

BOARD of SUPERVISORS



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MEMORANDUM

TO: William Scott, Police Chief
Joaquin Torres, Director, Office of Economic and Workforce Development
Patrick Mulligan, Director, Office of Labor Standards Enforcement

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: August 5, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Mar on July 28, 2020:

File No. 200830

Ordinance amending the Police Code to create 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 the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Office of Chair Mandelman
Office of Supervisor Mar
Rowena Carr, Police Department
Asja Steeves, Police Department
J'Wel Vaughan, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

1 [Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

2

3 **Ordinance amending the Police Code to create a right to reemployment for certain**
 4 **employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the**
 5 **same position previously held by the laid-off employee, or a substantially similar**
 6 **position, and to reasonably accommodate employees who cannot work because of a**
 7 **family care hardship.**

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

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

16 Section 1. Findings.

17 (a) The novel coronavirus and the resulting disease COVID-19 (collectively “COVID-
 18 19”) has had unprecedented detrimental effects on employees in the City and County of San
 19 Francisco (“the City”), nationwide, and worldwide. To ameliorate the local effects of this
 20 global pandemic, this ordinance extends and codifies, with minor amendments, a right to
 21 reemployment created by an emergency ordinance (Ordinance No. 104-20) for eligible laid-off
 22 employees if their prior employers seek to rehire staff. By facilitating reemployment, this
 23 ordinance aims to curb the long-term, adverse effects that job loss can cause on the financial,
 24 physical, and mental health of employees and their families and thus our greater community.

25 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
 response to the spread and threat of further spread of COVID-19, with which the Board of

1 Supervisors concurred on March 3, 2020. On March 6, 2020, the Health Officer the City and
2 County of San Francisco (“Health Officer”), acting in coordination with the health officers in
3 other counties in the San Francisco Bay Area, issued a declaration of local health emergency
4 regarding COVID-19. On March 16, 2020, to mitigate the spread of COVID-19, the Health
5 Officer issued Order No. C-19-07, directing that individuals living in the City shelter in their
6 places of residence until April 7, 2020, and that businesses, except essential businesses as
7 defined in the order, cease all activities at facilities located within the City except minimum
8 basic operations, as defined in the order. The order has been extended and amended several
9 times to allow certain additional activities and businesses to resume. It remains in effect with
10 no expiration date as Order No. C-19-07f.

11 (c) Due to the public health emergency related to COVID-19 and the actions required to
12 respond to it, an unprecedented number of individuals who work for employers operating in
13 the City are unable to work (including telework) due to illness, exposure to others with the
14 coronavirus, business closures or reductions in force, and family caregiving obligations related
15 to the closure of schools and childcare facilities, including an inability to secure alternative
16 caregiving assistance. Tens of thousands of employees working in the City have been or
17 likely will be laid off from their jobs. The City has received notice of some of those layoffs, as
18 required under the federal Worker Adjustment and Retraining Notification (“WARN”) Act, 29
19 U.S.C. §§ 2101-2109, and the California Worker Adjustment and Retraining Notification (“Cal-
20 WARN”) Act, Cal. Labor Code §§ 1400-1408. The WARN Act applies to employers with 100
21 or more employees, who were employed for six of the preceding 12 months and who worked
22 more than 20 hours per week. The WARN Act’s notice requirement is generally triggered by a
23 plant closing or mass layoff affecting 50 or more employees at a single site of employment.
24 The Cal-WARN Act applies to employers that currently employ or have employed in the last
25 12 months, 75 or more full-time or part-time employees for six of the last 12 months. The Cal-

1 WARN Act's notice requirement is triggered by a layoff in any 30-day period of 50 or more
2 employees at a covered establishment. In the span of less than three months, between
3 March 16, 2020 and June 5, 2020, pursuant to the WARN Act and Cal-WARN Act, the City
4 has received 352 notices of layoffs that have occurred during that period by San Francisco
5 employers and that have affected 38,994 employees. An unknown number of employees of
6 San Francisco businesses that are not subject to the WARN Act of the Cal-WARN Act have
7 also been affected by layoffs due to COVID-19. This ordinance is necessary to mitigate the
8 severe, long-term economic harm for these individuals unable to work due to the public health
9 emergency.

10 (d) The COVID-19 pandemic has caused an unprecedented spike in unemployment at
11 national, state, and local levels, the likes of which the country has not seen since the Great
12 Depression of the 1930s. Nationally, in April 2020, the unemployment rate rose to 14.7%, as
13 compared to a rate of approximately 4% during the prior quarter. While the national
14 unemployment rate declined in May and June to 13.3% and 11.1%, respectively, those rates
15 are still staggering. As of July 23, 2020, workers nationwide have filed approximately 53
16 million claims for unemployment insurance at some point during the pandemic. The impact in
17 California has been especially acute. Statewide, unemployment rate was above 16% for both
18 the months of April and May 2020, and it improved slightly to 15.1% for June 2020. Between
19 March 14 and July 18, 2020, Californians filed approximately 8.7 million claims for
20 unemployment insurance.

21 The City is similarly experiencing dramatic rates of unemployment. For April 2020, the
22 State of California preliminarily estimated that 69,400 San Franciscans were unemployed,
23 resulting in an unemployment rate of 12.6%. Between February 25, 2020 and May 30, 2020,
24 approximately 141,000 San Franciscans filed claims for unemployment insurance with the
25 State of California. As of June 18, 2020, the San Francisco Bay Area had lost over 3% of its

1 4.1 million jobs over the prior three months, resulting in more than 136,000 layoffs through the
2 region.

3 These numbers—while staggering—unfortunately fail to reflect the total impact of the
4 COVID-19 pandemic on the labor market. Traditional unemployment estimates have long
5 been critiqued for applying overly restrictive criteria to track unemployment, including the
6 requirement that the unemployed person be actively seeking work. According to the U.S.
7 Department of Labor, individuals are classified as unemployed if they do not have a job, have
8 actively looked for work in the prior four weeks, and are currently available for work.
9 Estimates, therefore, do not account for a large pool of “missing workers,” also known as
10 “marginally attached” workers, defined as potential workers who, because of weak job
11 opportunities, are neither employed nor actively seeking a job. Traditional unemployment
12 metrics also fail to account for the underemployed—those who may prefer to work full-time,
13 but can only acquire part-time work. Accounting for those marginally attached and the
14 underemployed, the U.S. Department of Labor estimates the unemployment rate to be 18.0%
15 nationwide and 14.9% in California (seasonally adjusted) for June 2020. In short, the COVID-
16 19 pandemic is likely having an even more detrimental effect on the job market in San
17 Francisco than estimated with traditional metrics.

18 Moreover, unemployment statistics, even when documenting a massive surge in
19 joblessness, do not adequately convey the human suffering that attends joblessness on such
20 a large scale. The loss of employment for individuals laid off as a result of the COVID-19
21 pandemic typically places them and their families in great economic peril. This is especially
22 so because job losses due to the pandemic are disproportionately affecting low-wage
23 workers, since many white-collar workers are able to continue working from home.

24 (e) Layoffs caused by the COVID-19 pandemic also pose a substantial risk to public
25 health because layoffs can cause a loss of private health insurance benefits for affected

1 employees and their families. The loss of private health insurance during normal times—let
2 alone during a pandemic—can put insurmountable pressure on a family’s fiscal, physical, and
3 mental health. While an employee may be entitled to extend health insurance benefits
4 temporarily under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), 29 U.S.C.
5 §§ 1161-68, COBRA continuation coverage is often more expensive than what the employee
6 paid for coverage while employed. A loss of one’s job and the related employment benefits
7 can force a family to choose between paying for COBRA continuation coverage, paying rent,
8 or putting food on the table. This ordinance, therefore, is intended to decrease the number of
9 laid-off employees who will be without employer-sponsored health insurance as a result of the
10 COVID-19 pandemic by requiring employers subject to the ordinance to rehire eligible
11 employees if rehiring begins, thereby resuming such employees’ access to their prior health
12 insurance benefits.

13 Layoffs caused by the COVID-19 emergency also pose a substantial risk to public
14 health in the City by potentially forcing laid-off employees to seek out the City’s public health
15 resources, if they are not eligible for COBRA or if COBRA continuation benefits are too costly
16 for them to secure. This ordinance, therefore, is intended to alleviate the burden that layoffs
17 of employees covered by the ordinance are likely to have on the City’s public health system.

18 (f) The COVID-19 pandemic has created unique challenges for caretakers, including
19 working parents whose children are unable to attend school, summer camp, or childcare
20 facilities, or whose regular caretakers are not available. The pandemic is also putting
21 substantial pressure on workers who must care for a family member who becomes ill due to
22 the novel coronavirus. These workers will have even more difficulty obtaining reemployment
23 following a layoff.

24 (g) The COVID-19 pandemic has created a substantial financial crisis for the City
25 collectively and for individuals living or working in the City. The pandemic has caused a

1 severe nationwide recession, which may evolve into an economic depression; but regardless,
2 the pandemic's economic effects are likely to last well after the State and City shelter in place
3 orders are lifted. The loss of employment for individuals laid off as a result of the COVID-19
4 pandemic poses a substantial threat to the City's economy and the economic livelihood of
5 affected employees and their families.

6 After the Great Recession of 2007-2009, California's unemployment rate increased to
7 12% and remained above 10% for 43 consecutive months between February 2009 and
8 August 2012. California's long-term unemployment percentages remained significantly higher
9 than pre-recession rates for a decade, at 24.9% in 2017 from 16.8% in 2007.

10 For individuals and families, the loss of a job results not only in lost wages in the short
11 term, but can permanently suppress an employee's wages and earning potential for the
12 duration of the employee's working life. A National Bureau of Economic Research study of
13 workers displaced during the Great Recession of 2008-2009 found that, five years after
14 displacement, workers' earnings averaged more than \$2,000 less per quarter than the
15 earnings of comparable non-displaced workers, translating to approximately 15% lost
16 earnings. An analysis of Congressional Budget Office estimates of the U.S. Gross Domestic
17 Product over time suggests that long-term wage losses for displaced workers who previously
18 had the same job for more than three years will total more than \$1 trillion over a 20-year
19 period (or roughly \$50 billion on average annually).

20 Job loss also increases an individual's risk of physical and mental health problems,
21 suicide, and homelessness, and it correlates with higher mortality rates. Finally, job loss for a
22 parent has been shown to hamper the educational progress of the parent's children and, as a
23 result, to suppress the future wages of those children.

24 These consequences from prolonged job loss are amplified by growing evidence that
25 employers may discriminate against applicants during the hiring process for having been

1 previously laid off, despite the absence of evidence that a prolonged period of unemployment
2 diminishes a worker’s productivity upon reemployment.

3 (h) Finally, this ordinance is intended to support the economic recovery of all
4 businesses operating in the City. Reemployment of laid-off employees will provide economic
5 relief directly to the affected employees and their families, giving them the opportunity to start
6 working again as soon as practicable. Reemployment aids not only an employee’s own
7 personal economic recovery, but also strengthens and provides continuity for the communities
8 in which the employee lives because the employee’s resumed income will likely flow back into
9 local businesses that the employee can once again frequent. Such economic activity in turn
10 helps revitalize the City’s economy and the greater local economy.

11
12 Section 2. The Police Code is hereby amended by adding Article 33K, to read as
13 follows:

14 **ARTICLE 33K: RIGHT TO REEMPLOYMENT FOLLOWING LAYOFF DUE TO COVID-**
15 **19 PANDEMIC**

16 **SEC. 3300K.1. TITLE.**

17 *This Article 33K shall be known as the “Back to Work” ordinance.*

18
19 **SEC. 3300K.2. DEFINITIONS.**

20 *For purposes of this Article 33K, the following terms shall have the following meanings:*

21 *“Beginning of the Public Health Emergency” means February 25, 2020, the date on which*
22 *Mayor London Breed proclaimed a state of emergency in response to the spread of the novel*
23 *coronavirus COVID-19.*

24 *“City” means the City and County of San Francisco.*

1 “Eligible Worker” means a person: 1) who was employed by an Employer for at least 90 days
2 preceding the date on which their Employer provided written notice to the employee of a Layoff; 2) who
3 was or is Separated due to a Layoff; and 3) who provided an Employer with labor or services for
4 remuneration as an employee, as defined under California Labor Code section 2750.3, including
5 persons employed on a part-time or temporary basis, within the geographic boundaries of the City.

6 “Employer” means any person as defined in Section 18 of the California Labor Code who
7 directly or indirectly, on or after February 25, 2020, employed or employs 100 or more employees
8 worldwide, as of the earliest date that an employer Separated or Separates one or more Eligible
9 Worker that resulted or results in a Layoff. “Employer” does not include any federal, state, local, or
10 other public agency. Further, “Employer” does not include any employer that provided or provides
11 services that qualify as healthcare operations, which include, without limitation, hospitals, medical
12 clinics, diagnostic testing locations, dentists, pharmacies, blood banks and blood drives,
13 pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home
14 healthcare service providers, mental health providers, or any related and/or ancillary healthcare
15 services, as well as veterinary care and all healthcare service providers to animals.

16 “Family Care Hardship” means a circumstance in which an Eligible Worker is unable to work
17 due to any reason for which an employee may use paid sick leave under Administrative Code §
18 12W.4(a) to provide care for another person, including but not limited to a need to care for a child
19 whose school or place of care has been closed or whose childcare provider is unavailable as a result of
20 the Public Health Emergency and no other suitable person is available to care for the child during the
21 period of such leave. For the purpose of this definition, “child” means a biological, adopted, or foster
22 child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years
23 of age or who is incapable of self-care because of a mental or physical disability.

24 “Layoff” means the Separation by an Employer of 10 or more Eligible Workers within a 30-day
25 period, starting on or after the Beginning of the Public Health Emergency, that is caused by an

1 Employer’s lack of funds, lack of work, closure, or cessation of operations resulting from the Public
2 Health Emergency, including, without limitation, health orders to mitigate the spread of COVID-19.

3 “OEWD” means the Office of Economic and Workforce Development for the City.

4 “Public Health Emergency” means the state of emergency declared by the Mayor in response
5 to the novel coronavirus COVID-19.

6 “Separate” and “Separation” mean to terminate, or the termination or end of, employment,
7 respectively, by an Employer.

8
9 **SEC. 3300K.3. RECORDS REGARDING LAYOFF.**

10 (a) Written Notice of Layoff and Right to Reemployment for Current Employees who are
11 Eligible Workers. When an Employer implements a Layoff on or after the effective date of this Article
12 33K, the Employer shall provide all Eligible Workers with written notice of the Layoff at or before the
13 time when the Layoff becomes effective. The Employer shall provide notice to each Eligible Worker in
14 a language understood by the Eligible Worker. The written notice shall include: a notice of the Layoff
15 and the Layoff’s effective date; a summary of the right to reemployment created by this Article 33K;
16 and a telephone number for a hotline, operated by OEWD, which Eligible Workers may call to receive
17 information regarding the right to reemployment created by Ordinance No. 104-20, as extended and
18 codified by this Article 33K, as well as navigation services and other City resources related to
19 unemployment.

20 (b) Written Notice of Layoff and Right to Reemployment for Former Employees who are
21 Eligible Workers. If an Employer implemented a Layoff after the Beginning of the Public Health
22 Emergency, but before the effective date of this Article 33K, the Employer shall within 30 days of the
23 effective date of this Article 33K provide written notice of the Layoff, consistent with the requirements
24 for notices set forth in Section 3300K.3(a), to each Eligible Worker who the Employer Separated due to

1 Layoff, unless the Employer otherwise provided notice to each Eligible Worker pursuant to Section 5 of
2 Ordinance No. 104-20.

3 (c) Notification to the City Regarding Layoff. An Employer shall provide written notice to
4 OEWD regarding any Layoff. The written notice shall include: the total number of Eligible Workers
5 affected by the Layoff; the job classification at the time of Separation for each Eligible Worker; the
6 original hire date for each Eligible Worker; and the date of Separation from employment for each
7 Eligible Worker.

8 (1) When an Employer implements a Layoff on or after the effective date of this Article
9 33K, the Employer shall provide the City with the notice within 30 days of the latest date on which it
10 Separated an Eligible Worker due to a Layoff.

11 (2) If an Employer implemented a Layoff after the Beginning of the Public Health
12 Emergency, but before the effective date of this Article 33K, unless the Employer otherwise provided
13 notice to the City pursuant to Section 5 of Ordinance No. 104-20, the Employer shall provide the City
14 with the notice within 30 days of the effective date of this Article 33K.

15 (d) Retention of Records. An Employer must retain the following records regarding each
16 Eligible Worker it Separated due to a Layoff for at least two years: full legal name; job classification at
17 the time of Separation; date of hire; last known address of residence; last known email address; last
18 known telephone number; and a copy of the written notice regarding the Layoff provided to the Eligible
19 Worker. For the purpose of this Section 3300K.3, two years is measured from the date of the written
20 notice provided by the Employer to the Eligible Worker, as required by subsections (a) or (b) of this
21 Section 3300K.3 or Section 5 of Ordinance No. 104-20.

22
23 **SEC. 3300K.4. EMPLOYER'S OBLIGATION TO MAKE OFFER OF REEMPLOYMENT TO**
24 **ELIGIBLE WORKERS FOLLOWING LAYOFF.**

1 (a) Offer of Reemployment Following Layoff to Same Position. Where an Employer initiated a
2 Layoff after the Beginning of the Public Health Emergency and subsequently seeks to hire a person to a
3 position located in the City that was formerly held by an Eligible Worker, the Employer shall first offer
4 the Eligible Worker an opportunity for reemployment to the Eligible Worker’s former position before
5 offering the position to another person.

6 (b) Offer of Reemployment Following Layoff to Similar Position. Where an Employer initiated
7 a Layoff after the Beginning of the Public Health Emergency and subsequently seeks to hire a person to
8 any position located in the City that is substantially similar to the Eligible Worker’s former position,
9 the Employer shall first offer the Eligible Worker an opportunity for reemployment to the substantially
10 similar position before offering the position to another person. For the purpose of this Section
11 3300K.4(b), a “substantially similar position” includes any of the following: a position with
12 comparable job duties, pay, benefits, and working conditions to the Eligible Worker’s position at the
13 time of Layoff; any position in which the Eligible Worker worked for the Employer in the 12 months
14 preceding the Layoff; or any position for which the Eligible Worker would be qualified, including a
15 position that would necessitate training that an Employer would otherwise make available to a new
16 employee to the particular position upon hire.

17 (c) Offers of Reemployment Made in Order of Seniority. An Employer shall first make an offer
18 of reemployment under this Article 33K to the most senior Eligible Worker who formerly held that same
19 position. If the most senior Eligible Worker who formerly held the same position declines the offer of
20 reemployment, an Employer shall make subsequent offers of reemployment to any other Eligible
21 Workers who previously held the same position or any substantially similar position in order of
22 seniority. If all Eligible Workers decline the offer of reemployment, then an Employer may make such
23 offer to any person. For the purpose of this Section 3300K.4(c), the seniority of an Eligible Worker is
24 measured from their earliest date of hire by an Employer.

1 (d) Exceptions. An Employer may withhold an offer of reemployment under the following
2 circumstances.

3 (1) Misconduct. An Employer may withhold an offer of reemployment under this Article
4 33K if, based on information learned subsequent to the Layoff of an Eligible Worker, the Employer
5 learns that an Eligible Worker engaged in any act of dishonesty, violation of law, violation of policy or
6 rule of the Employer, or other misconduct during the Eligible Worker's employment with the Employer.

7 (2) Severance Agreement. An Employer may withhold an offer of reemployment under
8 this Article 33K if the Employer and an Eligible Worker executed a severance agreement before the
9 effective date Ordinance No. 104-20 in which, in exchange for adequate consideration, the Eligible
10 Worker agreed to a general release of claims against the Employer.

11 (3) Rehiring. An Employer may withhold an offer of reemployment under this Article
12 33K if, prior to the effective date of Ordinance No. 104-20, the Employer hired a person other than the
13 Eligible Worker to the Eligible Worker's former position or to a substantially similar position, as
14 defined in Section 3300K.4(b).

15
16 **SEC. 3300K.5. NOTICE OF OFFER AND ACCEPTANCE.**

17 (a) Making an Offer of Reemployment. An Employer shall engage in good faith efforts to extend
18 offers of reemployment to all Eligible Workers, consistent with the terms set forth in this Section
19 3300K.5.

20 (1) Electronic Delivery. An Employer shall attempt to notify an the Eligible Worker of
21 an offer of reemployment by contacting the Eligible Worker by telephone at the Eligible Worker's last
22 known telephone number and by email at the Eligible Worker's last known email address. If the
23 Employer confirms that the Eligible Worker has access to receive an offer via email, text message,
24 facsimile, or some other mode of electronic transmission, the Employer may transmit the offer
25 electronically.

1 (2) Hard Copy Delivery.

2 (A) If an Employer makes initial contact with an Eligible Worker under Section
3 3300K.5(a)(1), but the Eligible Worker is unable to receive the offer electronically, the Employer shall
4 confirm the Eligible Worker's current address of residence. The Employer shall transmit a written
5 offer of reemployment to the Eligible Worker's current address of residence by certified mail or courier
6 delivery.

7 (B) If an Employer is unable to make initial contact with the Eligible Worker
8 under Section 3300K.5(a)(1), the Employer shall transmit a written offer of reemployment to the
9 Eligible Worker's last known address of residence by certified mail or courier delivery. In such
10 circumstances, a courier is authorized to deliver the offer to the address of residence without obtaining
11 proof of receipt by the Eligible Worker.

12 (3) The offer shall remain open for at least two business days following delivery,
13 although the Employer may extend the acceptance period.

14 (b) Order of Delivery of Offer. Where more than one Eligible Worker is eligible for an offer of
15 reemployment, an Employer shall transmit offers to Eligible Workers in the order set forth in Section
16 3300K.4(c).

17 (c) Acceptance. An Eligible Worker may accept an offer of reemployment by providing a
18 response to the Employer in writing by reasonable means of delivery identified by the Employer
19 including, without limitation, returning a signed version of an offer letter or, if authorized by an
20 Employer, by applying an electronic signature and transmitting acceptance of the offer to an Employer
21 by email or other mode of electronic communication. If the Eligible Worker notifies the Employer by
22 other means, including but not limited to by telephone or text message, of the Eligible Worker's
23 acceptance of the offer, the Employer must move forward with the reemployment but may require the
24 Employee to provide additional written documentation of the acceptance by reasonable means
25 identified by the Employer within not less than two business days from the acceptance.

1 (d) Rejection. If the Eligible Worker rejects an offer of reemployment or fails to respond to an
2 offer of reemployment within the time prescribed under Section 3300K.5(a)(3), which shall be deemed
3 to be a rejection of the offer of reemployment, the Employer may offer the position to another
4 individual in accordance with Section 3300K.4(c).

5
6 **SEC. 3300K.6. NON-DISCRIMINATION AND DUTY TO REASONABLY ACCOMMODATE**
7 **ELIGIBLE WORKERS EXPERIENCING A FAMILY CARE HARDSHIP.**

8 An Employer shall not discriminate against or take an adverse employment action against an
9 Eligible Worker as a consequence of an Eligible Worker experiencing a Family Care Hardship. An
10 Eligible Worker shall be entitled to reasonable accommodation of a job duty or job requirement if a
11 Family Care Hardship impacts the Eligible Worker’s ability to perform a job duty or to satisfy a job
12 requirement. An Employer shall, in response to a request for accommodation by an Eligible Worker,
13 make good faith efforts to reasonably accommodate an Eligible Worker during the period in which an
14 Eligible Worker experiences a Family Care Hardship. For the purpose of this Section 3300K.6, to
15 “reasonably accommodate” includes, without limitation, modifying an Eligible Worker’s schedule,
16 delaying the start date of reemployment, modifying the number of hours to be worked, or permitting
17 telework, to the extent operationally feasible, to accommodate the Eligible Worker’s Family Care
18 Hardship.

19
20 **SEC. 3300K.7. NOTIFICATION TO CITY OF OFFERS OF REEMPLOYMENT.**

21 An Employer shall, without disclosing the identities of any individual job candidates, notify the
22 OEWD in writing of all offers of reemployment made under this Article 33K, in addition to all
23 acceptances and rejections by Eligible Workers of such offers or reemployment.

24
25 **SEC. 3300K.8. REGULATIONS.**

1 OEWD may issue regulations regarding this Article 33K.

2
3 **SEC. 3300K.9. REMEDIES FOR VIOLATIONS.**

4 (a) An Eligible Worker may bring an action in the Superior Court of the State of California
5 against an Employer for violating this Article 33K, and may be awarded the following relief:

6 _____ (1) Hiring and reinstatement rights;

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

15 _____ (3) The value of the benefits the Eligible Worker would have received under the
16 Employer's benefit plans had the violation not occurred.

17 (b) If the Eligible Worker is the prevailing party in any legal action taken pursuant to this
18 Section 3300K.9, the court shall also award reasonable attorneys' fees and costs.

19
20 **SEC. 3300K.10. NO LIMITATION ON THE OTHER RIGHTS AND REMEDIES.**

21 This Article 33K does not in any way limit the rights and remedies that the law otherwise
22 provides to Eligible Workers, including without limitation, the rights to be free from wrongful
23 termination and unlawful discrimination.

24
25 **SEC. 3300K.11. WAIVER THROUGH COLLECTIVE BARGAINING.**

1 *This Article 33K shall not apply to Eligible Workers covered by a bona fide collective*
2 *bargaining agreement to the extent that the requirements of this Article are expressly waived in the*
3 *collective bargaining agreement in clear and unambiguous terms.*

4
5 **SEC. 3300K.12. PREEMPTION.**

6 *Nothing in this Article 33K shall be interpreted or applied so as to create any right, power, or*
7 *duty in conflict with federal or state law. The term “conflict” as used in this Section 3300K.12 means a*
8 *conflict that is preemptive under federal or state law.*

9
10 **SEC. 3300K.13. SUNSET.**

11 *This Article 33K shall expire by operation of law one year from the effective date of Ordinance*
12 *No. 104-20, or the date on which the state of emergency proclaimed on February 25, 2020, terminates,*
13 *whichever date occurs latest. Upon expiration, the City Attorney shall cause Article 33K to be removed*
14 *from the Police Code.*

15
16 Section 3. Severability.

17 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
18 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
19 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
20 remaining portions or applications of this ordinance. The Board of Supervisors hereby
21 declares that it would have passed this ordinance and every section, subsection, sentence,
22 clause, phrase, and word not declared invalid and unconstitutional without regard to whether
23 any other portion of the ordinance or application thereof would be subsequently declared
24 invalid or unconstitutional.

1 Section 4. Effective Date.

2 This ordinance shall become effective 30 days after enactment or upon expiration of
3 Emergency Ordinance No. 104-20, whichever date is later. Enactment occurs when the
4 Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the
5 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s
6 veto of the ordinance.

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

11 By: /s/ _____
12 LISA POWELL
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

Ordinance amending the Police Code to create 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 the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

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) 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 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.

The emergency ordinance was enacted on July 3, 2020. Under Charter section 2.107, it will remain in effect for 60 days, unless reenacted.

Amendments to Current Law

This ordinance extends and codifies the emergency ordinance, with clarifications and minor amendments. The substantive provisions of the ordinance are similar to the emergency ordinance, but the ordinance streamlines the process for making and accepting offers of reemployment, corrects an error in the definition of eligible worker to clarify that the worker must have been employed for at least 90 days prior to the notice of layoff without regard to the calendar year, and transfers the authority to issue regulations from OLSE to OEWD. It sunsets one year from the effective date of the emergency ordinance, or on the date on which the public health emergency terminates, whichever date occurs latest.

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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