

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 17, 2020

TO: Honorable Members of the City Council

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No. 20-0147-S15, -S35, -S42
Assignment No. 20-03-0357, -0358

RIGHT OF RECALL AND CITYWIDE WORKER RETENTION ORDINANCES

SUMMARY

At its meeting of March 27, 2020, the Council considered two draft ordinances in response to the COVID-19 emergency, which address Right of Recall and Citywide Worker Retention for employees within the City (CF 20-0147-S15, 20-0147-S35, and 20-0147-S42). The ordinances provide limited term actions to ensure fair employment practices during the emergency response and recovery. The Right of Recall ordinance covers certain employers that laid off workers during the COVID-19 pandemic. The Worker Retention ordinance covers certain businesses that change ownership or control within two years following the declaration of emergency resulting from the COVID-19 pandemic.

During the course of discussion, seven Motions were introduced by Council, and the Chief Legislative Analyst (CLA), with assistance of the City Attorney, City Administrative Officer (CAO), and Economic and Workforce Development Department (EWDD) were instructed to review the Motions and report with additional information. The seven motions are as follows:

1. Bonin – Ryu:
Amend both ordinances to apply only to businesses with more than 50 employees.
2. Price – Wesson:
Amend Right of Recall ordinance to define “Employer” to not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles (Sec. 200.31.B).
3. Lee – Buscaino:
Amend Right of Recall ordinance to:
 - A. Allow an employer to notify laid off qualified workers of recall opportunities in writing and electronic mail (Sec. 200.32.A).
 - B. Eliminate language that identifies a qualified worker as one that can perform the job with additional training. (Sec. 200.32.A).
 - C. Change the time limit in which a laid off worker must respond to the notice of recall opportunity from 10 days to 48 hours, and provide later priority to those who respond between 48 hours and 10 days (Sec. 200.32.B).

- D. Eliminate language which would allow punitive damages to be awarded to a laid off worker if an employer violates this ordinance (Sec. 200.33.A.3).
 - E. Eliminate language that would void a waiver of rights by a laid off worker and any waiver request by an employer would constitute a violation of this article (Sec. 200.35).
- 4. Buscaino – Rodriguez:
Amend both ordinances to exempt restaurants.
 - 5. Krekorian – O’Farrell:
Consider draft ordinances and amending motions at a future Council meeting.
 - 6. Cedillo – Rodriguez:
Amend both ordinances to apply to hospitality workers only.
 - 7. Martinez – Krekorian:
Instruct the CLA and City Attorney to develop a Permanent Worker Retention Ordinance for hospitality, tourism, and janitorial workers. Further, authorize CLA to hire the necessary consultants and report in 30 days with a status report.

This report addresses all of the above motions except for No. 5 (Krekorian – O’Farrell) as the Council in essence approved this motion by deferring action at the March 27, 2020 Council meeting. The recommendations are grouped by policy area. Council should consider and take actions on the various policy elements contained in the motions and request the City Attorney to prepare and present to the Council the revised ordinances for Right of Recall and Citywide Worker Retention consistent with Council direction.

RECOMMENDATIONS

That the Council, relative to the communication from the City Attorney and proposed ordinances providing Right of Recall and Worker Retention protections to workers laid off during the COVID-19 crisis, consider and take actions on each policy element below and request the City Attorney to prepare and present to the Council the revised ordinances consistent with Council direction:

Policy Area: Exemptions/Definitions

Right of Recall and Citywide Worker Retention Ordinances

- 1. Amend both ordinances to apply only to businesses with more than 50 employees (Bonin – Ryu).
- 2. Amend both ordinances to exempt restaurants (Buscaino – Rodriguez).
- 3. Amend both ordinances to apply to hospitality workers only (Cedillo – Rodriguez). Further discussion on the definition of “hospitality workers” would be required.

Right of Recall Ordinance Only

4. Define “Employer” to not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles (Sec. 200.31.B) (Price – Wesson).

Policy Area: Procedures

Right of Recall Ordinance Only

5. Allow an employer to notify laid off qualified workers of recall opportunities in writing and electronic mail (Sec. 200.32.A) (Lee – Buscaino).
6. Eliminate language that identifies a qualified worker as one that can perform the job with additional training. (Sec. 200.32.A) (Lee – Buscaino).
7. Change the time limit in which a laid off worker must respond to the notice of recall opportunity from 10 days to 48 hours, and provide later priority to those who respond between 48 hours and 10 days (Sec. 200.32.B) (Lee – Buscaino).
8. Eliminate language which would allow punitive damages to be awarded to a laid off worker if an employer violates this ordinance (Sec. 200.33.A.3.) (Lee – Buscaino).
9. Eliminate language that would void a waiver of rights by a laid off worker and any waiver request by an employer would constitute a violation of this article (Sec. 200.35) (Lee – Buscaino).

Policy Area: Permanent Retention Ordinance

10. Instruct the CLA and City Attorney to develop a Permanent Retention Ordinance for hospitality, tourism, and janitorial workers as discussed in this report. Further, authorize CLA to hire the necessary consultants and report in 30 days with a status report (Martinez – Krekorian).

BACKGROUND

In response to the Council actions of March 17, 2020, the City Attorney transmitted on March 26, 2020 two draft ordinances on Right of Recall for workers laid off during COVID-19 and a Citywide Worker Retention Requirement when a business reopens after a change in ownership (CF 20-0147-S15, 20-0147-S35, and 20-0147-S42). The ordinances provide limited term actions to ensure fair employment practices during the emergency response and recovery.

The Right of Recall ordinance would add Article 4-72J-A to the Los Angeles Municipal Code, providing various worker protections. It would provide priority by seniority for rehiring of those laid off due to COVID-19. A laid off worker would be defined as one who worked at least six months and separated on or after March 4, 2020, not including managers, supervisors or confidential employees. An employer would be defined as having earned \$5M or more in 2019. The draft ordinance would require a right of recall if the laid off worker held the same or similar position or can be qualified with training for a new job hire by the employer. Laid off workers would have 10 days to accept the offer. The draft ordinance also contains provisions relating to a private right of action; exempts collective bargaining; and, no waiver of rights. The draft ordinance

has no expiration date. It would require the CLA to report by March 1, 2022 on whether there is a need to continue the ordinance for COVID-19 recovery efforts.

The Citywide Worker Retention ordinance would provide protections by seniority after a change in ownership within two years of the emergency declaration. A change in control would be defined as any sale, assignment, or transfer of a business to a successor business that continues to operate as the same type of the incumbent business, or any person who controls the incumbent business employer. A worker would be defined as one who worked at least six months for the incumbent business employer on or after March 1, 2020 and prior to the change in ownership. The incumbent business employer would have 15 days after transfer to notify the successor business employer with worker names, and the successor business employer would be required to hire from the list by seniority for six months after the business is open to the public under the successor business employer. The draft ordinance also contains provisions relating to a private right of action; exempts collective bargaining; and, no waiver of rights. Those hired must be employed for at least 90 days with a written evaluation thereafter for a permanent hiring opportunity. The draft ordinance has no expiration date. It would require the CLA to report by March 1, 2022 on the effectiveness of the article in protecting workers when a business changes ownership and whether there is a need to continue the ordinance for COVID-19 recovery efforts.

On March 27, 2020, the Council considered the two draft ordinances and deliberated on various potential amendments as discussed in this report. While most of the proposed changes are straightforward, there are several that would require further policy direction from the Council in order for the City Attorney to revise the proposed ordinances.

Definition of Hospitality

Motion (Cedillo – Rodriguez) would amend both ordinances to apply to “Hospitality” workers only. “Hospitality” would need to be defined in the ordinances. This may include all or select employees at hotels, restaurants and other businesses. In correspondence with this office, Councilmember Cedillo’s Office suggested that the ordinances could apply to hotels, hotel restaurants, and restaurants with more than 500 employees with collective bargaining agreements. Council would need to provide direction on how employee counts will be calculated, e.g. number of employees at any one location within Los Angeles, number of total employees at all locations within Los Angeles, or number of employees nationwide. It will also be necessary to determine whether all employees will be covered or whether there will be exclusions (such as managers, supervisors and contractors). Additional discussion on the definition of hospitality is further discussed below.

Definition of Hospitality, Tourism, and Janitorial Workers

Motion (Martinez – Krekorian) instructs the CLA to work with the City Attorney to develop a Permanent Retention Ordinance for hospitality, tourism, and janitorial workers. The Motion would authorize the CLA to retain the assistance of a consultant, and to report in 30 days with a status report on the process and time frame to bring a Permanent Retention Ordinance to the Council. The City Attorney has advised that any ordinance that establishes a permanent worker retention requirement on City businesses would require economic studies and outreach to affected businesses, community and advocacy organizations, labor, and other interested parties. Studies

and reports that result from these efforts would then inform any findings the Council would make when considering and adopting a final ordinance.

In order to move forward with a study, a definition of “Hospitality, Tourism and Janitorial Workers” is essential. In correspondence from Council President Martinez’ Office, their office would define the industries to be included for review as follows:

- Hospitality/Tourism: include but not be limited to hotels, event centers, stadiums, concert facilities, sporting facilities, and conference centers.
- Janitorial Workers: include but not be limited to janitorial, maintenance and security service jobs in commercial properties.
- Airport Hospitality Operations: include but not be limited to employees at stores and restaurants inside airports and those involved in food and beverage delivery to aircraft.

There may be other criteria for a proposed permanent policy, such as the size of the business, gross receipts, service area or income threshold for the employees. Council may wish to provide additional guidelines and instructions, if appropriate.

While these definitions are considered in the context of a Permanent Retention Ordinance, Council may wish for consistency to incorporate a similar definition for the two proposed job protection ordinances for COVID-19 response. As indicated in the previous section, Motion (Cedillo-Rodriguez) would limit application of the Right of Recall and Citywide Worker Retention ordinances to the “Hospitality” industry, but City Attorney requires further information on its definition. The above could provide a definition of “Hospitality” and, to the extent possible, City Attorney could be requested to use existing City code sections to further prescribe the applicability of the short-term ordinances, e.g., “Hotel” is already defined in Los Angeles Municipal Code Section 186.01. The City Attorney may have other considerations for the two short-term ordinances, such as the square footage of venues, the size of the business in terms of number and types of employees, etc.

Other Issues

Several other issues were raised during the Council’s consideration of the draft ordinances, as follows:

Rebuttable Presumption

While none of the amending motions make changes to the Right of Recall ordinance’s definition of “Laid Off Worker,” several Councilmembers questioned why the definition provides the rebuttable presumption that any termination occurring on or after March 4, 2020 was due to a non-disciplinary reason. Councilmembers reported concern among business owners regarding the legally required burden of proof to demonstrate that a termination was disciplinary in nature. Some Councilmembers reported that business owners felt that the rebuttable presumption provided by the ordinance would give undue strength to the claims of laid off workers and could empower employees who had been terminated for disciplinary reasons.

Sunset Provision

There was Council discussion regarding whether each ordinance should be in effect for a limited term to respond to the COVID-19 emergency or remain in effect beyond the current emergency. The current draft ordinances before Council do not have a termination date; rather, the CLA is instructed to report before March 1, 2022 on the effectiveness of the provisions and whether they are still necessary for the City's recovery from the impacts of the COVID-19 pandemic.

"Laid Off Worker" in Right of Recall vs. "Worker" in Citywide Worker Retention Ordinance

Council discussed the difference in time frames contained in the two ordinances. A "Laid Off Worker" in the Right of Recall ordinance is one that separates after March 4, 2020 (date of the City and State Emergency Declaration). A "Worker" in the Citywide Worker Retention ordinance is defined as one employed as of March 1, 2020. Council discussion focused on whether these dates are correct and appropriate.

Priority for Right of Recall

Several issues arose relative to the priority of recalling laid off workers. Councilmembers reported that business owners were unsure whether preferential recall status prioritized employee classification or length of service.

Regarding employee classifications, one qualifying condition for a laid off worker having a right of recall is that the worker held "the same or similar position" to the one being offered. This condition is not clearly defined and is open to questions regarding its application, e.g., whether a line cook is "similar" to a prep cook, or a bartender is "similar" to a waiter. Council may wish to give direction about how it would like this requirement to be clarified.

The other qualifying condition states that laid off workers who "[are] or can be qualified for the position with the same training that would be provided to a new worker hired into that position" are to be given preferential hiring status over the hypothetical new worker. It is not clear how much a training regimen can diverge while being legally "the same." Councilmembers reported that the issues associated with this section are particularly problematic for restaurants. Note that Motion (Lee – Buscaino) would remove this criteria.

Ordinance Preparation for Emergency and Permanent Employee Protections

The City Attorney is prepared to revise the draft employee protection ordinances for COVID-19 response in accordance with Council's actions on amendments. The ordinances could apply to all businesses or select businesses/job classifications as defined. The duration of the ordinances could be limited or expanded. The City Attorney indicates they would have revised ordinances as soon as the next Council meeting.

The City currently has two worker retention ordinances in effect: the Hotel Worker Retention Ordinance affecting hotels along the Century Boulevard corridor near Los Angeles International Airport and the Grocery Worker Retention Ordinance. These ordinances are in effect and enforced. The Grocery Worker Retention Ordinance was challenged in court. In the end, the California Supreme Court found in favor of the City because the ordinance was approved based on specific findings resulting from economic studies and public outreach. The Court, in its ruling, specifically recognized the City's effort to engage hotel operators and owners, businesses, labor, community advocates, and others, as well as the detailed economic studies that evaluated impacts of the

proposed ordinances. The City Attorney advises that if Council desires a permanent Worker Retention ordinance and/or a permanent Right of Recall ordinance, such studies and outreach would be necessary to support the findings of the ordinances. This Office will work with the City Attorney on a permanent worker retention policy as directed by Council.


Tristan Noack
Legislative Analyst

- Attachments:
1. Bonin – Ryu Motion
 2. Price – Wesson Motion
 3. Lee – Buscaino Motion
 4. Buscaino – Rodriguez Motion
 5. Krekorian – O’Farrell Motion
 6. Cedillo – Rodriguez Motion
 7. Martinez – Krekorian Motion
 8. Draft Right of Recall Ordinance
 9. Draft Citywide Worker Retention Ordinance

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic in order that the two Ordinances apply only to businesses with more than 50 employees.

PRESENTED BY _____
MIKE BONIN
Councilmember, 11th District

SECONDED BY _____
DAVID RYU
Councilmember, 4th District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic as follows:

AMEND the Ordinance adding Article 4-72J-A to add the following language in red:

SEC. 200.31 DEFINITIONS

The following definitions shall apply to this article.

- A. "City" means the City of Los Angeles.
- B. "Employer" means any person or entity who employs a Worker who works in the City, and who earned gross receipts in 2019 exceeding \$5,000,000. *Employer does not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles.*

PRESENTED BY _____

CURREN D. PRICE, JR.
Councilmember, 9th District

SECONDED BY _____

HERB J. WESSON, JR.
Councilmember, 10th District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic as follows:

AMEND the Ordinance adding Article 4-72J-A via interlineation as follows:

SEC. 200.32 RIGHT OF RECALL.

or electronic mail

A. Priority for Laid Off Workers. An Employer shall offer in writing[^], to the last known address of every Laid Off Worker, any position which is or becomes available after the effective date of this article for which the Laid Off Worker is qualified. A Laid Off Worker is qualified - and must be offered a position in the order below - if the Laid Off Worker: (1) 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 ~~(2) is or can be qualified for the position with the same training that would be provided to a new worker hired into that position. If more than one Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest length of service with the Employer at the employment site.~~

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this article shall be given no less than ~~ten days~~ 48 hours in which to accept or decline the offer. ~~If Laid Off Worker responds after 48 hours but within ten days, Employer shall place Laid Off Worker on the next tier in order of seniority.~~

SEC. 200.33. ENFORCEMENT.

A. Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article.
2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.
- ~~3. Punitive damage, pursuant to California Civil Code Section 3294.~~
4. Reasonable attorneys' fees and costs, as determined by the court, if the Laid Off Worker is the prevailing party in the action.

B. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.34. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective

bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this article.

~~SEC. 200.35. NO WAIVER OF RIGHTS.~~

~~Except for a collective bargaining agreement provision made pursuant to Section 200.34, any waiver by a Laid Off Worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this article shall constitute a violation of this article.~~

PRESENTED BY _____
JOHN S. LEE
Councilmember, 12TH District

SECONDED BY _____
JOE BUSCAINO
Councilmember, 15th District

March 27, 2020
CF 20-0147-S19
20-0147-S19_mot_4_3-27-20

MOTION (Corrected)

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic as follows:

1. AMEND the Ordinance dated March 26, 2020 adding Article 4-72J-A to add the following language in red:

SEC. 200.31 DEFINITIONS

The following definitions shall apply to this article.

- A. "City" means the City of Los Angeles.
 - B. "Employer" means any person or entity who employs a Worker who works in the City, and who earned gross receipts in 2019 exceeding \$5,000,000. **Employer does not include restaurants.**
2. AMEND the Ordinance dated March 26, 2020 adding Article 4-72J-B to add a new section to the Ordinance entitled Exemptions with the following language in red:

Exemptions

The provisions of this Article shall not apply to restaurants (specifically restaurants located in existing hotel sites).

PRESENTED BY _____
JOE BUSCAINO
Councilmember, 15th District

SECONDED BY _____
MONICA RODRIGUEZ
Councilmember, 7th District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

MOTION

I HEREBY MOVE that Council CONTINUE the debate relative to the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic to a future Council meeting to allow for further consideration of the Ordinances and amending motions.

PRESENTED BY _____

PAUL KREKORIAN
Councilmember, 2nd District

SECONDED BY _____

MITCH O'FARRELL
Councilmember, 13th District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic in order that the two Ordinances apply to hospitality workers only.

PRESENTED BY _____
GILBERT A. CEDILLO
Councilmember, 1st District

SECONDED BY _____
MONICA RODRIGUEZ
Councilmember, 7th District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic to add the following recommendation:

INSTRUCT the Chief Legislative Analyst (CLA) and City Attorney to develop a Permanent Retention Ordinance for hospitality, tourism, and janitorial workers. The CLA is authorized to retain the assistance of a consultant, and shall report back in 30 days with a status report on the process and time frame to bring this Ordinance to the Council.

PRESENTED BY _____
NURY MARTINEZ
Councilmember, 6th District

SECONDED BY _____
PAUL KREKORIAN
Councilmember, 2nd District

March 27, 2020
CF 20-0147-S15, 20-0147-S35, 20-0147-S42
20-0147-S15_mot_3-27-20

ORDINANCE NO. _____

An ordinance adding Article 4-72J-A to Chapter XX of the Los Angeles Municipal Code subjecting certain businesses in Los Angeles to recall provisions for certain workers laid off during the COVID-19 pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 4-72J-A is added to Chapter XX of the Los Angeles Municipal Code to read as follows:

ARTICLE 4-72J-A

COVID-19 RIGHT OF RECALL

SEC. 200.30. PURPOSE.

As a result of the COVID-19 pandemic and "Safer at Home" declarations by California Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti, issued to protect the public health and welfare, many workers in the City of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the City hereby enacts legal protections for workers laid off due to the pandemic.

SEC. 200.31. DEFINITIONS.

The following definitions shall apply to this article:

- A. "City" means the City of Los Angeles.
- B. "Employer" means any person or entity who employs a Worker who works in the City, and who earned gross receipts in 2019 exceeding \$5,000,000.
- C. "Laid Off Worker" means any Worker who has a Length of Service with the Employer for six months or more and whose most recent separation from active employment by the Employer occurred on or after March 4, 2020, and resulted from a lack of business, a reduction in work force or other economic, non-disciplinary reason. This ordinance creates a rebuttable presumption that any termination occurring on or after March 4, 2020, was due to a non-disciplinary reason.

D. "Length of Service" means the total of all periods of time during which a Worker has been in active service, including periods of time when the Worker was on leave or vacation.

E. "Worker" means any person who does not act as a manager, supervisor or confidential employee, and who is not required to possess an occupational license.

SEC. 200.32. RIGHT OF RECALL.

A. Priority for Laid Off Workers. An Employer shall offer in writing, to the last known address of every Laid Off Worker, any position which is or becomes available after the effective date of this article for which the Laid Off Worker is qualified. A Laid Off Worker is qualified – and must be offered a position in the order below – if the Laid Off Worker: (1) 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 (2) is or can be qualified for the position with the same training that would be provided to a new worker hired into that position. If more than one Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest length of service with the Employer at the employment site.

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this article shall be given no less than ten days in which to accept or decline the offer.

SEC. 200.33. ENFORCEMENT.

A. A Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article.
2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.
3. Punitive damage, pursuant to California Civil Code Section 3294.
4. Reasonable attorneys' fees and costs, as determined by the court, if the Laid Off Worker is the prevailing party in the action.

B. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.34. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this article.

SEC. 200.35. NO WAIVER OF RIGHTS.

Except for a collective bargaining agreement provision made pursuant to Section 200.34, any waiver by a Laid Off Worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this article shall constitute a violation of this article.

SEC. 200.36. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council hereby declares that it would have adopted this article and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

SEC. 200.37. REPORT.

Before March 1, 2022, the Chief Legislative Analyst shall report to the City Council and Mayor on the effectiveness of the provisions of this article in protecting workers' stability of employment, recommendations for additional protections that further the intent of this article, and whether the provisions of the article are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

SEC. 200.38. RETALIATORY ACTION PROHIBITED.

No Employer shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to exercise his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reason: The State of California and the City of Los Angeles

have declared a state of emergency due to the COVID-19 pandemic. Residents are subject to "stay at home" orders and certain businesses must reduce services or close. Workers in the City of Los Angeles are losing employment as a result of layoffs or closures, affecting their ability to feed and shelter their families. The pandemic also increases the threat to the safety of these workers and their families if workers' incomes are reduced or eliminated now or for the foreseeable future, along with health benefits and the means to seek medical assistance. Because of the immediate threat of economic hardship for workers in the City, this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By


DAVID MICHAELSON

Chief Assistant City Attorney

Date

3/26/20

File No.

M:\Muni Counsel\COVID-19\REVISED ORDINANCES AND REPORTS\LAMC 200.30 - COVID-19 RIGHT OF
RECALL.3.26.20.docx

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than three-fourths of all its members.

CITY CLERK

MAYOR

Ordinance Passed

Approved

ORDINANCE NO. _____

An ordinance adding Section 200.40 to Article 4-72J-B of Chapter XX of the Los Angeles Municipal Code requiring certain businesses in Los Angeles to comply with citywide worker retention provisions applicable to an employer's change of ownership or control that occurs within two years following the declaration of emergency resulting from the COVID-19 pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 4-72J-B is added to Chapter XX of the Los Municipal Code to read as follows:

ARTICLE 4-72J-B

COVID-19 CITYWIDE WORKER RETENTION ORDINANCE

SEC. 200.40. PURPOSE.

As a result of the COVID-19 pandemic and "Safer at Home" declarations by California Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti, issued to protect the public health and welfare, many workers in the City of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the City hereby enacts legal protections for workers when a business changes ownership.

SEC. 200.41. DEFINITIONS.

The following definitions shall apply to this article:

A. "Business" means a corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign, set up for profit in the City.

C. "Change in Control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of 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 of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.

B. "City" means the City of Los Angeles.

D. **"Employment Commencement Date"** means the date on which a Worker retained by the Successor Business Employer pursuant to this article commences work for the Successor Business Employer in exchange for compensation under the terms and conditions established by the Successor Business Employer or as required by law.

E. **"Incumbent Business Employer"** means the Person who owns, controls, and/or operates a Business prior to the Change in Control.

G. **"Length of Service"** means the total of all periods of time during which a Worker has been in active service, including periods of time when the worker was on leave or vacation.

G. **"Person"** means an individual, corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

H. **"Successor Business Employer"** means the Person who owns, controls, and/or operates a Business after the Change in Control.

I. **"Transfer Document"** means the purchase agreement or other documents creating a binding arrangement to effect the Change in Control.

J. **"Worker"** means an individual employed by the Incumbent Business Employer: (1) who has a Length of Service with the Incumbent Business Employer for six months or more; (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 Incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business subject to the Change in Control; and (4) who worked for the Incumbent Business Employer on or after March 1, 2020, and prior to the execution of the Transfer Document. "Worker" does not include a managerial, supervisory, or confidential employee.

SEC. 200.42. BUSINESS WORKER RETENTION.

A. BUSINESS EMPLOYER'S RESPONSIBILITIES.

1. The Incumbent Business Employer shall, within 15 days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A.1 of this section, and shall be required to hire from that list for a

period beginning upon the execution of the Transfer Document and continuing for six months after the Business is open to the public under the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. TRANSITION EMPLOYMENT PERIOD.

1. A Successor Business Employer shall retain each Worker hired pursuant to this article for no fewer than 90 days following the Worker's Employment Commencement Date. During the 90-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a Worker with a written offer of employment. This offer shall remain open for at least ten business days from the date of the offer.

2. If, within the period established by Section 200.42.A.2, the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall retain Workers by seniority within each job classification to the extent that comparable job classifications exist.

3. During the 90-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this article.

4. At the end of the 90-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this article. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer shall consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer shall retain a record of the written performance evaluation period of no fewer than three years.

C. NOTICE OF CHANGE IN CONTROL.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six months after the Business is open to the public under the Successor Business Employer.

2. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of the Successor Business Employer and its contact information, and the effective date of the Change in Control.

3. Notice shall be posted in a conspicuous place at the Business so as to be readily viewed by Workers, other employees, and applicants for employment.

SEC. 200.43. RETALIATORY ACTION PROHIBITED.

No Incumbent or Successor Business Employer employing a Worker shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to exercise his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 200.44. ENFORCEMENT.

A. A Worker may bring an action in the Superior Court of the State of California against an Incumbent Business Employer or the Successor Business Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article. For a Worker, the 90-day transition employment period begins on the Worker's Employment Commencement Date with the Successor Business Employer.

2. Front or back pay for each day the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

a. The average regular rate of pay received by the Worker during the last three years of their employment in the same occupation classification; or

b. The most recent regular rate received by the Worker while employed by either the Business, Incumbent Business Employer, or the Successor Business Employer.

3. Value of the benefits the Worker would have received under the Successor Business Employer's benefits plan.

B. If the Worker is the prevailing party in any legal action taken pursuant to this section, the court may award reasonable attorney's fees and costs.

C. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.45. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this article.

SEC. 200.46. NO WAIVER OF RIGHTS.

Except for a collective bargaining agreement provision made pursuant to Section 200.45, any waiver by a Worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this article shall be a violation of this article.

SEC. 200.47. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council hereby declares that it would have adopted this article and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

SEC. 200.48. REPORT.

Before March 1, 2022, the Chief Legislative Analyst shall report to the City Council and Mayor on the effectiveness of the provisions of this article in protecting workers when a business changes ownership, recommendations for additional protections that further the intent of this article, and whether the provisions of the article are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reason: The State of California and the City of Los Angeles have declared a state of emergency due to the COVID-19 pandemic. Residents are subject to "stay at home" orders and certain businesses must reduce services or close. Workers in the City of Los Angeles are losing employment as a result of layoffs or closures, affecting their ability to feed and shelter their families. The pandemic also increases the threat to the safety of these workers and their families if workers' incomes are reduced or eliminated now or for the foreseeable future, along with health benefits

and the means to seek medical assistance. Because of the immediate threat of economic hardship for workers in the City, this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

Date

3/26/20

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than three-fourths of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____