

# California Enacts Law Requiring Certain Employers to Offer Open Positions to Laid Off Employees in the Travel and Hospitality Industries

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As travel begins to resume in California, the Legislature has imposed additional stringent requirements on employers in the travel and hospitality industries. Beginning April 16, 2021, [Senate Bill 93](#) will require employers in these industries to offer job positions back to their laid-off employees as they become available (within five business days). The bill creates California Labor Code Section 2810.8 which will not expire until December 31, 2024. The new section requires covered employers to recall laid-off employees, in order of seniority, for all positions for which they are qualified. Employers must make job offers in writing, either by hand or to their last known physical address, and by email and text message, and keep detailed records for three years. The bill also requires covered employers to give their laid-off employees at least five business days to accept or decline the offer. If several employees qualify for the same position, employers may make concurrent-conditional offers to more than one individual conditioned on seniority.

It is important to note that an employer who declines to recall a laid-off employee because of lack of qualifications must provide his reasons to the employee in writing within 30 days. There is some uncertainty associated with this notice requirement. Indeed, the bill does not specify whether notice must be provided to each employee deemed unqualified for the open position or only to the most senior laid-off employee who would have been offered the position.

## Who is a covered “laid-off” employee?

To be covered by this bill, an employee must meet two criteria: (1) the employee must have been employed by the employer for at least six months in the 12 months preceding January 1, 2020; and (2) the employee’s most recent separation from the employer must have been due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic reason.

Additionally, to be eligible for rehire, the laid-off employee must be “qualified” for the position. An employee is qualified if he or she held the same or similar position with the employer at the time of the employee’s most recent layoff. What is considered a “similar” position is not specifically defined by the bill.

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## Who is a covered employer?

The bill applies to the following employers:

- Airports: including adjoining areas used or intended for airport buildings, facilities, as well as airport rights of way together with the buildings and facilities;
- Airport hospitality operations: defined as a business that prepares, delivers, inspects, or provides any other service in connection with the preparation of food or beverage for aircraft crew or passengers at an airport, or that provides food and beverage, retail, or other consumer goods or services to the public at an airport. The bill excludes any air carrier certificated by the Federal Aviation Administration.
- Airport service providers: providing functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, whether the contract is with a passenger air carrier, airport facility management, or airport authority.
- Building services: which includes only employers providing janitorial, building maintenance, or security services to office, retail, or other commercial buildings.
- Event centers: defined as structures of more than 50,000 square feet or 1,000 seats, used for the purposes of public performances, sporting events, business meetings, or similar events. This includes any contracted, leased, or sublet premises connected to or operated in conjunction with the event center's purpose (for example, food preparation facilities, concessions, retail stores, restaurants, bars, and parking facilities).
- Hotels: with 50 or more guest rooms. The bill also covers any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.
- Private club: defined as any organizations operating a building or complex of buildings containing at least 50 guest rooms offered as overnight lodging to members.

It is also important to note that the bill adopts a broad definition of "employer." The requirements imposed by the bill apply even if the employer hired their employees indirectly through the services of a temporary services firm, staffing agency or similar entity, so long as the employer exercises control over the wages, hours, or working conditions of the employee.

## Strict Recordkeeping Requirements

The new legislation contains detailed recordkeeping requirements for covered employers. In addition to retaining copies of the notices sent to laid-off employees, employers must keep records for three years (from the date of the issuance of the notice), of the following information: (1) the employee's

full legal name; (2) the employee's job classification at the time of separation; (3) the employee's date of hire; (4) the employee's last known home address; (5) the employee's last known email address; and (6) the employee's last known telephone number.

Additionally, employers are required to maintain all records of communications with the employee concerning offers of employment made to the employee pursuant to the bill.

## **Penalties and Damages for Non-Compliance**

Importantly, the bill sets out extensive penalties and damages for failing to comply that could prove extremely costly. In addition to requesting re-hiring and reinstatement, covered employees may recover past and future lost wages, the value of the benefits they would have received under the employer's benefit plan, and interest on all amounts due and unpaid. The Division of Labor Standards Enforcement may also impose a civil penalty of \$100 for each employee whose rights were violated. At its discretion, the Division may also decide to impose liquidated damages of \$500 per day for each individual "until such time as the violation is cured."

The bill also prohibits employers from retaliating against employees who exercise their rights under the new law. That includes employees who mistakenly, but in good faith, allege that the employer is not complying with the bill.

## **Conclusion**

Time is of the essence. Because the timeframe imposed by the new legislation is relatively short, employers in the travel and hospitality industries should be prepared to identify qualifying employees in advance to be in a position to issue notices promptly as positions become available. To that end, it would be helpful to prepare a list of laid-off employees identifying the employees' names, prior position and qualifications, years of service, and contact information (including email addresses if known). It would also be advisable to incorporate the requirements set out by the bill into written policies and create templates to be sent to laid-off employees to facilitate the process. Covered employers should seek legal advice as soon as possible in connection with this legislation.

The legal landscape continues to evolve quickly and there is a lack of clear-cut authority or bright line rules on implementation of the new law. This article is not intended to be an unequivocal, one-size fits all guidance, but instead represents our interpretation of where applicable law currently and generally stands. 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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