

ORDINANCE NO. _____

An ordinance adding Article 4-72J-A to Chapter XX of the Los Angeles Municipal Code subjecting specified businesses in Los Angeles to recall provisions for certain workers laid off during the COVID-19 pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 4-72J-A is added to Chapter XX of the Los Angeles Municipal Code to read as follows:

ARTICLE 4-72J-A

COVID-19 RIGHT OF RECALL

SEC. 200.30. PURPOSE.

As a result of the COVID-19 pandemic and “Safer at Home” declarations by California Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti, issued to protect the public health and welfare, many workers in the City of Los Angeles are facing significant job and economic insecurity. Workers at the Airport, in the Hospitality Industry and those who provide services to Commercial Property are especially impacted by worker lay-offs as a result of the pandemic because travel has been severely halted and businesses in the industry cannot easily adjust to the lack of patronage during the crisis. The Stay-At-Home Orders have severely impacted Commercial Property services as many offices and stores are closed. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the City hereby enacts legal protections for workers laid off due to the pandemic.

SEC. 200.31. DEFINITIONS.

The following definitions shall apply to this article:

A. “**Airport**” means the City of Los Angeles Department of Airports and each airport it operates in the City.

B. “**Airport Employer**” means any employer that provides any service at the Airport or provides any service to any employer servicing the Airport, and is required to comply with the Los Angeles Living Wage Ordinance, Los Angeles Administrative Code Sections 10.37 *et seq.* An Airport Employer does not include:

1. An airline; or

2. An employer that is party to an agreement with the Airport that contains a worker rehire requirement.

C. “**City**” means the City of Los Angeles.

D. “**Commercial Property Employer**” means an owner, operator, manager or lessee, including a contractor, subcontractor or sublessee, of a non-residential property in the City that employs 25 or more janitorial, maintenance or security service workers. Only the janitorial, maintenance, and security service workers who perform work for a Commercial Property Employer are covered by this article.

E. “**Employer**” means an Airport Employer, a Commercial Property Employer, an Event Center Employer, and a Hotel Employer. For purposes of this Article, an “Employer” does not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles.

F. “**Event Center Employer**” means an owner, operator or manager of a publicly or privately owned structure in the City of more than 50,000 square feet or with a seating capacity of 1,000 seats or more that is used for public performances, sporting events, business meetings or similar events. An event center includes, but is not limited to, concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

G. “**Hotel Employer**” means an owner, operator or manager of a residential building in the City designated or used for public lodging or other related service for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. A Hotel Employer includes the owner, operator, manager or lessee of any restaurant physically located on hotel premises.

H. “**Laid Off Worker**” means any person who, in a particular week, performs at least two hours of work within the geographical boundaries of the City for an Employer, has a Length of Service with the Employer of six months or more, and whose most recent separation from active employment by the Employer occurred on or after March 4, 2020, as a result of a lack of business, a reduction in work force or other economic, non-disciplinary reason. This ordinance creates a rebuttable presumption that any termination occurring on or after March 4, 2020, was due to a non-disciplinary reason. For purposes of this article, a Laid Off Worker does not include a manager, supervisor, confidential employee or a person who performs as their primary job responsibility sponsorship sales for an Event Center Employer.

I. “**Length of Service**” means the total of all periods of time during which a Worker has been in active service to an Employer, including periods of time when the Worker was on leave or vacation.

SEC. 200.32. RIGHT OF RECALL.

A. Priority for Laid Off Workers. An Employer shall make the offer to a Laid Off Worker, in writing, to the last known mailing address, electronic mail, and text message phone number, of any position which is or becomes available after the effective date of this article for which the Laid Off Worker is qualified. A Laid Off Worker is qualified – and must be offered a position in the order of priority below – if the Laid Off Worker: (1) held the same or similar position at the same site of employment at the time of the Laid Off Worker's most recent separation from active service with the Employer; or (2) is or can be qualified for the position with the same training that would be provided to a new worker hired into that position. If more than one Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest Length of Service in (1) and then (2) with the Employer at the employment site.

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this article shall be given no less than five (5) business days in which to accept or decline the offer.

SEC. 200.33. ENFORCEMENT.

A. A Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article.
2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.
3. Punitive damage, pursuant to California Civil Code Section 3294.
4. The court shall award reasonable attorneys' fees and costs to a Laid Off Worker who prevails in any such enforcement action and to an Employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.

B. A civil action by a Laid Off Worker alleging a violation of any provision of this article shall commence only after the following requirements have been met:

1. The Laid Off Worker provides written notice to the Employer of the provisions of the article alleged to have been violated and the facts to support the alleged violation; and
2. The Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

C. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.34. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

A collective bargaining agreement in place on the effective date of this article that contains a right of recall provision shall supersede the provision this article. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this article may only be waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this article but the agreement does not include a right of recall provision, this article applies. A collective bargaining agreement may be amended at any time to explicitly waive with clear and unambiguous terms the provisions of this article.

SEC. 200.35. NO WAIVER OF RIGHTS.

Except for a collective bargaining agreement provision made pursuant to Section 200.34, any waiver by a worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a worker to waive rights given by this article shall constitute a violation of this article.

SEC. 200.36. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council hereby declares that it would have adopted this article and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

SEC. 200.37. REPORT.

Before March 1, 2022, the Chief Legislative Analyst shall report to the City Council and Mayor on the effectiveness of the provisions of this article in protecting workers' stability of employment, recommendations for additional protections that further the intent of this article, and whether the provisions of the article are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

SEC. 200.38. RETALIATORY ACTION PROHIBITED.

No Employer shall discharge, reduce in compensation, or otherwise discriminate against any worker for opposing any practice proscribed by this article, for participating

in proceedings related to this article, for seeking to exercise his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 200.39. RULES AND REGULATIONS

The Office of Wage Standards of the Bureau of Contract Administration shall promulgate Rules and Regulations that will be updated when necessary consistent with this article for further clarification of the provisions of this article. The Rules and Regulations shall be posted on the WagesLA.lacity.org website.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

Date 4/27/20

File No. CF 20-0147-S15; 20-0147-S35; 20-0147-S42

M:\GENERAL COUNSEL DIVISION\ORDINANCES AND REPORTS\ORDINANCES - FINAL YELLOW\LAMC 200.30 - Revised COVID-19 RIGHT OF RECALL 4.27.20.docx

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____