

## Updates

May 06, 2020

City of Los Angeles COVID-19 Right of Recall Ordinance Adopted

The City of Los Angeles adopted and Mayor Eric Garcetti approved two new ordinances on April 27, 2020: the [COVID-19 Right of Recall Ordinance](#) and [COVID-19 Worker Retention Ordinance](#).

The COVID-19 Right of Recall Ordinance requires that airport, hotel, event center, and commercial property employers offer a laid off worker, in writing, any position which is or becomes available after the effective date of the ordinance (listed as [June 14, 2020](#)) for which the laid off worker is qualified. The written offer must be sent to the laid off worker's last known mailing address, email address, **and** cellular phone number (by text message).

A laid off worker is qualified for recall—and must be offered a position in the order of priority below—if he/she held the same or a similar position (at the same location) at the time of the layoff or if he/she can be qualified for the position with the same training that would be provided to a new hire. A laid off worker who is offered a position must be given at least five business days to accept or decline the offer. If more than one laid off worker is entitled to preference for a position, the employer should offer the position to the laid off worker with the greatest length of service with the employer at the employment site (the worker's length of service is inclusive of leaves and vacation time). The ordinance defines "Laid Off Worker" as someone who meets the following four requirements:

1. A former employee who did **not** act as a manager, supervisor, or confidential employee (and who is not required to possess an occupational license) during his/her employment and whose primary job responsibility was not sponsorship sales for an event center business;
2. A former employee who worked at least two hours in a one-week period within the geographical boundaries of the city of Los Angeles;
3. A former employee that must have worked for the employer for at least six months; and
4. The employee's separation must have occurred on or after March 4, 2020, as a result of lack of business, a reduction in force, or other economic, non-disciplinary reason.

There is a rebuttable presumption that any termination that occurred on or after March 4, 2020, was due to a non-disciplinary reason. A laid off worker cannot waive his/her individual rights under the ordinance. Other than in connection with bona fide negotiation of a collective bargaining agreement (CBA), any request by an employer to a worker to waive will constitute a violation of the ordinance.

The ordinance prohibits retaliation and provides an enforcement mechanism allowing employees to bring claims for violation of the ordinance only after they have provided the employers with written notice and time to cure. Employers cannot discharge, reduce the compensation of, or otherwise discriminate against any employee for opposing any practice proscribed by the ordinance, seeking to enforce his/her rights, participating in proceedings, or for otherwise asserting rights under the ordinance.

The ordinance does not have a specific end date and the City Council and mayor of Los Angeles will revisit the ordinance to determine whether the provisions are still necessary before March 1, 2022.

## **Frequently Asked Questions**

### **Who qualifies as an employer subject to the COVID-19 Right of Recall?**

**Airport Employer:** Defined as a business that: (1) provides **any** service at an airport (defined as the City of Los Angeles Department of Airports and each airport it operates in the city) or (2) provides any service to **any business servicing the airport; and** is required to comply with the Los Angeles Living Wage Ordinance (codified in Los Angeles Administrative Code sections 10.37, et seq.). The definition does not include an airline or an employer that is a party to an agreement with the airport that already contains a worker rehire requirement.

**Commercial Property Employer:** Defined as an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the city that employs 25 or more **janitorial, maintenance, or security service workers**. Only the janitorial, maintenance, and security service workers who perform work for a commercial property employer are covered.

**Event Center Employer:** Defined as an owner, operator, or manager of a publicly or privately-owned structure within the city of more than 50,000 square feet or with a seating capacity of 1,000 seats or more that is used for public performances, sporting events, business meetings, or similar events. An event center includes, but is not limited to, concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

**Hotel Employer:** Defined as an owner, operator, or manager of a residential building in the city designated or used for public lodging or other related service for the public and either (1) contains 50 or more guestrooms, or (2) has earned gross receipts in 2019 exceeding \$5 million. The definition also includes the owner, operator, manager, or lessee of any restaurant located on the hotel premises.

Excluded from the definition of employer for purposes of this update are nonprofit institutions of higher learning that operate medical centers in the city of Los Angeles.

### **Are managers and supervisors subject to the COVID-19 Right of Recall?**

No. The Right of Recall only applies to a laid off worker who does not act as a manager, supervisor, or confidential employee. A laid off worker also does not include a person who performs as their primary job responsibility sponsorship sales for an event center employer.

### **How do you determine whether the laid off worker is qualified for recall or rehire?**

The laid off worker must have held the **same or similar position** at the same site of employment at the time of the laid off worker's most recent separation from active service with the employer;

or

The laid off worker is or can be qualified for the position with the **same training that would be provided to a new worker** hired into that position.

### **How long is the COVID-19 Right of Recall in effect?**

From June 14, 2020, onward without an end date. The City Council and mayor of Los Angeles will revisit the ordinance to determine whether the provisions are still necessary before March 1, 2022.

### **How can the Right of Recall be enforced?**

A laid off worker may file a civil action against an employer **only after** meeting the following two pre-filing requirements:

1. Providing written notice to the original and/or new employer of the provisions of the ordinance the worker believes the employer allegedly violated and the facts supporting the alleged violation
2. Providing the original and/or new employer with 15 days to cure any alleged violation

A laid off worker, who has complied with the two pre-filing requirements, may bring an action against an employer in the Superior Court for the State of California for violation of the ordinance and may be awarded: hiring and reinstatement rights; "all actual damages including but not limited to lost pay and benefits and for statutory damages in the sum of \$1,000, whichever is greater"; punitive damages; and reasonable attorneys' fees and costs.

An employer who prevails in a civil action may recover attorneys' fees if the court deems that the worker's lawsuit was frivolous.

### **Is there an exemption for the COVID-19 Right of Recall?**

Yes, there is an exemption, but it applies in the case of a CBA with a right of recall provision that is in place on or before June 14, 2020. Any or all provisions of the ordinance may be expressly waived in a CBA as long as the waiver is explicitly set forth within the agreement in clear and unambiguous terms.

### **Can an employee waive his/her rights under the COVID-19 Right of Recall Ordinance?**

No, a laid off worker cannot waive his/her individual rights under the ordinance. Other than in connection with bona fide negotiation of a CBA, any request by an employer to an employee to waive will constitute a violation of the ordinance.

In light of this new ordinance, employers who have workers in the city of Los Angeles should contact experienced employment counsel to ensure compliance.

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