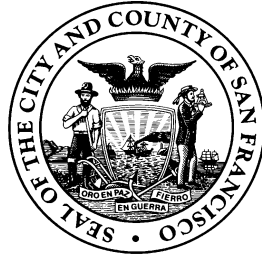


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: May 13, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 200455

Emergency Ordinance 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 previously held by a laid-off worker, or a substantially similar position, as defined.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

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

2

3

4 **Emergency Ordinance temporarily creating a right to reemployment for certain**
5 **employees laid off due to the COVID-19 pandemic if their employer seeks to fill the**
6 **same position previously held by a laid-off worker, or a substantially similar position,**
7 **as defined.**

8

9

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

13

14 Be it ordained by the People of the City and County of San Francisco:

15

16 Section 1. Name of Ordinance.

17 This emergency ordinance shall be known as the “Back to Work” emergency
18 ordinance.

19 Section 2. Declaration of Emergency Pursuant to Charter Section 2.107.

20 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
21 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
22 of any City or County department or office required to comply with time limitations established
23 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
24 that requires the passage of this emergency ordinance.

25

1 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
2 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of
3 Supervisors concurred with the February 25 Proclamation and the actions taken by the Mayor
4 to meet the emergency.

5 (c) On March 16, 2020, to mitigate the spread of COVID-19, the Local Health Officer
6 issued Order No. C19-07, subsequently replaced by Order No. C19-07b on March 31, 2020,
7 directing San Franciscans to “shelter in place.” These Orders generally require individuals to
8 stay in their homes through May 3, and require businesses to cease all non-essential
9 operations at physical locations in the City. On April 27, 2020, the Public Health Officers for
10 the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and
11 the City of Berkeley advised that they will issue a revised shelter-in-place orders that largely
12 keep the current restrictions in place and extend them through May. On May 1, 2020, the
13 Public Health Officers for the same above-referenced counties issued Order No. C19-07c,
14 thereby replacing Order Nos. C19-07 and C19-07b. The most recent Order generally extends
15 the prior Orders’ requirements that individuals generally stay in their homes and that
16 businesses cease all non-essential operations at physical locations in the City, with some
17 limited additional exceptions, including that: certain outdoor businesses may resume
18 operations if they can do so safely; individuals may engaged in additional forms of recreation;
19 and construction may resume, provided it can be done safely. The most recent Order is
20 effective until May 31, 2020.

21 (d) Due to the public health emergency related to COVID-19 and the actions required
22 to respond to the emergency, a growing number of employees across the City are unable to
23 work (including telework) due to illness, exposure to others with the coronavirus, business
24 closures or reductions in force, and family caregiving obligations related to the closure of
25 schools and care facilities including an inability to secure alternate caregiving assistance.

1 These conditions pose a severe and imminent threat to the health, safety, and economic well-
2 being of San Franciscans and those who work in San Francisco.

3 (e) This emergency ordinance is necessary to mitigate the severe economic harm for
4 individuals unable to work due to the public health emergency.

5
6 Section 3. Findings and Purpose.

7 (a) On March 4, 2020, the Governor for the State of California issued a proclamation,
8 declaring a State of Emergency to exist in California as a result of the threat posed by COVID-
9 19. On March 6, 2020, the Health Officer for the San Francisco Department of Public Health
10 issued a similar declaration of local health emergency regarding the novel coronavirus
11 disease COVID-19.

12 (b) On March 16, 2020, the Health Officer for the San Francisco Department of Public
13 Health issued Order No. C19-07, directing in part that all individuals living in the City to shelter
14 in their place of residences until April 7, 2020. The order also directed businesses with a
15 facility in the City, except essential businesses as defined in the order, to cease all activities at
16 facilities located within the City except minimum basic operations, as defined in the order. As
17 a result of the order, a substantial number of businesses operating in the City have been
18 required to temporarily or permanently close their physical locations in the City or to
19 permanently close their businesses entirely, or have had to temporarily or permanently lay off
20 employees. On March 31, 2020, the City issued Order No. C19-07b, superseding the March
21 16, 2020 order and extending the new order until May 3, 2020. On May 1, 2020, the City
22 issued Order No. C19-07c, superseding the March 31, 2020 order and extending the new
23 order until May 31, 2020.

24 (c) On March 19, 2020, the Governor issued Executive Order N-33-20 to preserve
25 public health and safety and ensure the healthcare delivery system is capable of serving all,

1 and prioritizing those at the highest risk and vulnerability, ordering in part that all residents
2 heed the order from the State Public Health Officer ordering all individuals living in the State of
3 California to stay home or at their place of residence for an indefinite period of time except,
4 among other terms, to maintain continuity of operations of identified federal critical
5 infrastructure sectors.

6 (d) As a consequence of the local and State shelter in place and stay at home orders,
7 many employees working in the City have been or likely will be laid off from their jobs. The
8 City has received notice of some of those layoffs, as required under the federal Worker
9 Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. §§ 2101-2109, and the
10 California Worker Adjustment and Retraining Notification (“Cal-WARN”) Act, Cal. Labor Code
11 §§ 1400-1408. The WARN Act requires employers to provide 60 days’ notice in advance of a
12 plant closing or mass layoff. The WARN Act applies to employers with 100 or more
13 employees, to the extent such employees have been employed for at least six of the last 12
14 months and have, on average, worked more than 20 hours per week. The WARN Act defines
15 a mass layoff as a layoff of 50 or more employees at a single site of employment. The Cal-
16 WARN Act requires employers to provide 60 days’ notice in advance of a mass layoff,
17 relocation, or termination at a covered establishment. The Cal-WARN Act applies to
18 employers that employ, or have employed in the preceding 12 months, 75 or more full-time or
19 part-time employees, to the extent such employees have been employed for at least six
20 months of the 12 months preceding the date of the required notice. The Cal-WARN Act
21 defines a mass layoff as a layoff during any 30-day period of 50 or more employees at a
22 covered establishment.

23 (e) Between March 1, 2020 and May 1, 2020, the City has received 293 layoff notices
24 from private employers operating in San Francisco pursuant to the WARN Act and the Cal-
25 WARN Act. The federal WARN Act and the Cal-WARN Act notices, however, only reflect

1 mass layoffs or business closures implemented by employers that are subject these statutes
2 and thus significantly underestimate the actual number of employees in the City experiencing
3 layoffs as a result of the COVID-19 pandemic. Indeed, an untold number of employees
4 employed by businesses with less than 100 employees or 75 employees at their business
5 facility in San Francisco have been affected by a layoff due to COVID-19. Based on
6 anecdotal evidence being shared with the City, it appears that many City employers have laid-
7 off at least 10 employees during a 30-day period since Mayor Breed declared the public
8 health emergency as a result of COVID-19 on February 25, 2020; as such, it is intent of this
9 emergency ordinance to provide the protections set forth herein to eligible employees affected
10 by a layoff of this size.

11 (f) The layoffs now occurring in large numbers in San Francisco are quickly pushing
12 unemployment in our community to uncommonly high numbers. Between February 25, 2020
13 and April 18, 2020, over 83,000 San Franciscans filed claims for unemployment insurance
14 with the State of California. The City anticipates that many more in the San Francisco
15 workforce will seek unemployment insurance in the coming weeks and months as result of a
16 separation from employment, including due to a mass layoff or location closure caused by the
17 COVID-19 pandemic. It is entirely possible—even likely, according to some economists—that
18 the unemployment rate in San Francisco and surrounding areas will reach levels higher than
19 at any time since the Great Depression of the 1930s. Unemployment statistics, even when
20 documenting a massive surge, do not adequately convey the human suffering that attends
21 joblessness on such a large scale. The loss of employment for individuals laid off as a result
22 of the COVID-19 pandemic typically places them and their families in economic peril.

23 (g) Layoffs caused by the COVID-19 pandemic also pose a substantial risk to public
24 health because layoffs can cause a loss of private health insurance benefits for affected
25 employees and their families. The loss of private health insurance during normal times—let

1 alone in the midst of a pandemic—can put seemingly or actually insurmountable pressure on
2 a family’s fiscal, physical, and mental health. While an employee may be entitled to extend
3 their health insurance benefits temporarily pursuant to the Consolidated Omnibus Budget
4 Reconciliation Act (“COBRA”), 29 U.S.C. §§ 1161-68 (1994), COBRA continuation coverage
5 is often more expensive than the amount that active employees are required to pay for group
6 health coverage. If an employer offers health insurance benefits to its employees, the cost of
7 such benefits are typically shared by the employer and employee. A separated employee,
8 however, typically must pay both the employee’s and the employer’s share of health
9 insurance benefits in order to receive continuation coverage pursuant to COBRA. As such,
10 COBRA continuation coverage is typically much more expensive than the cost of an
11 employee’s health insurance premiums while the employee was employed. In the direst
12 circumstances, a loss of one’s job and the related employment benefits can force a family to
13 choose between paying for COBRA continuation coverage, paying rent, or putting food on the
14 table. This emergency ordinance, therefore, is intended to decrease the number of laid-off
15 employees who will be without employer-sponsored health insurance as a result of the
16 COVID-19 pandemic by requiring employers subject to the emergency ordinance to rehire
17 eligible employees if rehiring begins, thereby resuming such employees’ access to their prior
18 health insurance benefits.

19 (h) Layoffs caused by the COVID-19 emergency also pose a substantial risk to public
20 health in the City by potentially forcing laid off employees to seek out the City’s public health
21 resources, in event that they are not eligible for COBRA or COBRA continuation benefits are
22 too costly for their family to secure. This emergency ordinance, therefore, is intended to
23 alleviate the burden that layoffs of employees working in the City place on the City’s public
24 health system.

25

1 (i) The loss of employment for individuals laid off as a result of the COVID-19
2 pandemic poses a substantial threat to the City's economy and the economic livelihood of
3 affected employees and their families. The COVID-19 pandemic has created a substantial
4 financial crisis for the City collectively and for individuals living and working in the City, likely
5 causing an economic recession or depression in the City, and likely lasting well after the State
6 and City stay at home and shelter in place orders are lifted. After the emergency ceases, the
7 City will endeavor to support the reemergence of all non-essential businesses operating in the
8 City to the extent it is financially feasible for such business to resume operations.
9 Reemployment of laid off employees also provides economic relief directly to the affected
10 employees and their families, giving them the opportunity for reemployment as soon as
11 practicable, aiding their own personal economic recovery following their previous separation
12 from employment, and strengthening and providing continuity for the communities in which
13 they live. With the benefit of resumed income, such employees will likely frequent local
14 businesses, thereby aiding in the revitalization of the City economy and the greater local
15 economy.

16 (j) The COVID-19 pandemic has created unique challenges on caretakers, including
17 working parents whose children are no longer able to attend school or childcare facilities, or
18 whose regular care givers are not available as well as those responsible to care for a child,
19 parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, or registered
20 domestic partner when such person is ill, injured, or receiving medical care. Employees who
21 are responsible for the care of children or the others mentioned above may have even more
22 difficulty obtaining reemployment following a layoff.

1 Section 4. Definitions.

2 For purposes of this emergency ordinance, the following terms shall have the following
3 meanings:

4 “Beginning of the Public Health Emergency” means Mayor London Breed’s February
5 25, 2020, proclamation of a state of emergency in response to the spread of the novel
6 coronavirus COVID-19.

7 “City” means the City and County of San Francisco.

8 “Conclusion of the Public Health Emergency” means: (1) the date on which the
9 Governor for the State of California terminates or rescinds, without replacement, Emergency
10 Order N-33-20; or (2) the date on which the City terminates or rescinds, without replacement,
11 Order No. C19-07c, or takes similar action to end the current shelter in place and the
12 prohibition on operation of the business activities as set forth in Order No. C19-07c, whichever
13 date is later.

14 “Employer” means any person who directly or indirectly owns or operates a for-profit
15 business or non-profit in the City that employs 10 or more employees as of the earliest date
16 that an employer Separates one or more employees that subsequently results in a Layoff.

17 “Employer” does not include any federal, state, or local or other public agency.

18 “Eligible Worker” means a person: (1) employed by the Employer for at least 90 days of
19 the calendar year preceding the date on which an Employer provides written notice to the
20 employee of a layoff caused by the Public Health Emergency; and (2) and who was separated
21 from employment due to a layoff caused by the Public Health Emergency or the SIP Orders.

22 “Family Care Hardship” means an Eligible Worker who is unable to work due to either:
23 (1) a need to care for their child whose school or place of care has been closed, or whose
24 childcare provider is unavailable, as a result of the Public Health Emergency, and no other
25 suitable person is available to care for the child during the period of such leave; (2) or any

1 grounds stated in Administrative Code § 12W.4(a) for which a person may use paid sick leave
2 to provide care for someone other than themselves. For the purpose of this definition, “child”
3 means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person
4 standing *in loco parentis*, who is under 18 years of age, or a child 18 years of age or older
5 who is incapable of self-care because of a mental or physical disability.

6 “Layoff” means a separation from employment by an Employer of 10 or more
7 employees during any 30-day period, commencing on or after February 25, 2020, and which
8 is caused by the Employer’s lack of funds or lack of work for its employees, resulting from the
9 Public Health Emergency and SIP Orders. This definition includes any layoff conducted in
10 conjunction with the closure or cessation of an Employer’s business operations in the City.

11 “Public Health Emergency” means the states of emergency declared by the State of
12 California or the City in response to the novel coronavirus COVID-19.

13 “Separate” and “Separation” means the termination or end of employment.

14 “SIP Orders” mean orders issued by the State and City, including without limitation
15 State Executive Order N-33-20 and City Order Nos. C19-07, C19-07b, and C19-07c, directing
16 residents to stay at home and shelter in place and prohibiting operation of all business
17 activities other than those expressly excluded.

18
19 Section 5. Records Regarding Layoff.

20 (a) Written Notice of Layoff and Right to Reemployment for Existing Employees.

21 When an Employer implements a Layoff after the Beginning of the Public Health Emergency,
22 the Employer shall provide all affected employees with written notice of the Layoff at or before
23 the time when the Layoff becomes effective. The Employer shall provide notice to each
24 affected employee in a language understood by the affected employee. The written notice
25 shall include below-listed terms.

1 (1) A notice of the Layoff and the Layoff's effective date.

2 (2) A summary of the right to reemployment created by this emergency
3 ordinance.

4 (3) A telephone number for a hotline, to be operated by the Office of Labor
5 Standards and Enforcement ("OLSE"), which affected employees may call to receive
6 information regarding the right to reemployment created by this emergency ordinance, as well
7 as navigation services and other City resources related to unemployment.

8 (4) A hyperlink to a website, to be operated by OLSE, where affected
9 employees may complete an online form reflecting their name, Employer, date of Layoff,
10 telephone number, email address, and address of residence, which, with an affected
11 employee's consent, OLSE may use to contact an affected employee regarding navigation
12 services and other resources related to unemployment. The form shall also include an option
13 for an affected employee to withhold their consent from being contacted by OLSE regarding
14 such services. An affected employee's decision to withhold such consent shall not adversely
15 affect any right to reemployment under this emergency ordinance.

16 (5) A request that an affected employee authorize their Employer to provide
17 their name and contact information to the City. The request must advise an affected
18 employee that: the California Constitution recognizes a right to privacy with respect to
19 personal information, including contact information; the City wishes to obtain such information
20 so that OLSE may contact affected employees in order to provide information about
21 navigation services and other City resources regarding unemployment and so that the City
22 may gather comprehensive data regarding the number of layoffs occurring in San Francisco
23 as a result of the Public Health Emergency; the Employer requests the affected employee's
24 written consent to disclose to the City the employee's full legal name, last known address of
25 residence, last known telephone number(s), and last known email address(es). The consent

1 form shall also include an attestation from the employee, indicating which of the above-listed
2 categories of personal information they consent for the Employer to disclose to the City and
3 the affected employee's signature authorizing such disclosure. The Employer shall include a
4 pre-addressed and stamped envelope with the written notice required by this Section 5 to
5 facilitate the employee's return of the requested information. The request shall also state that,
6 should an affected employee consent to disclosure of their contact information, the employee
7 is directed to return the written authorization to the Employer within seven days of the affected
8 employee's receipt of the Employer's notice of Layoff.

9 (b) Written Notice of Layoff and Right to Reemployment for Former Employees. To
10 the extent an Employer has Separated any affected employee before this emergency
11 ordinance becomes effective, the Employer shall provide written notice of the Layoff,
12 consistent with the requirements set forth in subsection (a) of this Section 5, to each affected
13 employee who the Employer Separated due to Layoff within 30 days of the effective date of
14 this emergency ordinance.

15 (c) Notification to the City Regarding Layoff. An Employer shall provide written notice
16 to OLSE of a Layoff. An Employer shall provide such notice within 30 days of the date it
17 initiates a Layoff. In the event, however, that an Employer did not foresee that Separation of
18 employees would result in a Layoff, as defined in this emergency ordinance, the Employer
19 shall provide such written notice within seven days of its Separation of the tenth employee in a
20 30-day period as a result of Public Health Emergency and SIP Orders. Written notice to
21 OLSE shall identify: the total number of employees located in San Francisco affected by the
22 Layoff; the job classification at the time of Separation for each affected employee; the original
23 hire date for each affected employee; and the date of Separation from employment for each
24 affected employee. To the extent any Separated employee expressly consents to disclosure
25 of their full legal name, last known address of residence, last known telephone number(s),

1 and/or last known email address(es), as provided for in subsection (a) of this Section 5, the
2 Employer shall include such information in its notice to OLSE. To the extent an Employer
3 receives written authorization from any Separated employee after the Employers notifies the
4 City of the Layoff in accordance with this subsection (c), the Employer shall provide to OLSE,
5 on a supplemental basis, any information an affected employee authorizes for disclosure to
6 the City.

7 (d) Retention of Records. Where an Employer initiates a Layoff after the Beginning of
8 the Public Health Emergency, an Employer must retain the following records for at least two
9 years regarding each affected employee: the employee's full legal name; the employee's job
10 classification at the time of Separation from employment; the employee's date of hire; the
11 employee's last known address of residence; the employee's last known email address; the
12 employee's last known telephone number; and a copy of the written notice regarding the
13 Layoff provided to the employee. For the purpose of this Section 5, two years is measured
14 from the date of the written notice provided by the Employer to a laid off employee, as
15 required by subsections (a) and (b) of this Section 5.

16
17 Section 6. Employer's Obligation to Make Offer of Reemployment to Eligible Workers
18 Following Layoff.

19 (a) Offer of Reemployment Following Layoff to Same Position. Where an Employer
20 has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently
21 seeks to hire a person to a position formerly held by an Eligible Worker, the Employer shall
22 first offer the Eligible Worker an opportunity for reemployment to their former position before
23 offering the position to another person.

24 (b) Offer of Reemployment Following Layoff to Similar Position. Where an Employer
25 has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently

1 seeks to hire a person to any position that is substantially similar to the Eligible Worker's
2 former position and the position is also located in the City, an Employer shall first offer the
3 Eligible Worker an opportunity for reemployment to the substantially similar position before
4 offering the position to another person. For the purpose of this Section 6, a "substantially
5 similar position" includes any of the following: a position with comparable job duties, pay,
6 benefits, and working conditions to the Eligible Worker's position at the time of Layoff; any
7 position in which the Eligible Worker worked for the Employer in the 12 months preceding the
8 Layoff; and any position for which the Eligible Worker would be qualified, including a position
9 that would necessitate training that an Employer would otherwise make available to a new
10 employee to the particular position upon hire.

11 (c) Offers of Reemployment Made in Order of Seniority. In the event an Employer
12 intends to offer reemployment to an Eligible Worker, and the Employer Separated more than
13 one Eligible Worker from the same job classification, the Employer shall make offers of
14 reemployment to such Eligible Workers based on their former seniority with the Employer.
15 For the purpose of this subsection (c), seniority with the Employer shall be based upon an
16 Eligible Worker's earliest date of hire with the Employer.

17 (d) Exception for Hires Made Prior to Effective Date. The right to an offer of
18 reemployment created by this emergency ordinance as stated in this Section 6, and the
19 attendant rights and remedies set forth in Sections 7, 8, 9 and 11 of this emergency
20 ordinance, shall not apply where an Employer initiated a Layoff after the Beginning of the
21 Public Health Emergency and hired a person other than an Eligible Worker to a position
22 formerly held by an Eligible Worker on or before the effective date of this emergency
23 ordinance.

24
25

1 Section 7. Notice of Offer and Acceptance.

2 (a) Method of Delivery. An Employer shall transmit an offer of reemployment to an
3 Eligible Worker to the Eligible Worker's last known address of residence by reasonable means
4 identified by an Employer, including, without limitation, first class mail or personal delivery.
5 With the Eligible Worker's consent and confirmation of receipt, an Employer may transmit an
6 offer of reemployment to an Eligible Worker by email.

7 (b) Order of Delivery of Offers. Where more than one Eligible Worker is eligible for an
8 offer of reemployment, as set forth in subsections (a) and (b) in Section 6, an Employer shall
9 transmit offers to Eligible Workers in their order of seniority, as set forth in subsection (c) in
10 Section 6.

11 (c) Notification by Telephone. In addition to the transmittal requirement of subsection
12 (a) of this Section 7, an Employer shall make a good faith effort to notify the Eligible Worker of
13 the offer by telephone at the Eligible Worker's last known telephone number.

14 (d) Duration of Offer.

15 (1) If the Employer makes contact with the Eligible Worker by telephone, and
16 the Eligible Worker consents to receiving the offer by email, the offer shall remain open for
17 two business days following the telephone call, provided that, at the time the Employer makes
18 contact with the Eligible Worker by telephone, the Employer notifies the Eligible Worker of the
19 two business days duration for which the offer shall remain open.

20 (2) If the Employer is unable to make contact with the Eligible Worker by
21 telephone or the Eligible Worker does not consent to receiving the offer by email, the offer
22 shall remain open for seven calendar days after the date of confirmed receipt by mail or
23 personal delivery. If the Eligible Worker does not confirm receipt by mail or personal delivery,
24 the offer shall remain open for ten calendar days after the date on which the offer is sent by
25 the Employer by mail or personal delivery.

1 (e) Acceptance. An Eligible Worker shall accept an offer of reemployment by
2 providing a response to the Employer in writing by reasonable means identified by the
3 Employer including, without limitation, returning a signed version of an offer letter by any
4 reasonable method of delivery or, if authorized by an Employer, by applying an electronic
5 signature and transmitting acceptance of the offer to an Employer by email or other
6 reasonable electronic method. If the Eligible Worker notifies the Employer by other means,
7 including but not limited to by telephone or text message, of their intent to accept the offer, the
8 Employer must allow the Eligible Worker two business days from that date to respond in the
9 written reasonable means identified by the Employer. If the Eligible Worker fails to respond to
10 an offer of reemployment within the timeframes prescribed under subsection (d) of this
11 Section 7, then the Eligible Worker shall be deemed to have rejected the offer of
12 reemployment, and then the Employer is permitted to offer the position to the next most senior
13 Eligible Worker, as set forth under subsection (c) of Section 6, or, if there are no alternative
14 Eligible Workers, then to offer the position to alternative job candidate.

15 (f) Extension by Mutual Agreement. An Employer and Eligible Worker may extend the
16 offer or acceptance periods beyond the timeframes prescribed in this Section 7 by mutual
17 agreement.

18
19 Section 8. Terms of Reemployment.

20 (a) 90-Day Reemployment Period. An Eligible Worker shall be entitled to
21 reemployment for a period of 90 days after the date the Eligible Worker resumes employment.
22 An Employer may, however, based on clear and convincing evidence, Separate an Eligible
23 Worker during the 90-day reemployment period:

24 (1) based on information learned subsequent to rehiring the Eligible Worker that
25 would disqualify the Eligible Worker from their position, including, without limitation, acts of

1 dishonesty, violations of law, violations of a policy or rule of the Employer, or other
2 misconduct;

3 (2) for acts of dishonesty, violations of law, violations of a policy or rule of the
4 Employer, or other misconduct committed by the Eligible Worker after the Eligible Worker has
5 resumed employment; or

6 (3) if the Employer suffers a demonstrable financial hardship or other event
7 pertaining to the operations of the Employer’s business that necessitates Separation of the
8 Eligible Worker.

9 (b) Minimum Terms of Reemployment. With the exception of the term of employment
10 defined in subsection (a) of this Section 8, an Employer shall offer reemployment based on at
11 least the same terms and conditions that the Employer previously provided to the Eligible
12 Worker at the time of the Eligible Worker’s Separation due to Layoff. For the purpose of this
13 subsection, terms and conditions of prior employment include, without limitation, job duties,
14 pay, benefits, and working conditions. An Employer shall comply with this subsection (b)
15 unless, as a result of the economic impact caused by the Public Health Emergency to the
16 Employer’s business, offering reemployment to the Eligible Worker at one or more of their
17 former terms of employment would cause the Employer demonstrable financial hardship.
18 Nothing in this subsection shall be interpreted to limit an Eligible Worker’s rights to benefits
19 under the Families First Coronavirus Response Act, Public Law 116-127 (“FFCRA”),
20 Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 (“CARES Act”), the
21 Public Health Emergency Leave (“PHEL”) Ordinance, S.F. Emergency Ordinance No.
22 200355, or any other law providing benefits to employees that were not available prior to April
23 1, 2020.

1 Section 9. Non-Discrimination and Duty to Reasonably Accommodate Eligible Workers
2 Experiencing a Family Care Hardship.

3 For the purpose of this emergency ordinance, an Employer shall not discriminate
4 against or take an adverse employment action against an Eligible Worker as a consequence
5 of an Eligible Worker experiencing a Family Care Hardship. An Eligible Worker shall be
6 entitled to reasonable accommodation of a job duty or job requirement if a Family Care
7 Hardship impacts their ability to perform a job duty or to satisfy a job requirement. An
8 Employer shall, in response to a request for accommodation by an Eligible Worker, make
9 good faith efforts to reasonably accommodate an Eligible Worker during the period in which
10 they experience a Family Care Hardship. For the purpose of this Section 9, to “reasonably
11 accommodate” includes, without limitation, modifying an Eligible Worker’s schedule, modifying
12 the number of hours to be worked, or permitting telework, to the extent operationally feasible,
13 to accommodate the Eligible Worker’s Family Care Hardship.

14
15 Section 10. Notification to City of Offers of Reemployment.

16 An Employer shall notify the Office of Labor Standards Enforcement in writing of all
17 offers of reemployment made under this emergency ordinance, in addition to all acceptances
18 and rejections by Eligible Workers of such offers or reemployment.

19
20
21 Section 11. Remedies for Violations.

22 (a) An Eligible Worker may bring an action in the Superior Court of the State of
23 California against an Employer for violating this emergency ordinance, and may be awarded
24 the following relief:

1 (1) Hiring and reinstatement rights, whereupon the 90-day reemployment period
2 referenced in Section 8 of this ordinance shall not commence until the date the Employer
3 rehires an Eligible Worker;

4 (2) Back pay for each day of the violation and front pay for each day during
5 which the violation will continue. Back pay and front pay shall be calculated at a rate of pay
6 not less than the higher of: (A) if employed for less than three years prior to the Eligible
7 Worker's date of Separation due to Layoff, the average regular rate received by the Eligible
8 Worker during the Eligible Worker's employment; (B) if employed for more than three years
9 prior to the Eligible Worker's date of Separation due to Layoff, the average regular rate
10 received by the Eligible Worker during the last three years of the Eligible Worker's
11 employment; or (C) the most recent regular rate received by the Eligible Worker as of the date
12 of Separation due to Layoff; and

13 (3) The value of the benefits the Eligible Worker would have received under the
14 Employer's benefit plan had the violation not occurred.

15 (b) If the Eligible Worker is the prevailing party in any legal action taken pursuant to
16 this Section 10, the court shall also award reasonable attorneys' fees and costs.

17
18 Section 12. No Limitation on Other Rights and Remedies.

19 This emergency ordinance does not in any way limit the rights and remedies that the
20 law otherwise provides to Eligible Workers, including without limitation, the rights to be free
21 from wrongful termination and unlawful discrimination.

22
23 Section 13. Waiver Through Collective Bargaining.

24 This emergency ordinance shall not apply to Eligible Workers covered by a bona fide
25 collective bargaining agreement to the extent that the requirements of this emergency

1 ordinance are expressly waived in the collective bargaining agreement in clear and
2 unambiguous terms.

3
4 Section 14. Preemption.

5 Nothing in this emergency ordinance shall be interpreted or applied so as to create any
6 right, power, or duty in conflict with federal or state law. The term “conflict” as used in this
7 Section 14 means a conflict that is preemptive under federal or state law.

8
9 Section 15. Severability.

10 If any section, subsection, sentence, clause, phrase, or word of this emergency
11 ordinance, or any application thereof to any person or circumstance, is held to be invalid or
12 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
13 affect the validity of the remaining portions or applications of this emergency ordinance. The
14 Board of Supervisors hereby declares that it would have passed this emergency ordinance
15 and every section, subsection, sentence, clause, phrase, and word not declared invalid and
16 unconstitutional without regard to whether any other portion of the ordinance or application
17 thereof would be subsequently declared invalid or unconstitutional.

18
19 Section 16. Effective Date; Expiration.

20 Consistent with Charter Section 2.107, this emergency ordinance shall become
21 effective immediately upon enactment, and shall expire upon whichever of the two following
22 occurrences happens first: (a) the 61st day following enactment unless the ordinance is
23 reenacted as provided by Section 2.107; or, (b) the Conclusion of the Public Health
24 Emergency and rescission of the SIP Orders. Enactment occurs when the Mayor signs the
25 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within

1 ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the
2 ordinance.

3

4 Section 17. Supermajority Vote Required.

5 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
6 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

7

8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/ _____
11 JON GIVNER
Deputy City Attorney

12 i.e., n:\govern\as2013\1200339\00848008.doc

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LEGISLATIVE DIGEST

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

Emergency Ordinance 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 previously held by a laid-off worker, or a substantially similar position, as defined.

Existing Law

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 due to a layoff and subsequently seeks to rehire employees to the same or similar positions.

Amendments to Current Law

The ordinance requires employers operating in San Francisco to offer a right to reemployment to certain employees laid off as a result of the COVID-19 pandemic and the related stay at home and shelter in place orders issued by the City and County of San Francisco and the State of California. The ordinance applies to employers of any size who layoff ten or more employees in a 30-day period as a result of the emergency. The employer must extend offers of reemployment to any employee previously employed for at least 90 days in the preceding calendar year. If the employee accepts the offer, the employer must maintain the employment relationship for 90 days, subject to certain exceptions for misconduct and financial hardship. The ordinance applies to layoffs between February 25, 2020 and the expiration of the ordinance.

The ordinance is an emergency ordinance, so under Charter section 2.107, it will take effect immediately upon enactment and will remain in effect for 60 days, unless reenacted. If not, reenacted, it will expire on the 61st day.

Background Information

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the COVID-19 pandemic, concurred by proclamation of the Board of Supervisors on March 3, 2020. On March 16, 2020, the County Health Officer issued Order No. C19-07 directing San Franciscans to stay in their homes and requiring businesses to cease all non-essential operations at physical locations in the County.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only