

Connecticut Requires Certain Hotels, Lodging Houses, Food Service Contractors and Building Service Enterprises to Recall Certain Laid-Off Workers

Article By:

Peter M. Stein

Deborah DeHart Cannavino

Dean R. Singewald II

On July 13, 2021, Connecticut Governor Ned Lamont signed into law Public Act 21-189, An Act Requiring Employers to Recall Certain Laid-Off Workers in Order of Seniority (the “Act”), which requires hotels, lodging houses, food service contractors, and building service enterprises with at least 15 employees to notify qualified laid off employees, whose lay-offs were due to lack of business, or a reduction or furlough of the employer’s workforce, due to the COVID-19 pandemic, about available positions. This obligation applies to those laid off employees (i) who were employed for six months or more in the twelve months preceding March 10, 2020, and (ii) whose most recent separation from active service, or whose failure to be scheduled for customary seasonal work by that employer, occurred after March 10, 2020, and before May 1, 2022. The new notification requirements took effect on July 13, 2021.

The Act applies to employers who directly or indirectly operate an enterprise, defined as “a hotel, lodging house, food service contractor or building services enterprise, including such a business located at a publicly or privately operated highway service plaza that employs fifteen or more employees.” A “food service contractor” includes any enterprise that enters into a contract for a term of not less than six months to provide food service (on-site preparation, service and cleanup of food or beverages) at any commercial, industrial, institutional or mixed-use business facility in Connecticut in a single building or in contiguous buildings under common ownership or management or at any state building. An employer refers to any person, including a corporate officer or executive, who directly or indirectly employs or exercises control over the wage and working conditions of any employee, and it includes hiring through a temporary staffing agency. Cruise line companies are specifically excluded from coverage of the Act.

Pursuant to the Act, not later than five days after a position becomes available, eligible laid-off employees, who are qualified for the position, are to be notified that the position is available by the former employer. Notice must be in writing to the employee’s last known mailing or email address and via a text message, if the employer maintains the employee’s mobile phone number. A laid-off

employee is qualified for an available position if the employee (i) held the same or similar position at the time of the employee's most recent separation from active service with the employer, or (ii) is or can be qualified for the position with the same training that would be provided to a new employee hired at that position. Where more than one laid-off employee is qualified for an available position, the employer must offer the position to the employee with the greatest length of service.

Should an employer decline to rehire an eligible laid-off employee, due to lack of qualifications, and instead hires another individual, the employer must, within thirty days, provide the laid-off employee with written notice indicating the reasons for the hiring decision.

Upon being offered a position, eligible laid-off employees must be provided at least five days to accept or decline the offer. Should an employee fail to respond to the offer in the time provided, the offer will be deemed declined. If the offer is accepted, the rehired employee is entitled to work at least thirty days, unless there is just cause for termination of employment.

Should a laid-off employee decline the offer due to underlying conditions related to contracting COVID-19 on or before May 1, 2021, supported by a medical note, the employee will retain the right to accept an available position for which the employee is qualified in the future.

Employers that lay off any rehired employee prior to May 1, 2022, must state the reasons in an affidavit submitted to the Connecticut Department of Labor within thirty days of the layoff. The Act prohibits employers from retaliating against eligible laid-off employees for exercising their rights under the Act, and it allows a laid-off employee aggrieved by a violation of the Act's provisions to bring a civil action in Superior Court. Should the court find that the employer violated the Act, the court may enjoin the employer from engaging in such violation and may order such affirmative action as the court deems appropriate, including the reinstatement or rehiring of the laid-off employee, with or without back pay and fringe benefits, or other equitable relief as the court deems appropriate. Prevailing employees shall be awarded reasonable attorney's fees and costs.

The provisions of the Act apply to eligible laid-off employees, regardless of whether an employee is represented for purposes of collective bargaining, or is covered by a collective bargaining agreement. The provisions may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Any agreement that provides equal or greater protection for laid-off employees is valid, and it will not be a violation for an employer to follow an order of preference for rehiring laid-off employees required by a collective bargaining agreement that is different from the order of preference required by the Act.

Qualified employers should do the following in response to the Act:

- Consult with counsel to determine whether the provisions of the Act apply and if so, how they may be applicable to the employer's workforce.
- Develop procedures to implement the notification requirements of the Act.
- Ensure that the circumstances surrounding hiring, rehiring and termination decisions support the employer's personnel decisions.
- Train those employees involved in the hiring process.

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