

REVISED LEGISLATIVE DIGEST
(Amended in Committee – March 11, 2021)

[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.

Prior Emergency Ordinance

An emergency ordinance (Ordinance No. 104-20) temporarily required certain employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 public health emergency. It applied to employers that operate in San Francisco and employ 100 or more employees, except healthcare operations. The emergency ordinance applied 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) received notices of layoffs and offers of reemployment and operated a hotline for workers. The Office of Labor Standards Enforcement (OLSE) was authorized to issue regulations but did not do so.

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, and reenacted by Ordinance Nos. 159-20, 231-20 and 009-21. It expired on March 2, under Charter section 2.107, which provides that emergency ordinances remain in effect for 60 days, unless reenacted.

Background

This ordinance is substantially the same as the emergency ordinance, with clarifications and minor amendments. 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.

An amendment adopted in Committee changes the definition of employer to incorporate definitions in various provisions of the municipal code. Under the amended definition, an “employer” covered by the ordinance includes any:

- “Contractor” as defined by Police Code Section 3300C.1(b). This definition includes certain contractors for security, janitorial, or building maintenance services that employ 25 or more persons.
- “Grocery Establishment” as defined by Police Code Section 3300D.2(e). This definition includes retail grocery stores that are over 15,000 square feet in size, without regard to how many people are employed.
- “Hospitality Establishment” as defined by Police Code Section 3300E.2. This definition includes any:
 - “Large Hotel,” which is a “Hotel” as defined in Planning Code Section 102 that has 100 or more guest rooms and/or suites of rooms, without regard to how many people are employed. “Large Hotel” does not include a Residential Hotel as defined in Section 102 of the Planning Code.
 - “Large Food Service Operation,” which is a food and/or beverage concession within or on the grounds of a stadium, arena, theater, auditorium, convention center, or similar facility located in the City with a seating capacity of 5,000 or more at which 100 or more persons have been employed at food and/or beverage concessions. For purposes of the 100-employee threshold in the preceding sentence, the number of employees of separately-owned food and/or beverage concessions shall be aggregated if operated in the same venue.
 - “Large Restaurant,” which is a “restaurant” as defined in Section 471.3 of the Health Code that has employs 200 or more persons at a single establishment in the City
- “Employer” as defined by Police Code Section 3300F.2, which is an any Person that owns or operates a Formula Retail Establishment with 20 or more Employees in the City. For the purpose of calculating the 20-employee threshold referenced herein, Employees performing work in other Formula Retail Establishments in the City that are

- owned or operated under the same trade name by the same Employer shall be counted. "Employer" does not include a Nonprofit Corporation or governmental entity.
- "Employer" additionally includes employers that do not fit into these cross-referenced definitions without considering the threshold size or employee count requirements in the definitions (employers that are not a grocery store, hotel, food service operation, restaurant, or Formula Retail Establishment) that employ 100 or more employees.

As an example of how this applies, a grocery store that is 14,000 square feet in size and that is part of a business with 30 retail sales establishments is not an employer subject to the ordinance even if it employs more than 100 employees, because it is not a "Grocery Establishment" due to its location size and it is not a Formula Retail Employer. Because it would be a "Grocery Establishment" but for not meeting the threshold size requirement, it is not subject to the alternative definition of employer that employees 100 or more employees.

Additional amendments clarify that the requirements to make offers of reemployment apply prospectively from the effective date of the ordinance, remove positions for which the eligible worker would be qualified from the definition of "substantially similar" position, and makes a few other non-substantive updates.

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