenger and baggage handling, and cleaning services.

3. Food preparation services at a school that is an agency under paragraph (3)j. of this section.

b. "Service employee" does not include an individual who is any of the following:

1. A managerial or professional employee.

2. Regularly scheduled to work less than 16 hours per week.

3. Who performs work on any building, structural, electric, HVAC, or plumbing project, if the work requires a license under Title 24 or a permit.

(9) "Successor employer" means an employer for which any of the following apply:

a. Is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days.

b. Has purchased or acquired control of a property where service employees were employed at any time during the previous 90 days.

c. Terminates or does not renew a service contract and hires service employees as its direct employees to perform services that are substantially similar within 90 days after a service contract is terminated or ends.

§ 2002. Notice requirements; transition period.

(a) An awarding authority must comply with subsection (b) of this section before doing any of the following:

(1) Terminating a service contract.

(2) Contracting out services currently performed by the awarding authority.

(3) Selling or transferring any property where service employees are employed.

(b) No fewer than 15 days before taking any of the actions under subsection (a) of this section, an awarding authority must do all of the following:

(1)a. Provide the successor employer a list containing the name, date of hire, job classification of each service employee currently performing the work to be performed under the service contract, and the name and contact information of the service employee's collective bargaining representative, if any.

b. If the awarding authority is terminating a service contract, the awarding authority must request the information required under paragraph (b)(1)a. of this section from the contractor with the terminating service contract.

(2)a. Provide written notice to each affected service employee explaining which of the following events is or will be occurring:

1. The pending termination of the service contract.

2. The entrance into a service contract.

3. The sale or transfer of the property,

b. The written notice provided under paragraph (b)(2)a. of this section must include the name and address of the awardee, purchaser, or transferee, and the service employees' rights provided under this chapter.

(3) The information required under paragraph (b)(2) of this section must also be provided as follows:

a. Posted conspicuously at each affected work site.

b. If the affected service employees have a collective bargaining representative, to the collective bargaining representative.

(c) A successor employer shall take reasonable steps to ascertain the identity of all affected service employees.

(d)(1) Except as provided under subsection (f) of this section, a successor employer shall retain all affected service employees at a covered location for a transition period until the earlier of the following:

a. Ninety days.

b. The successor employer’s service contract is terminated.

(2) A successor employer may not reduce any affected service employee’s work hours to circumvent the protections provided under this chapter.

(e)(1) A successor employer shall provide each affected service employee a written offer of employment for the transition period under subsection (d) of this section that contains all of the following:

a. The date by which the service employee is required to accept the offer, which must be at least 10 days after the notice is delivered to the service employee.

b. The name, address, and telephone number of the successor employer and the name of the individual who is authorized by the successor employer to make the employment offer.

(2) The written offer required under paragraph (e)(1) of this section must be all of the following:

a. Substantially in the form under § 2004 of this title.

b. In English, Spanish, and any language that is the first language spoken by at least 5% the affected service employees.

(3) The successor employer must also send the written offer required under paragraph (e)(1) of this section to the service employee's collective bargaining representative, if any.

(4) The written offer required under this subsection (e) may be sent via electronic mail.

(f) A successor employer may retain less than all of the affected service employees during the transition period under subsection (d) of this section only if the successor employer does all of the following:

(1) Finds that fewer service employees are required to perform the work than the predecessor employer had employed.

(2) Retains service employees by seniority within each job classification.

(3) Maintains a preferential hiring list of those service employees not retained.

(4) Hires any additional service employees from the list maintained under paragraph (f)(3) of this section, in order of seniority, until all affected service employees have been offered employment.

(g) Except as provided under subsection (f) of this section, a successor employer may not discharge a service employee retained under this section without just cause during the transition period under subsection (d) of this section.

(h) At the end of the transition period under subsection (d) of this section, the successor employer shall perform a written performance evaluation for each service employee retained under this section. If a service employee’s performance during this transition period is satisfactory, the successor employer shall offer the service employee continued employment under terms and conditions established by the successor employer.

(i) An agreement that restricts or hinders the ability of a successor employer to fulfill the obligations under this section is declared to be contrary to public policy and void.

§ 2003. Penalties.

(a) A service employee who has been discharged or otherwise not retained in violation of this chapter may bring an action as follows:

(1) Against the awarding authority, for any violation of §§ 2002(a) through (b) of this title.

(2) Against the successor employer, for any violation of §§ 2002(c) through (h) of this title.

(b) A person who refuses, fails, or neglects to comply with § 2002 of this title is liable to the service employee for punitive damages as follows:

(1) For a first violation, an amount not exceeding $2,500.

(2) For a second or subsequent violation, an amount not exceeding $5,000.

(3) Each work week during which there is a day when a violation occurs constitutes a separate violation.

(c) In addition to the damages under subsection (b) of this section, the court may do any of the following for a violation of § 2002 of this title:

(1) Award the service employee reasonable attorney fees and costs.

(2) Require the violator to pay special damages, including back pay and interest on back pay.

(3) Require the violator to pay compensatory damages.

(4) Issue injunctive relief requiring a successor employer to do any of the following:

a. Employ service employees as required under this chapter.

b. Provide information as required under § 2002 of this title.

§ 2004. Offer of Employment Form Letter.

The offer of employment to a service employee under § 2002(e) of this title must use the following form or be substantially similar to the following form:

DATE:

TO: [Name of Service Employee]

IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

We have received information that you are employed by _____ and are currently performing work at _____. Your current employer, _____, will no longer be providing services or employment at your worksite as of this date: _____ because of the following reason:

□ Your current employer has lost its contract with the owners of your worksite.

□ Your current employer is contracting out for the service you perform.

□ Ownership of your worksite is changing.

We are [Name of Successor Employer] and will be providing the same service at your worksite. We are offering you a job with us for a 90-day probationary period that starts _____, to perform the same type of work that you have already been doing, under the following terms:

Pay rate per hour: $ _____

Hours per shift: _____

Total hours per week: _____

Benefits:

If you want to continue working at this worksite, you must let us know by this date: _____. If we do not receive your response by the end of business that day, we will not hire you and you will lose your job. We can be reached by telephone at _____.

The Delaware Service Worker Protection Act gives you the following rights:

1.We must give you at least 10 days to accept this offer of employment.

2. You have the right, with certain exceptions, to be hired by us for the first 90 days that we begin to provide services at this worksite.

3. During this period, you cannot be fired without just cause.

4. If you believe that you have been fired or laid off in violation of the Service Worker Protection Act, you have the right to institute legal action, and if successful may be awarded back pay, reinstatement, damages, attorney's fees, and court costs.

FROM: [Name of successor employer]

Authorized Representative: _____

Address: _____

_____

Telephone No.: _____

Section 2. Amend Subchapter III, Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6940. Service worker protection.

An agency must comply with the Service Worker Protection Act, Chapter 20 of Title 19, when the agency is an awarding authority or a successor employer to a service contract.

Section 3. This Act takes effect 90 days after enactment and applies to all contracts entered into or renewed after its enactment into law.

Section 4. This Act is known as “The Service Worker Protection Act”.