

New Jersey Health Care Entities Should Add New Employee Protections to Their Due Diligence Checklists

Healthcare entities, home healthcare agencies, and staffing registries considering a transaction in New Jersey must keep new obligations to certain employees in mind. On August 18, 2022, Governor Murphy signed into law New Jersey Senate Bill No. 315 (the Act), which created broad protections for many employees in the healthcare sector in the event of a change in control. The Act requires any change in control to be made pursuant to a contract or agreement between the parties that preserves the wages, benefits, and employment status of eligible employees.

Covered Health Care Entities

The Act covers health care facilities licensed pursuant to N.J.S.A. 26:211-1 *et seq.*, which include, among others, general hospitals, diagnostic centers, treatment centers, rehabilitation centers, skilled nursing homes, nursing homes, outpatient clinics, home health care agencies, and residential health care facilities. The Act also covers staffing registries and home care services agencies as defined under N.J.S.A. 45:11-23. If a healthcare entity is part of a larger facility that contains non-healthcare entities or divisions, only the portion of the facility which is licensed pursuant to N.J.S.A. 26:211-1 shall be considered a “healthcare entity” for purposes of the Act.

Covered Transactions

“Change in control” is defined broadly to include any transaction involving a sale, disposition, or transfer of all or substantially all of the assets used in a healthcare entity’s operations or of a controlling interest in such entity, as well as any event or sequence of events, including a purchase, sale, or termination of a management contract or lease, that causes the identity of the health care entity employer to change. A “change in control” does not include a change in control transaction in which both parties involved are government entities.

Covered Employees

The Act provides protection for all current employees employed at an affected healthcare entity during the 90 days immediately preceding a change in control; other than

1. employees who are exempt from overtime pursuant to the executive exemption under New Jersey wage and hour law; and
2. any employee discharged for cause during the 90 days.

The Act also covers former employees of a healthcare entity who retain recall rights under an agreement with their former healthcare entity employer.

Effective Date

The Act goes into effect on November 16, 2022 (Effective Date) and applies to contracts or agreements for changes in control entered into on or after the Effective Date.

Actions Required

Under the Act, at least 30 days before a change in control, a covered healthcare entity undergoing the change in control must provide the successor healthcare entity and any applicable collective bargaining representative a list containing the name, address, date of hire, phone number, wage rate, and employment classification of each eligible employee. The covered healthcare entity also must inform all eligible employees of their rights provided by the Act and post a notice of these rights in a conspicuous location.



Debra Steiner Friedman

Member

dfriedman@cozen.com
Phone: (215) 665-3719
Fax: (215) 701-2419



Aselle Kurmanova

Member

akurmanova@cozen.com
Phone: (212) 453-3954
Fax: (212) 509-9492

Related Practice Areas

- Health Care & Life Sciences
- Labor & Employment

Successor healthcare entities must offer continued employment to all eligible employees for a transitional period of at least four months following the change in control, without any reduction in wages, paid time off, or the total value of their benefits (including health care, retirement, and education benefits). The offers must be in writing and remain open for at least ten business days. Suppose the total number of available positions with the healthcare care entity is less than the total number of eligible employees. In that case, employees must be offered positions based on seniority and experience.

Retained employees may not be terminated during the transitional period unless they are discharged for cause or due to a reduction in force (with employees being retained based on seniority and experience). Laid-off employees must be offered any positions they previously held if those positions are restored during the transitional period.

At the end of the transitional period, each retained eligible employee must undergo a performance evaluation, which must be recorded in writing. If the employee's performance is satisfactory, the employee must be offered continued employment. Notably, the Act does not define "for cause" or "satisfactory."

No actions taken in compliance with a collective bargaining agreement shall be considered a violation of the Act, and the Act permits a successor healthcare entity to recognize a collective bargaining representative of the employees and/or bargain with the collective bargaining representative during the transitional period.

Successor healthcare entities must retain written records of each employment offer and performance evaluation for a minimum of three years from the date of the offer or the performance evaluation. They also must retain the employee's name, address, date of hire, phone number, wage rate, and employment classification. These records must be made available to the employee or a representative of the employee upon request.

Penalties for Non-Compliance

As applicable, aggrieved employees may pursue an action against their former and/or successor employers by filing a private action in court or seeking relief with the New Jersey Department of Labor. Remedies may encompass recovery of unpaid wages and benefits, liquidated damages, attorneys' fees, and administrative penalties, as well as injunctive relief (including reinstatement).

This new law requires covered healthcare employers to be proactive in evaluating employee staffing requirements in the event of a change in control. It also may require covered healthcare employers to rethink the timing of when they alert employees to an impending change of control and the impact of such communications on the transaction.
