

LEGISLATIVE DIGEST

[Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

Reenactment of emergency ordinance (Ordinance No. 104-20, as reenacted by Ordinance Nos. 159-20 and 231-20) temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position as, or a position substantially similar to, the position previously held by the laid-off employee.

Existing Law

In general, under existing law, there is no right to reemployment for employees working in San Francisco in the event that their employer separates them from employment. However, an emergency ordinance (Ordinance No. 104-20, as reenacted by Ordinance No. 159-20 and Ordinance No. 231-20) temporarily requires certain employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 public health emergency. The legislative digest for Ordinance No. 104-20 can be found in Board File No. 200455. Lightly edited, it summarizes the emergency ordinance as follows:

The emergency ordinance applies to employers that operate in San Francisco and employ 100 or more employees, except healthcare operations. The emergency ordinance applies to employees who were employed for at least 90 days of the calendar year preceding the notice of a layoff and who suffered layoff due to the emergency. A layoff is a separation from employment of 10 or more eligible employees within a 30-day period, starting on or after February 25, 2020, due to the emergency. If an employer seeks to rehire employees to the same or similar positions previously held by laid-off eligible employees, an employer shall offer reemployment to such eligible employees in order of seniority.

Under the emergency ordinance, the Office of Economic and Workforce Development (OEWD) receives notices of layoffs and offers of reemployment and operates a hotline for workers. The Office of Labor Standards Enforcement (OLSE) is authorized to issue regulations.

Additionally, the emergency ordinance requires employers to reasonably accommodate employees who cannot work because of a family care hardship. A family care hardship is a circumstance in which the employee is unable to work due to any reason for which a person may use paid sick leave under Administrative Code § 12W.4(a) to provide care for someone other than themselves, including but not limited to a need to care for a child whose school or place of care has been closed or whose childcare provider is unavailable as a result of the public health emergency and no other suitable person is available to care for the child during the period of such leave.

Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 104-20, as reenacted by Ordinance No. 159-20 and Ordinance No. 231-20, with the result that it does not terminate on December 30, 2020, but rather is extended for an additional 60 days.