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City of Los Angeles Right of Recall and Retention Ordinances

The City of Los Angeles recently passed and Mayor Garcetti signed into law two ordinances that will go into effect on June 14, 2020, imposing employee recall and retention requirements on airport, commercial property, event center, and hotel employers. These four (4) categories are defined as:

1. *Airport Employer:* 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 L.A. Living Wage Ordinance. It *does not* include an airline or an employer that already had an agreement with a worker rehire requirement. Note: “airport” means the City of Los Angeles Department of Airports and each airport it operates in the city.

2. *Commercial Property Employer:* An owner, operator, manager, or lessee, including a contractor, subcontractor or sub-lessee, of a non-residential property in the city that employs 25 or more janitorial, maintenance or security service workers. Notably, only janitorial, maintenance, and security service workers are covered employees.

3. *Event Center Employer:* 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. Specific examples include concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

4. *Hotel Employer:* An owner, operator, or manager of a residential building in the city designated or used for public lodging or other related service for the public *and* either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. This employer includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.

Both ordinances allow for a lawsuit against businesses based on violations of their requirements and contain an exemption for collective bargaining agreements.

WORKER RETENTION ORDINANCE

This ordinance applies where one of the businesses listed above undergoes a change in ownership or control, including sale, assignment, transfer, contribution, or other disposition of assets (referred to as a “Change in Control”).

Exchange of Preferential Hiring List

Within 15 days of the execution of a Transfer Document (the agreement reflecting the Change in Control) the Incumbent Business Employer (the party who owns, operates, or controls the Business *before* the Change in Control) must provide the Successor Business Employer (the party who owns, operates, or controls the Business *after* the Change in Control) the name, address, date of hire, and occupation classification of each Worker. “Workers” mean non-managerial employees who worked for at least six (6) months for the Incumbent Business Employer, on or after March 4, 2020, and prior to the Change in Control.

The Successor Business Employer must keep a preferential hiring list of Workers identified by the Incumbent Business Employer and hire from that list for a period starting from the execution of the Transfer Document up to six (6) months after the Business is open to the public under the Successor Business Employer.

If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer shall retain written verification of that offer for no fewer than three (3) years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

The 90-Day Transition Employment Period

Any Worker hired by the Successor Business Employer under this Ordinance, must remain employed for at least 90 days unless terminated for cause (e.g., poor performance). The Successor Business Employer must provide a written offer letter of employment for the 90-day period to a Worker. The offer must remain open for at least ten (10) business days.

If during this 90-day period the Successor Business Employer determines that it needs fewer Workers than needed by the Incumbent Business Employer, the position should be offered to the Worker in the same occupational classification with the longest time working for the Incumbent Business Employer.

At the end of the 90-day employment period, the Successor Business Employer must conduct a written performance evaluation for each Worker retained pursuant to the Ordinance. If the

Worker's performance during the 90-day period is satisfactory, the Successor Business Employer must consider offering such Worker continued employment under the terms and conditions set by the Successor Business Employer.

The Successor Business Employer must keep record of the written performance evaluation period for at least three (3) years.

Notice of Change In Control

The Incumbent Business Employer must post written notice of the Change in Control at the affected Business within five (5) business days after the execution of the Transfer Document. This notice must be posted in a conspicuous place at the Business where it is visible to employees and applicants. The notice must remain posted during any closures and for six (6) months after the Business opens to the public under the Successor Employer. At a minimum, the notice must contain the name and contact information of the Incumbent Business Employer, the name and contact information of the Successor Business Employer, and the effective date of the Change in Control.

RIGHT OF RECALL ORDINANCE

Only Applies to Laid-Off Workers

This ordinance only applies to “laid-off workers” who are defined as individuals who have performed at least two (2) hours of work in the city and either (a) worked for six (6) months or more with the employer (including leave and vacation times) or (b) separated from the employer on or after March 4, 2020 for a non-disciplinary reason (i.e., lack of business, reduction in work force, or other economic reason). Managers, supervisors, confidential employees, or a person who is primarily responsible for sponsorship sales for an event center employer are not included.

Employer Must Contact Laid-Off Workers Regarding Available Positions For Which They Are Qualified

If an employer, as defined under the four (4) categories above, has laid off workers as defined by the ordinance and positions are open, they must contact the workers, in writing to the last known mailing address, e-mail, and text message phone number, and let them know of any positions that are available for which the worker is qualified. A worker is deemed “qualified” if (1) they held the same or similar position at the same site of employment prior to being laid off *or* (2) they can become qualified with the same training that would be provided to a new worker hired for that same position. The offers must remain open for at least five (5) business days.

Preference for Available Position Decided by Seniority

If more than one laid-off worker is entitled to preference for a position, the employer must first offer the position (1) to the laid off worker with the greatest length of service who held the *same position* and then (2) to the laid-off worker with the greatest length of service *who can become qualified for the position* with the same training that would be provided to a new worker hired into that position. A worker who is offered a position must have at least five business days to accept or decline the offer.

RETALIATORY ACTION PROHIBITED.

Both ordinances contain retaliation clauses prohibiting the termination, reduction in compensation, or otherwise discrimination against any Worker for opposing any practice, for participating in proceedings related to, for seeking to exercise his or her rights by any lawful means, or for otherwise asserting rights under these ordinances.

Prerequisite Before Filing of Lawsuit Based on Either Ordinance: Notice of Violation and Cure Period

Before filing a lawsuit against a business, the individual must provide written notice to the business of the sections that have been violated along with supporting facts. The business has fifteen (15) days from receipt of the written notice to cure the alleged violation.

An individual may be awarded hiring and/or reinstatement rights, front or back pay, benefits, and reasonable attorneys' fees and costs. If the business prevails and shows that the lawsuit was frivolous, it will be awarded attorneys' fees and costs.

This is not legal advice. We are here to help. Please contact us for assistance with your employment needs.

*By: Rodrigo J. Torres, Esq.
May 13, 2020*