

# Priority Hiring Required for Laid Off Workers of Covered Employers in Los Angeles

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On April 29, 2020, the City of Los Angeles issued a new ordinance, entitled “[COVID-19 Right of Recall](#),” that requires covered employers in Los Angeles to offer priority hiring for laid off rank and file workers, and to allow those workers 5 business days to accept or deny the offer of employment. Specifically, covered employers must send written offer letters – via mail, email, and written text message – to laid off workers for positions the person is qualified for that become available after June 14, 2020. A laid off worker is qualified for a position if he or she held the same or similar position at the same site of employment prior to his or her separation, or can be qualified with the same training offered to a new worker hired into that position.

The ordinance takes effect on June 14, 2020.

## **Covered Employers**

The ordinance applies to the following types of Employers:

- **Airport Employers:** 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 Los Angeles Living Wage Ordinance. Airlines and an employer that is party to an agreement with the Airport that contains a worker rehire requirement are excluded from the ordinance.
- **Commercial Property Employers:** 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. The ordinance only applies to the janitorial, maintenance, and security service workers who perform work for the Commercial Property Employer.
- **Event Center Employers:** 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. Examples include concert halls, stadiums, sports arenas, racetracks, coliseums, and

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convention centers.

- **Hotel and Hotel Restaurant Employers:** An owner, operator or manager of a residential building in the city designated or used for public lodging or other related services for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 of over \$5 million. The term also includes the owner, operator, manager or lessee of any restaurant physically located on hotel premises.

Importantly, an “Employer” does not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles.

## **Covered Workers**

The ordinance applies to “Laid Off Workers,” which are defined as any person:

1. Who performs at least two hours of work in Los Angeles for a covered employer,
2. Who has worked for a covered employer for 6 or more months (inclusive of leaves and vacations), and
3. Who was separated on or after March 4, 2020, as a result of a lack of business, a reduction in work force or other economic, non-disciplinary reason.

Importantly, a Laid Off Worker does **not** include a “manager, supervisor, confidential employee or a person who performs as their primary job responsibility sponsorship sales for an Event Center Employer,” although these are not defined terms under the ordinance.

## **Exemptions for Collective Bargaining Agreements**

If a covered employer has a collective bargaining agreement (“CBA”) with a right of recall provision, the said CBA provision will govern and supersede this Ordinance. A CBA may be amended to waive this Ordinance.

## **No Waiver of Rights**

Unless specifically waived in a CBA, employers may not request workers to waive the right to recall, and if such waiver occurs, it will be unenforceable.

## **Retaliation Prohibited**

The ordinance prohibits covered employers from retaliating (i.e., discharging, reducing pay, or otherwise discriminating) against any worker for opposing any practice proscribed by the ordinance, participating in proceedings related to the ordinance, or asserting or seeking to exercise rights under the ordinance.

## **Violations**

The ordinance provides a private right of action and civil remedies to employees for violations, including hiring and job reinstatement rights, actual damages (such as lost pay and benefits) or statutory damages of \$1,000 (whichever is greater), and reasonable attorneys' fees and costs.

Importantly, before workers can bring a civil action, they are required to provide written notice to the employer of the provisions alleged to have been violated and supporting facts. The employer then has 15 days from receipt of the written notice to cure the alleged violation.

As you are aware, things are changing quickly and there is no clear-cut authority or bright line rules. This is not an unequivocal statement of the law, but instead represents our best interpretation of where things currently stand. This article does not address the potential impacts of the numerous other local, state and federal orders that have been issued in response to the COVID-19 pandemic, including, without limitation, potential liability should an employee become ill, requirements regarding family leave, sick pay and other issues.

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