

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. _____

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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 _____