

ASSEMBLY, No. 4268

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 15, 2020

Sponsored by:

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District 37 (Bergen)

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SYNOPSIS

Permits certain employees to refuse to work due to unsafe working conditions during state of emergency or public health emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/18/2020)

1 AN ACT concerning certain employees working in unsafe conditions
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. a. During the entire pendency of a public health emergency
8 or state of emergency declared by the Governor, except with respect
9 to employees covered by subsection j. of this act, an employee who:
10 (1) performs functions which involve physical proximity to
11 members of the public or to other employees in the worksite or in
12 employer-sponsored or employer-authorized transportation, housing
13 or dining facilities, and which are essential to the public's health,
14 safety, and welfare, including transportation services, hotel and
15 other residential services, financial services, and the production,
16 preparation, storage, sale, and distribution of essential goods such
17 as food, beverages, medicine, fuel, and supplies for conducting
18 essential business and work at home; or (2) any other employee
19 deemed an essential employee by the public authority declaring the
20 public health emergency or state of emergency, shall have the right
21 to refuse to work onsite under conditions that violate health and
22 safety standards or otherwise jeopardize the health of the employee
23 or members of the employee's family, either because the employer
24 has not taken sufficient measures to alleviate exposures to
25 communicable disease or other health or safety hazards, or because
26 such measures are not feasible with respect to the available work
27 and the employee, as in the case of the employee driving passengers
28 in a personal vehicle, or in the case of an employee with high
29 vulnerability to serious adverse health effects from the
30 communicable disease or other health or safety hazard.

31 b. The Department of Labor and Workforce Development shall
32 develop standards by which to determine whether, under the
33 circumstances, an employee's decision to refuse to work onsite is
34 reasonable. Such circumstances that would make an employee's
35 decision reasonable include, but are not limited to, situations where
36 an employer:

37 (1) Refuses to implement or ignores good hygiene and infection
38 control practices;

39 (2) Pressures an employee to work when the worker is sick or
40 fails to require an exposed employee to quarantine a recommended
41 number of days according to the Department of Health when the
42 employer has reason to know the employee has been exposed to a
43 communicable or infectious disease on or off the worksite;

44 (3) Refuses to implement policies and procedures for frequent
45 and thorough hand washing that includes providing employees,
46 customers, and worksite visitors with a place to wash hands, and if
47 soap and running water are not immediately available, providing

1 alcohol-based hand sanitizers containing a certain percentage of
2 alcohol according to the Department of Health standards;

3 (4) Refuses to establish and enforce policies and practices that
4 promote flexible worksites, such as telecommuting, and flexible
5 work hours, such as staggered shifts, to increase the physical
6 distance among employees and between employees and others
7 whenever possible;

8 (5) Ignores or refuses to implement regular housekeeping
9 practices, including routine cleaning and disinfecting of surfaces,
10 equipment, and other elements of the work environment;

11 (6) Fails to isolate employees from hazards, such as installing
12 high-efficiency air-filters, increasing ventilation rates, physical
13 barriers, drive through windows for customers, and isolation rooms
14 wherever possible;

15 (7) Fails to provide employees with the personal protective
16 equipment recommended by the National Institute for Occupational
17 Safety and Health that is needed to keep them safe while
18 performing their jobs; or

19 (8) Fails to take proper steps to sanitize, install health and safety
20 systems or allow employees time off as required by federal or state
21 law or company policy, should an employee test positive or show
22 symptoms of a communicable or infectious disease.

23 Within one month of adopting the standards, the department shall
24 institute a public awareness campaign to inform employees and
25 employers of their rights and responsibilities under this act, and
26 how employees can file complaints if employees believe their
27 employers are in violation of this act.

28 The department shall review and revise the standards as
29 necessary on at least an annual basis beginning one year after the
30 initial adoption of the standards and immediately upon the
31 declaration of any new state of emergency or public health
32 emergency.

33 c. No employer shall take retaliatory personnel action or
34 discriminate against an employee because the employee, for reasons
35 which are in accordance with this act, refuses to work, or files a
36 complaint with the division alleging the employer's violation of any
37 provision of this act, or informs any other person of their rights
38 under this act.

39 Any employee claiming to be aggrieved by an employer in
40 violation of this act may, personally or by an attorney-at-law, make,
41 sign, and file, within 7 days of the adverse action, a petition in court
42 for a temporary restraining order or a request for temporary relief
43 with the Department of Labor and Workforce Development.

44 d. Upon the submission of a complaint, the division shall
45 contact the employee and employer within a 48 hour period to
46 attempt to promptly resolve the complaint. If the division cannot
47 resolve the complaint within that timeframe, the division shall
48 continue to investigate the matter and make a decision within 120

1 hours from the submission of the complaint as to whether or not the
2 employee's refusal to work is reasonable under the circumstances
3 and the measures that the employer is required to take, if possible,
4 for the employee to return to work.

5 e. Upon the determination by the division that an employee's
6 decision to refuse to work is reasonable or by consent by the
7 employer of the employee's refusal, an employee who has not been
8 reassigned to other work by the employer shall, in addition to
9 retaining a right to continued employment, continue to be paid by
10 the employer for the hours that would have been worked until such
11 time as the employer can demonstrate to the satisfaction of the
12 division, or if the employee's refusal to work has been consented to
13 by the employer, to the satisfaction of the employee, that the
14 condition has been remedied.

15 f. The department, in consultation with worker centers, worker
16 rights organizations, nonprofit legal services organizations,
17 exclusive representative employee organizations, and unions in the
18 State, shall develop the following:

19 (1) A standard with respect to the right to refuse work.

20 (2) Methods by which an employee can file a complaint with the
21 division pertaining to a violation of this act, including but not
22 limited to, the creation of a 24/7 telephone hotline, an electronic
23 application through the Division's website, and by mail or fax on a
24 standard form; and

25 (3) A dispute resolution process for the division to resolve
26 conflicts between employees and employers with respect to this act,
27 including criteria to be used by the division to make a final
28 determination when investigating cases.

29 With respect to the department's consultation with other entities,
30 the department shall give preference to organizations that have at
31 least two or more of the following:

32 (1) multi-lingual capacity;

33 (2) intake and outreach staff or organizers;

34 (3) access to community networks that are culturally relevant to
35 workers in traditionally low-wage industries; or

36 (4) access to a legal clinic.

37 g. There shall be a rebuttable presumption of an unlawful
38 retaliatory personnel action under this section whenever an
39 employer takes adverse action against an employee, or a family
40 member of the employee if the family member is also an employee
41 of the employer, within 90 days of when that employee: files a
42 complaint with the division or a court alleging a violation of any
43 provision of this section; informs any person about an employer's
44 alleged violation of this section; cooperates with the department or
45 other persons in the investigation or prosecution of any alleged
46 violation of this section; opposes any policy, practice, or act that is
47 unlawful under this section; or informs any person of his or her
48 rights under this section. The presumption may be rebutted by clear

1 and convincing evidence that the action was taken for other
2 permissible reasons.

3 h. Any failure of an employer to accommodate an employee's
4 reasonable refusal to work in accordance with this act, or any other
5 violation of this act, shall be regarded as a failure to meet the wage
6 payment requirements of the "New Jersey State Wage and Hour
7 Law," P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of
8 that act, as the case may be, and remedies, penalties, and other
9 measures provided by that act, R.S.34:11-58, and section 10 of
10 P.L.1999, c.90 (C.2C:40A-2) for failure to pay wages or other
11 violations of that act shall be applicable, including, but not limited
12 to, penalties provided pursuant to sections 23 and 25 of that act
13 (C.34:11-56a22 and 34:11-56a24), and civil actions by employees
14 pursuant to section 26 of that act (C.34:11-56a25), except that an
15 award to an employee in a civil action shall include, in addition to
16 the amount provided pursuant to section 26 of that act (C.34:11-
17 56a25), any actual damages suffered by the employee as the result
18 of the violation plus an equal amount of liquidated damages.

19 i. Within 60 days following the date of enactment of this act,
20 the Commissioner of Labor and Workforce Development shall
21 promulgate rules and regulations necessary to effectuate the
22 purposes of this act.

23 j. Notwithstanding the provisions of subsection a. of this act,
24 this act shall not be applicable to an employee in the public or
25 private sector who, during a state of emergency:

26 (1) is a public safety worker or first responder, including any
27 fire, police or other emergency responders; or

28 (2) is involved in providing medical and other healthcare
29 services, emergency transportation, social services, and other care
30 services, including services provided in health care facilities,
31 residential facilities, or homes.

32 k. As used in this act:

33 "Commissioner" means Commissioner of Labor and Workforce
34 Development.

35 "Department" means Department of Labor and Workforce
36 Development.

37 "Division" means the Division of Wage and Hour Compliance in
38 the Department of Labor and Workforce Development.

39 "Public health emergency" means an occurrence or imminent
40 threat of an illness or health condition, caused by bioterrorism,
41 epidemic or pandemic disease, or a novel and highly fatal infectious
42 agent or biological toxin, that poses a substantial risk of a
43 significant number of human fatalities or incidents or permanent or
44 long-term disability, and which has been declared a public health
45 emergency by the Governor.

46 "State of emergency" means a natural or human-made disaster or
47 emergency, including an epidemic or other health emergency, for
48 which a state of emergency has been declared by the President of

1 the United States, the Governor, a municipal emergency
2 management coordinator, or other public authority permitted by law
3 to declare a state of emergency.

4 If the state of emergency does not apply to the entire State, an
5 employee shall be regarded as a covered employee under this act
6 only if the employee is working in the area subject to the state of
7 emergency.

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9 2. This act shall take effect immediately.

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STATEMENT

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14 This bill provides that during any public health emergency or
15 state of emergency declared by the Governor, an employee who: (1)
16 performs functions which involve physical proximity to members of
17 the public or to other employees in the worksite or in employer-
18 sponsored or employer-authorized transportation, housing or dining
19 facilities, and which are essential to the public's health, safety, and
20 welfare, including transportation services, hotel and other
21 residential services, financial services, and the production,
22 preparation, storage, sale, and distribution of essential goods such
23 as food, beverages, medicine, fuel, and supplies for conducting
24 essential business and work at home; or (2) any other employee
25 deemed an essential employee by the public authority declaring the
26 public health emergency or state of emergency, has the right to
27 refuse to work onsite under conditions that violate health and safety
28 standards or otherwise jeopardize the health of the employee or
29 members of the employee's family, either because the employer has
30 not taken sufficient measures to alleviate exposures to
31 communicable disease or other health or safety hazards, or because
32 such measures are not feasible with respect to the available work
33 and the employee, as in the case of the employee driving passengers
34 in a personal vehicle, or in the case of an employee with high
35 vulnerability to serious adverse health effects from the
36 communicable disease or other health or safety hazard.

37 An employee in the public or private sector who, during a public
38 health emergency or state of emergency: (1) is a public safety
39 worker or first responder, including any fire, police or other
40 emergency responders; or (2) is involved in providing medical and
41 other healthcare services, emergency transportation, social services,
42 and other care services, including services provided in health care
43 facilities, residential facilities, or homes will not be covered by the
44 bill.

45 Under the bill, the Department of Labor and Workforce
46 Development is required to develop standards by which to
47 determine whether, under the circumstances, an employee's
48 decision to refuse to work onsite is reasonable within 60 days

1 following the date of enactment of the bill. The bill lists several
2 circumstances that would make an employee's decision to refuse to
3 work reasonable. The bill requires the department to consult with
4 worker centers, worker rights organizations, nonprofit legal services
5 organizations, exclusive representative employee organizations, and
6 unions in the State in the development of standards, methods for
7 employees to file complaints, and a dispute resolution process for
8 complaints.

9 The bill requires the Division of Wage and Hour Compliance to
10 attempt to promptly resolve any complaint within 48 hours from the
11 filing of a complaint. If the division cannot resolve the complaint
12 within that timeframe, the division will continue to investigate the
13 matter and make a decision within 120 hours from the submission
14 of the complaint as to whether or not the employee's refusal to
15 work is reasonable under the circumstances, and the measures that
16 the employer is required to take, if possible, for the employee to
17 return to work.

18 The bill prohibits employers from discriminating or retaliating
19 against employees who exercise their rights under this act and treats
20 violations of the act as violations of the "New Jersey State Wage
21 and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).