

L.A. CITY COUNCIL PASSES RIGHT-OF-RECALL AND WORKER RETENTION ORDINANCES

Insights
May 4, 2020

Los Angeles Mayor Garcetti just signed two companion ordinances involving worker retention and right-of-recall that will go into effect on June 14, 2020. The below is intended to help employers determine if — and to what extent — these ordinances impact your business operations.

DO THESE LAWS APPLY TO OUR BUSINESS?

The two ordinances only apply to airport, commercial property, event center, and hotel employers. These four categories are expansively defined and include tangential employers encompassed within these industries. More specifically, these employers are defined as:

- 1. Airport Employer:** Any employer that provides any service at the airport or provides any service to any employer servicing the airport and is required to comply with the L.A. Living Wage Ordinance. It **does not** include an airline or an employer that already had an agreement with a worker rehire requirement. Note: “airport” means the City of Los Angeles Department of Airports and each airport it operates in the city.
- 2. Commercial Property Employer:** 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. Notably, only janitorial, maintenance, and security service workers are covered employees.

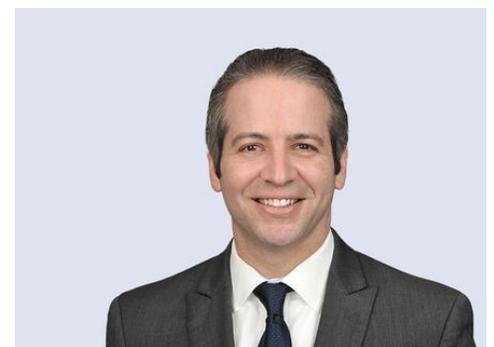
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3. **Event Center Employer:** An owner, operator or manager of a publicly or privately owned structure in the city of more than 50,000 square feet or with a seating capacity of 1,000 seats or more that is used for public performances, sporting events, business meetings or similar events. Specific examples include concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.
4. **Hotel Employer:** 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 contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. This employer includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.

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WHAT DOES RIGHT-OF-RECALL MEAN FOR MY BUSINESS?

First, this ordinance only applies to “laid-off workers.” To qualify, a laid-off worker must have performed at least two hours of work in the city and either (1) worked for six months or more with the employer (including leave and vacation times) or (2) separated from the employer on or after March 4, 2020 for a non-disciplinary reason (i.e., lack of business, reduction in work force, or other economic reason).

Managers, supervisors, confidential employees, or a person who is primarily responsible for sponsorship sales for an event center employer are not included.

If an employer has laid off workers as defined by the ordinance and positions that are open, they must contact the workers, in writing to the last known mailing address, e-mail, and text message phone number, and let them know of any positions that are available for which the worker is qualified. A worker is deemed “qualified” if (1) they held the same or similar position at the same site of employment prior to being laid off OR (2) they can become qualified with the same training that would be provided to a new worker hired for that same position.

If more than one laid-off worker is entitled to preference for a position, the employer must first offer the position (1) to the laid off worker with the greatest length of service who held the *same position* and then (2) to the laid-off worker with the greatest length of service *who can become*

qualified for the position with the same training that would be provided to a new worker hired into that position. A worker who is offered a position must have at least five business days to accept or decline the offer.

Any waiver of rights under this ordinance is unenforceable unless made pursuant to an explicit waiver in a collective bargaining agreement. Prior to March 1, 2022, the city will create a report assessing the effectiveness of the ordinance and whether these protections are still necessary.

WHAT DOES WORKER RETENTION MEAN FOR MY BUSINESS?

This ordinance applies where one of the businesses listed above undergoes a change in ownership or control, including sale, assignment, transfer, contribution, or other disposition of assets, within the next two years.

INCUMBENT BUSINESS: NOTICE AND LIST OF EMPLOYEES

The incumbent business must post written notice of the change in control in a conspicuous place visible to workers, employees, and applicants for employment within five business days of the transfer. Notice must include the name of the incumbent business and contact information, the name of the successor business and contact information, and the effective date of the change of control. Notice must remain posted during any closure and for six months after the successor employer opens to the public.

Within 15 days after execution of transfer, an incumbent business owner must provide the successor business with the name, address, date of hire, and occupation classification of each worker who (1) has worked for six months or more; (2) whose primary place of employment is the business that is being transferred; (3) who is employed or contracted to perform work functions directly to the incumbent owner or who is contracted with the incumbent business to provide services; and (4) who worked for the incumbent business employer on or after March 4, 2020 and prior to the business transfer. Managerial, supervisory, or confidential employees are not included.

SUCCESSOR BUSINESS: REHIRE AND REVIEW

The successor business is required to keep and hire from the list provided from the time of transfer to six months after the successor business is open to the public. If the successor business extends an offer of employment, it must retain written verification of the offer for at least three years after the offer was made. The verification should include the name, address, date of hire, and occupation classification of the worker.

Once hired, the successor business must keep each worker for at least 90 days (unless good cause exists for termination) after they begin working and provide them with a written offer of employment which will remain open for at least 10 business days. If during the 90-day period, the successor business determines that it needs fewer employees than the incumbent business did, it must offer the position to the worker with the greatest length of service.

At the end of the 90-day period, the successor business must perform a written performance evaluation for each worker it hired under this ordinance. If the worker's performance is satisfactory, the successor business must consider offering the worker continued employment. The business must keep a record of the written performance evaluation for at least three years.

WHAT ARE THE PENALTIES FOR NONCOMPLIANCE?

Both ordinances require that an employee provide written notice of the alleged violations and give the employer 15 days from receipt to cure the violation prior to filing a civil suit. If an employer refuses to remedy the violation under the Right-of-Recall ordinance, a worker can file a lawsuit with potential damages including hiring and reinstatement; the greater of either lost pay and benefits or statutory damages up to \$1,000; punitive damages; and attorneys' fees and costs.

If an employer refuses to remedy the violation under the Worker Retention ordinance, a worker can file a lawsuit with potential damages including hiring and reinstatement; front or back pay for each day the violation continues (calculated at the average rate of pay during the past three years or the most recent regular wage received by the worker); and value of the benefits the worker would have received under the successor business benefits plan.

WHAT SHOULD EMPLOYERS DO?

As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

CONCLUSION

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Los Angeles office](#), or any member of [our Post-Pandemic Strategy Group Roster](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.