

Los Angeles Continues to Lead Worker Protection in Hospitality, Janitorial, and Tourism Sectors Through Right of Recall and Retention Upon Change in Ownership

Date May 1, 2020

Executive Summary: On April 29, 2020, the Los Angeles City Council adopted two ordinances governing (1) right of recall and (2) protection of workers in the hospitality, janitorial, and tourism industries within the City of Los Angeles (the “City”). The purposes of these Ordinances are to protect workers that have been particularly impacted by the pandemic and ensure fair employment practices. Mayor Eric Garcetti has previously stated that he intends to sign these Ordinances.

RIGHT OF RECALL

Below is a summary of the new requirements and benefits established by this Ordinance.

Impacted Businesses

The Ordinance applies to:

Airport Employers: business providing services for the City’s Department of Airports or any airport operating in the City;

Commercial Property Employers: any owner, operator, manager, or lessee of a commercial property in the City that employs 25 or more janitorial, maintenance, or security service workers;

Event Center Employers: any owner, operator, or manager of any structure in the City that is greater than 50,000 square feet or has a seating capacity of over 1,000 that is used for public performances (i.e. concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers); and

Hotel Employers: any owner, operator, or manager of a building in the City that is used for public lodging that either (a) has 50+ guestrooms **or** (b) earned over \$5 million in gross receipts in 2019 (including any restaurant physically on the hotel premises).

The Ordinance does **not** apply to non-profit institutions of higher learning that operate medical centers in the City, airlines, restaurants that do not operate within a qualifying hotel, a business that has an agreement with a City airport that contains a worker rehire requirement, or a business that has a Collective Bargaining Agreement *with* a right of recall provision.

Eligible Workers

The Ordinance only applies to workers that (1) performed work within the City for an impacted business, (2) worked for the employer for at least six months, and (3) were separated on or after March 4, 2020 as a result of lack of business, reduction in work force, or other economic, non-disciplinary reason. There is a rebuttable presumption that any termination on or after March 4, 2020 was due to a non-disciplinary reason. For qualifying commercial properties, only janitorial, maintenance, or security service workers are eligible.

The Ordinance does **not** apply to a manager, supervisor, confidential employee, or a person whose primary job responsibility is sponsorship sales for an Event Center Employer.

Employer Obligations for Right of Recall

Where a position becomes available, an employer is required to make a written offer of employment via mail, email, and text message to an eligible worker if the worker was previously laid off for a position that he/she is qualified. Workers are considered to be “qualified” if they held the same or similar position at the same location at the time of separation or can be qualified for the position with the same training that would be provided to another person hired into that position.

If more than one laid off worker is eligible, priority is given to the worker (1) with the greatest length of service, and then (2) with the employer at the employment site.

The worker must have at least five business days to accept or decline the offer.

Documentation

Under the Ordinance, no formal documentation by the employer is required.

Enforcement

Workers claiming a violation of the Ordinance may bring a private right of action. However, they must first give written notice to the employer of the alleged violation. The employer has 15 days to cure the violation. Workers that bring legal action may seek damages including reinstatement, the greater of actual damages (i.e. lost wages and benefits) or \$1,000, punitive damages, attorneys' fees, and costs.

Expiration

The Ordinance does not provide an expiration date; however, the City must prepare a report prior to March 1, 2022 to determine whether this Ordinance is still necessary.

WORKER RETENTION

This Ordinance protects workers that may be affected by the sale of a business from a prior owner ("Incumbent") to another owner ("Successor").

Impacted Businesses

The Ordinance applies to Airport Employers, Commercial Property Employers, Event Center Employers, and Hotel Employers.

The Ordinance does **not** apply to airlines, restaurants that do not operate within a qualifying hotel, a business that has an agreement with a City airport that contains a worker rehire requirement, or a business that has a Collective Bargaining Agreement *with* a right of recall provision.

Eligible Workers

The Ordinance only applies to workers that (1) worked for the Incumbent for more than six months, (2) was still working for the Incumbent on or after March 4, 2020 but before the change in ownership, and (3) whose primary place of employment is subject to change and control. For qualifying commercial properties, only janitorial, maintenance, or security service workers are eligible.

The Ordinance does **not** apply to a manager, supervisor, or confidential employee.

Incumbent Employer Obligations

Within five business days of signing documents transferring ownership, the Incumbent must post written notice of the change in control at the location(s) of the affected business. The Notice must remain posted during any closure and for six months after the Successor is open to the public. The Notice must (1) include the name of the Incumbent and contact information, (2) include the name of the Successor and contact information, (3) include the effective date of change in control, and (4) must be posted in a conspicuous place visible to eligible workers, other employees, and applicants.

Within 15 days of signing documents transferring ownership, the Incumbent must provide the Successor with a list of workers that includes the name, address, date of hire, and occupation classification of each worker.

Successor Employer Obligations

The Successor must retain each eligible worker for at least 90 days ("Transition Period"). The Transition Period begins on the date that the worker receives compensation from the Successor. The Successor must provide a written offer of employment for the Transition Period, and this offer must stay open for at least 10 business days. During the Transition Period, the Successor may not

terminate an eligible worker's employment without cause. At the end of the Transition Period, the Successor must provide a written performance evaluation for each eligible worker. If the performance is satisfactory, the employer must consider continuing that worker's employment.

If the Successor determines that fewer workers are needed, it must offer the position based on length of service.

For the six months after the business is open to the public under the Successor, the Successor must give hiring priority to the list of workers provided by the Incumbent

Documentation

The Successor must maintain written records of all employment offers made to any eligible worker and all performance evaluations at the end of the Transition Period for three years.

Enforcement

Workers claiming a violation of the Ordinance may bring a private right of action. However, they must first give written notice to the employer of the alleged violation. The employer has 15 days to cure the violation. Workers that bring legal action may seek damages including reinstatement, front pay, back pay, the value of lost benefits, attorneys' fees, and costs.

Expiration

The Ordinance does not provide an expiration date; however, the City must prepare a report prior to March 1, 2022 to determine whether this Ordinance is still necessary.

RECOMMENDATIONS

It is recommended that employers in the hospitality, janitorial, and tourism industries within the City of Los Angeles seeking to hire additional workers determine if they are affected by these Ordinances and, if so, evaluate eligible employees.

It is recommended that employers seeking to sell or purchase businesses in the hospitality, janitorial, and tourism industries within the City review their obligations as an Incumbent or Successor Employer.

These Ordinances will have a significant impact on employers in Los Angeles. FordHarrison attorneys are available to assist you in implementing these changes and ensuring compliance with this and the other similar worker protection orders. If you have any questions or need assistance in complying with these Ordinances, please contact the authors of this Alert, Jack Schaedel, jschaedel@fordharrison.com, and Jenny Choi, jchoi@fordharrison.com, both of whom are attorneys in our Los Angeles office. Of course, you may also contact the FordHarrison attorney with whom you usually work.

FordHarrison is closely monitoring the spread of Coronavirus and associated federal and state legislation and has implemented continuity plans, including the ability to work remotely in a technologically secure environment when necessary, to ensure continuity of our operations and uninterrupted service to our clients. We are following all CDC guidelines and state and local laws as applicable. We are committed to ensuring the health and welfare of our clients, employees, and communities while continuing to provide our clients with the highest quality service. Please see our dedicated Coronavirus Taskforce and Coronavirus – CARES Act pages for the latest FH Legal Alerts and webinars on Coronavirus and workplace-related provisions of the CARES Act, as well as links to governmental and industry-specific resources for employers to obtain additional information and guidance. For more information or to be connected with a Coronavirus Taskforce or CARES Act attorney, please contact clientservice@fordharrison.com.