Engage PEO Client Alert:

California Enacts Statewide COVID-19 Rehiring Protocol for Certain Employers

On April 16, 2021, Governor Newson signed into law Senate Bill 93 which amends California Labor Code section 2810.8 to include a rehiring protocol for employees of certain employers who were laid off due to the COVID-19 pandemic. The new law will remain **in effect until December 31, 2024**.

Covered Employers

The new law applies to "any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, **owns or operates an enterprise and employs or exercises control over the wages, hours, or working conditions of any employee**."

An **enterprise** includes the following employers:

- **Hotels** (residential buildings that are designated or used for lodging and other related services for the public, and containing 50 or more guest rooms, or suites of rooms). Adjoining rooms do not constitute a suite of rooms and any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.
- **Private clubs** (private, membership-based businesses or nonprofit organizations that operate a building or complex of buildings containing at least 50 guest rooms or suites of rooms that are offered as overnight lodging to members. The number of guest rooms or suites of rooms shall be calculated based on the room count on the opening of the private club or on December 31, 2019, whichever is greater).
- **Event centers** (publicly or privately owned structures of more than 50,000 square feet or 1,000 seats that is used for the purposes of public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers, as well as any contracted, leased, or sublet premises connected to or operated in conjunction with event centers' purpose, including food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities).
- **Airport hospitality operations** (businesses that prepare, deliver, inspect, or provide any other service in connection with the preparation of food or beverage for aircraft crew or passengers at an airport, or that provide food and beverage, retail, or other consumer goods or services to the public at an airport). This category of employers excludes air carriers certificated by the Federal Aviation Administration.
- **Airport service providers** (businesses that perform, under contract with a passenger air carrier, airport facility management, or airport authority, functions on the property of the airport that are directly related

to the air transportation of persons, property, or mail, including, but not limited to, the loading and unloading of property on aircraft, assistance to passengers under Part 382 (commencing with Section 382.1) of Title 14 of the Code of Federal Regulations, security, airport ticketing and check-in functions, ground-handling of aircraft, aircraft cleaning and sanitization functions, and waste removal). However, this category of employers excludes air carriers certificated by the Federal Aviation Administration).

- **Provisions of building service to office, retail, or other commercial buildings.**

Please note that the new law also applies in the following scenarios:

- Ownership of the covered employer changed after the separation from employment of a laid-off employee, but the enterprise is conducting the same or similar operations as before the COVID-19 state of emergency;
- Form of organization of the covered employer changed after the COVID-19 state of emergency;
- Substantially all of the assets of the covered employer were acquired by another business entity that conducts the same or similar operations using substantially the same assets; and
- The covered employer relocates the operations at which a laid-off employee was employed before the COVID-19 state of emergency to a different location.

Covered Employees

The new law applies to "any employee who was **employed by [a covered] employer for 6 months or more in the 12 months preceding January 1, 2020**, **and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic**, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary reason due to the COVID-19 pandemic."

Rehiring Protocol

The new law mandates that covered employers adhere to the following rehiring protocol:

1. Within **five (5) business days of establishing a position**, an employer shall offer its laid-off employees in writing, either by hand or to their last known physical address, **and** by email and text message to the extent the employer possesses such information, all job positions that become available after [April 16, 2021] for which the laid-off employees are qualified. A laid-off employee is qualified for a position if the employee held the same or similar position at the enterprise at the time of the employee's most recent layoff with the employer.

2. The employer shall offer positions to laid-off employees in an order of preference subject to paragraph (1) above. If more than one employee is entitled to preference for a position, the covered employer must offer the position to the laid-off employee with the greatest length of service based on the employee's date of hire for the enterprise.

3. A laid-off employee who is offered a position must be given at least **five (5) business days from the date of receipt of the notice, in which to accept or decline the offer**. An employer may make simultaneous, conditional offers of employment to laid-off employees, with a final offer of employment conditioned on application of the preference system set forth in paragraph (2) above.

4. A covered employer that declines to recall a laid-off employee on the grounds of lack of qualifications and instead hires someone other than a laid-off employee must provide the laid-off employee a written notice within thirty (30) days including the length of service with the covered employer of those hired in lieu of that recall, along with all reasons for the employer's decision.

Recordkeeping Requirements

Covered employers must retain the records for laid-off employees, containing the information outlined below, for at minimum three (3) years, measured from the date of the written notice regarding the layoff:

- Employee's full legal name;
- Employee's job classification at the time of separation from employment;
- Employee's date of hire;
- Employee's last known address of residence;
- Employee's last known email address;
- Employee's last known telephone number;
- A copy of the written notices regarding the layoff provided to the laid-off employee; and
- All records of communications between the covered employer and the employee concerning offers of employment made to the employee pursuant to the new law.

Anti-Retaliation Prohibition

Covered employers are prohibited from refusing to employ, terminating, reducing compensation or otherwise taking adverse employment against a laid-off employee for seeking to enforce their rights pursuant to the new law, participating in proceedings related to the new law, opposing any employment practice related to the new allow, or otherwise asserting their rights pursuant to the new law.

Remedies

A covered employee can file a complaint for violation of the new law with the California Division of Labor Standards Enforcement (DLSE) for following remedies:

1. **Front pay or back pay <u>for each day during which the violation continues</u>, calculated at a rate of compensation <u>not less than the highest of any of the following rates</u>:** (a) average regular rate of pay received by the laid-off employee during the last three (3) years of that employee's employment in the same occupation classification; (b) most recent regular rate received by the laid-off employee while employed by the employer; or (c) regular rate received by an employee occupying the position in place of the laid-off employee that should have been employed; and
2. **Value of the benefits the laid-off employee would have received under the covered employer's benefit plan.**

Additionally, the DLSE may seek civil penalties against a covered employer in the amount of $100 for each employee whose rights under the new law are violated **<u>and</u>** liquidated damages in the amount of $500 per employee per day the rights of a covered employee are violated **<u>and</u>** until the covered employer cures such violation(s). After collection of such civil penalties, the DLSE has authority to pay the employee those funds which the law considers compensatory damages. The DLSE also has authority to investigate and issue citations for violations of the new law as well as seek injunctive relief in state court.

Please contact your Engage HR Consultant if you have any questions.