

Updates

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City of Los Angeles COVID-19 Worker Retention 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 Worker Retention Ordinance applies to airport, hotel, event center, and commercial property businesses and works in tandem with the COVID-19 Right of Recall Ordinance. The ordinance becomes effective on June 14, 2020, and is triggered when employers engage in a "Change in Control" (by selling, assigning, transferring, contributing, or otherwise disposing of all or substantially all the assets used in the operation of a business, or a discrete portion of a business that continues to operate as the same type of business) to a successor or new employer.

The original employer, called the incumbent business employer, must provide the new employer, called the successor business employer, with the name, address, date of hire, and occupation classification of each worker within 15 days after the execution of the transfer document (defined as the purchase agreement or other document effectuating the Change in Control). The new employer must maintain a "preferential hiring list" of those workers and must hire from that list beginning on the date of the execution of the transfer document until six months after the business is open to the public under the new employer.

If the new employer determines that it needs fewer workers than the original employer needed, the new employer is required to offer an available position to the worker in the same occupational classification with the greatest length of service with the original employer.

If the new employer extends an offer of employment to a worker, the offer must be in writing, **can be limited to a 90-day transition period**, and must remain open for at least 10 business days following the offer of employment. The new employer must retain written verification of that offer of employment for at least three years from the date of the offer. The written verification must include the name, address, date of hire, and occupation classification of the worker(s).

A worker **does not include** a managerial, supervisory, or confidential employee and is defined as:

1. Someone whose length of service for the original employer was for six months or more (the worker's length of service is inclusive of leaves and vacation time);
2. Whose primary place of employment is a business subject to a Change in Control;
3. Who is employed or contracted to perform work functions directly by the original employer or by an individual or business who has contracted with the original employer to provide services; and
4. Who worked for the original employer on or after March 4, 2020, and prior to the execution of the transfer document.

The ordinance requires the original employers to post written notices of the Change in Control within five days of the execution of the transfer document. (See the FAQs below for additional notice requirements.) It also requires that the new employer retain each worker hired under the ordinance for at least 90 days after the worker starts working for the new employer. During the 90-day transition period, the worker can only be terminated with cause and must be employed under "reasonable terms and conditions of employment as required by law."

The ordinance then requires that after the 90-day transition period the new employer provide the worker with a written performance evaluation. The new employer must retain a record of the written performance evaluation for at least three years. If the worker's performance during the 90-days is "satisfactory," the new employer is

required to consider offering the worker continued employment.

An employee 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 a business to an employee 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. Businesses 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 a business subject to the COVID-19 Worker Retention Ordinance?

Airport Businesses: 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**, the City of Los Angeles Department of Airports; **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 a business (defined as an airport, commercial property, event center, or hotel business) that is a party to an agreement with the airport that contains a worker retention requirement.

Commercial Property Businesses: 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, or security service workers who perform work for a commercial property business are covered.

Event Center Businesses: 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 Businesses: 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.

What are the notice requirements under the COVID-19 Worker Retention Ordinance?

The original employer must post a written notice of the Change in Control in a conspicuous place (visible to workers) at the location of the affected business within five business days following the execution of the transfer document. The notice must remain posted during any closure of the business and for six months after the business is open to the public under the new employer.

The written notice must include at least the following:

- The name of the original employer and its contact information;
- The name of the new employer and its contact information; and
- The effective date of the Change of Control.

Can the new business terminate a worker hired subject to the COVID-19 Worker Retention Ordinance during the 90-day transition period?

Yes, but the business can only terminate the employee for cause during the 90-day transition period.

Is there a specific end date for the COVID-19 Worker Retention Ordinance?

There is not a specific end date for the Worker Retention Ordinance. The Ordinance only provides that 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 COVID-19 Worker Retention Ordinance be enforced?

There are no criminal penalties. A worker may file a civil action against the 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; and
2. Providing the original and/or new employer with 15 days to cure any alleged violation.

An individual, who has complied with the two pre-filing requirements, may bring an action against the original or new employer in the Superior Court for the State of California for violation of the ordinance and may be awarded:

1. Hiring and reinstatement
2. Front or back pay for each day the violation continues, which will be calculated at a rate of compensation not less than the higher of the following:
 - The average regular rate of pay received by the worker during the last three years of their employment in the same occupation classification; or
 - The most recent regular rate received by the worker while employed by either the business, incumbent business employer, or the successor business employer.
3. The value of the benefits the worker would have received under the successor business employer's benefits plan; and
4. The potential for reasonable attorneys' fees and costs if the employee prevails (at the court's discretion).

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 Worker Retention Ordinance?

Yes, there is an exemption that applies in the case of a CBA with a worker retention 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 Worker Retention Ordinance?

No, a 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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