

BOARD of SUPERVISORS



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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: September 30, 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. 201087

Reenactment of emergency ordinance (Ordinance No. 104-20, reenacted by Ordinance No. 159-20) to temporarily 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 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 **Reenactment of emergency ordinance (Ordinance No. 104-20, reenacted by Ordinance**
4 **No. 159-20) to temporarily create a right to reemployment for certain employees laid off**
5 **due to the COVID-19 pandemic if their employer seeks to fill the same position**
6 **previously held by a laid-off worker, or a substantially similar position, as defined.**

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

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

15 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

16 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
17 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
18 of any City or County department or office required to comply with time limitations established
19 by law. An emergency ordinance enacted under Charter Section 2.107 automatically
20 terminates on the 61st day after passage, but may be reenacted upon the same terms and
21 conditions applicable to its initial enactment.

22 (b) Pursuant to Charter Section 2.107, the City enacted Ordinance No. 104-20, the
23 “Back to Work” emergency ordinance, which temporarily requires certain employers operating
24 in San Francisco to offer reemployment to eligible employees laid off as a result of the
25 COVID-19 public health emergency. The emergency ordinance became effective when
enacted, on July 3, 2020. On September 4, 2020, Ordinance No. 104-20 was reenacted by

1 another emergency ordinance, Ordinance No. 159-20, which will terminate automatically on
2 November 3, 2020, unless reenacted.

3 (c) The Board of Supervisors hereby finds that the findings declared in Sections 2 and
4 3 of Ordinance No. 104-20 and reaffirmed in Section 1 of Ordinance No. 159-20 remain valid
5 and compelling, and declares further that an actual emergency continues to exist that requires
6 the reenactment of the Back to Work emergency ordinance to mitigate the economic effects of
7 layoffs caused by the public health emergency. COVID-19 continues to present an extremely
8 dangerous public health risk to the community, and the adverse economic impact on workers
9 and their families remains severe, notwithstanding gradual efforts to reopen sectors of the
10 economy. Further, many employees continue to experience family caregiving challenges due
11 to school and care facility closures, challenges securing caregiving assistance, and the
12 continuation of distance learning for school children.

13
14 Section 2. Reenactment of Emergency Ordinance.

15 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an
16 additional 60 days the emergency ordinance temporarily requiring certain employers operating
17 in San Francisco to offer reemployment to eligible employees laid off as a result of the
18 COVID-19 public health emergency (Ordinance No. 104-20, as reenacted by Ordinance No.
19 159-20).

20
21 Section 3. Effective Date; Expiration.

22 (a) If enacted prior to the expiration of Ordinance No. 159-20, which reenacted
23 Ordinance No.104-20, this reenacted emergency ordinance shall become effective
24 immediately upon the date of expiration of Ordinance No. 159-20, and shall itself expire on the
25 61st day following its effective date unless reenacted as provided by Charter Section 2.107.

1 (b) If enacted after the expiration of Ordinance No. 159-20, this reenacted emergency
2 ordinance shall become effective immediately upon enactment, shall have operative effect
3 retroactively to the date that Ordinance No.159-20 expired, and shall expire on the 61st day
4 following the date that Ordinance No. 159-20, expired, unless reenacted as provided by
5 Charter Section 2.107.

6
7 Section 4. Directions to Clerk.

8 The Clerk of the Board of Supervisors is hereby directed to place a copy of this
9 reenacted emergency ordinance in File No. 200455 for Ordinance No. 104-20 and File No.
10 200816 for Ordinance No. 159-20 and to make a notation cross-referencing this emergency
11 ordinance where Ordinance Nos. 104-20 and 159-20 appear on the Board of Supervisors
12 website as legislation passed.

13
14 Section 5. Supermajority Vote Required.

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

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: /s/ Lisa Powell
22 LISA POWELL
23 Deputy City Attorney

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LEGISLATIVE DIGEST

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

Reenactment of emergency ordinance (Ordinance No. 104-20, reenacted by Ordinance No. 159-20) to temporarily 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 a laid-off worker, or a substantially similar position, as defined.

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, 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, with the result that it does not terminate on November 3, 2020, but rather is extended for an additional 60 days.