

Right of Recall Could Soon Be Statewide

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As the state of California [moves toward full reopening](#), employers in certain jurisdictions in California already have to contend with [local right of reemployment or recall requirements](#). While last year Governor Newsom [vetoed a statewide right of recall](#), the state legislature has approved a similar statute, [Senate Bill 93](#). If signed by the Governor, the bill would require that covered employers offer employees laid off due to the COVID-19 pandemic available positions based on a preference system.

Covered Employers

Under the proposed legislation, employers who operate hotels, private clubs, event centers, airport hospitality services, or building services to office, retail, or other commercial buildings would have to comply with the statewide right of recall.

Each of the industries covered is further defined based on the size of the enterprise and related qualifications.

Covered Employees

The bill applies to “laid-off employees” defined as an employee who was employed by the employer for 6 months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic.

Requirement

Covered employers must offer laid-off employees all job positions that become available for which the employee is qualified. Laid-off employees will be deemed qualified if the employee held the same or similar position at the time of lay-off.

The laid-off employee must be given at least 5 business days to respond to the offer.

If more than one employee would be entitled to a position, the employer must offer the position to the employee with the greatest length of service based on the date of hire.

An employer that declines to recall a laid-off employee on the grounds of lack of qualifications must provide the laid-off employee written notice within 30 days.

Record-keeping

Covered employers will be required to retain the following records for at least three years measured from the date of layoff:

- Employee's full legal name
- Employee's job classification at time of separation
- Employee's date of hire
- Employee's last known residence address
- Employee's last known email
- Employee's last known telephone number
- A copy of the notice of layoff

The statute is a budget bill and, therefore, if signed will go into effect immediately. Per the current terms, it will sunset on December 31, 2024.

While typically new bills are not sent to the governor until the end of the legislative session, bills may be approved and sent before the end of the session. This session, the governor has already signed a couple of bills related to COVID-19, including [supplemental paid sick leave](#).

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National Law Review, Volume XI, Number 106

Source URL: <https://natlawreview.com/article/right-recall-could-soon-be-statewide>