Engage PEO Client Alert:

CALIFORNIA UPDATE: California Cities & Counties Enact COVID-Related Worker Recall & Retention Ordinances

County of Los Angeles

On ***May 12, 2020***, the County of Los Angeles' Board of Supervisors passed sister ordinances—COVID-19 Right of Retention Ordinance and the COVID-19 Right of Recall Ordinance—to address employees in the janitorial, maintenance, security service and hospitality industries in unincorporated Los Angeles County impacted by COVID-19 separation of employment. The ordinances outline protocol for retaining employees in the event of change of control of the covered employers as well as the procedure for recalling laid-off employees.

The ordinances define employer to include **Commercial Property Employers** (an owner, operator, manager or lessee, including a contractor, subcontractor or sublessee, of a non-residential property in unincorporated Los Angeles County employing 25 or more janitorial, maintenance or security service workers) and **Hotel Employers** (an owner, operator, or manager of a residential building in unincorporated Los Angeles County designated or used for public lodging or other related service for the public and either contains 50 or more guest rooms or has earned gross receipts in 2019 exceeding $5 million).

City of Los Angeles

Effective ***June 14, 2020***, employers in the travel, entertainment, tourism and hospitality industry within the City of Los Angeles became subject to a specific return-to-work protocol, pursuant to the City of Los Angeles' COVID-19 Right of Recall Ordinance and COVID-19 Worker Retention Ordinance.

Los Angeles' Recall Ordinance mandates a specific recall protocol for covered employees, which includes: (1) workers employed an Airport Employer; (2) janitorial, maintenance or security services workers employed by a Commercial Property Employer; (3) workers employed by an Event Center Employer; and (4) workers employed by Hotel Employers.

Per the Retention Ordinance, if there is a change in control or ownership of the Airport Business, Commercial Property Business, Event Center Business, or Hotel Business, for two years after the COVID-19 state of emergency ends, covered employers must place workers employed on or after March 4, 2020 on a "preferential hiring list." Notably, the new business entity must hire from the "preferential hiring list" for ***at least 6 months***, retain such workers for no less than 90 days, and conduct the workers' performance evaluations to assess their continued employment with the new entity.

The ordinances define the employers subject to the ordinances as follows:

1. ***Airport Employers and Airport Businesses***. Employers providing service at Los Angeles Airports or provide service to employers servicing Los Angeles Airports ***and*** is required to comply

with the Los Angeles Living Wage Ordinance, ***except*** airlines and business that have contracted with the airport whose contracts already include worker rehire procedures.

2. ***Commercial Property Employers and Commercial Property Businesses***: Non-residential properties located in Los Angeles employing 25 or more janitorial, maintenance or security service workers. *Of note, the ordinances only apply to janitorial, maintenance, and security service workers who perform work for a Commercial Property Business*.
3. ***Event Center Employers and Event Center Businesses*.** Publicly or privately owned structures in the City of Los Angeles with more than 50,000 square feet ***or*** with seating capacity of 1,000 seats or more, that are used for public performances, sporting events, business meetings or similar events.
4. ***Hotel Employers or Hotel Businesses****.* Residential buildings in the City of Los Angles designated or used for public lodging or other related service for the public ***and*** either contain 50 or more guestrooms ***or*** whose 2019 gross receipts exceed $5 million.

Long Beach

Similar to the City of Los Angeles, on May 19, 2020, the City of Long Beach enacted its COVID-19 Worker Recall Ordinance (link here) and COVID-19 Worker Retention Ordnance (link here), which took effect on ***June 22, 2020*.** The ordinances only apply to Long Beach employers that provide janitorial services with 25 or more employees, and hotels employing 25 or more employees.

Recall Requirement

Long Beach's Recall Ordinance requires covered employers to extend a written offer—*via mail, email or text message*— of the recall of eligible laid-off employees (excluding managers, supervisors, or confidential employees)for any position that is or becomes available for which the former employee is qualified. To qualify for a position, the laid-off employee must either:

1. Held the same or similar position at the site of employment at the time of the laid-off employee's most recent separation of employment; ***or***
2. Is or can be qualified for the position with the same training that would be provided to a new employee hired into that same position.

If more than one laid-off employee is entitled to a preference for one position, the covered employer must offer the position based on seniority—greatest length of service with the covered employer.

Rebuttable Presumption of Termination Due to Non-Disciplinary Reason

Notably, Long Beach's Recall Ordinance creates a rebuttable presumption that any separation of employment that occurred on or after March 4, 2020 resulted from a non-disciplinary reason.

Expiration

The ordinances include no expiration dates.

San Francisco

San Francisco Mayor London Breed returned unsigned the temporary Emergency Order, File 200455, entitled "Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic," which took effect on ***July 3, 2020***, and mandates layoff notices, reemployment rights, and reasonable accommodation for certain workers employed my covered employers.

Covered Employer

The ordinance applies to private employers in the City and County of San Francisco, which employed or employ 100 or more employees on or after February 25, 2020 as of the earliest date that the employer separated or separates 1 or more employees that resulted or results in a ***Layoff***.

The ordinance defines "***Layoff***" to mean separation of employment of 10 or more employees during any 30-day period, commencing on or after February 25, 2020 by a covered employer, and which is caused by the covered employer's lack of funds ***or*** lack of work for its employees, resulting from San Francisco's COVID-19 Public Health Emergency and any order issued by the Health Officer of the City and County of San Francisco directing residents to stay at home and shelter in place and, thus, prohibiting operation of any business activities other than those expressly authorized.

Employers that provided or provides services that provide healthcare operations are exempt, which includes hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare service providers, mental health providers, or any related and/or ancillary healthcare services, as well as veterinary care and all healthcare service providers to animals.

Covered Employee

San Francisco's ordinance applies to ***eligible employees*** who are (1) employed by a covered employer for ***at least 90 days*** of the calendar year preceding the date on which the covered employer provided or provides written notice to the employee of a ***Layoff***; and (2) who was or is separated from employment due to a ***Layoff***.

Notice of Layoffs

The ordinance requires covered employers to provide a notice of a ***Layoff*** to ***current*** and ***former eligible workers*** (in the language understood by each employee) and to San Francisco's Office of Economic and Workforce Development (OEWD).

For ***former employees*** separated due to a ***Layoff*** that occurred between February 26, 2020 and July 2, 2020, covered employers must provide the notice within 30 days of July 3, 2020.

For ***current employees*** subject to a ***Layoff*** that occurred between February 26, 2020 and July 2, 2020, at or before the ***Layoff*** becomes effective, covered employers must provide notice to those employees within 30 days of July 3, 2020.

The written notice to current and former employees must include the following information:

1. Notice of the **Layoff** and the **Layoff**'s effective date;
2. A summary of the employee's right to reemployment created by this emergency ordinance; and

3. A telephone number for a hotline, to be operated by the OEWD, which eligible workers may call to receive information regarding the right to reemployment created by this emergency ordinance, as well as navigation services and other City and County of San Francisco's resources related to unemployment.

Within 30 days of the date of an employer initiates a ***Layoff***, it must provide written notice to the OEWD. For unforeseen circumstances, covered employers must provide written notice within 7 days of its separation of the 10th employee in a 30 day-period, which was caused by the San Francisco's Public Health Emergency and any order issued by the Health Officer of the City and County of San Francisco directing residents to stay at home and shelter in place and, thus, prohibiting operation of any business activities other than those expressly authorized.

Written notice to the OEWD must identify: (1) the total number of employees located in San Francisco affected by the ***Layoff***; (2) the job classification at the time of separation for each eligible worker; (3) the original hire date for each eligible worker; and (4) the date of separation from employee for each eligible worker.

Record Retention

For every ***Layoff*** initiated after February 25, 2020, covered employers must retain records ***for at least 2 years–***measured from the date that the written notice was provided to the eligible employee**—**containing the following information ***for each eligible worker***: (1) full legal name; (3) job classification at the time of separation; (3) date of hire; (4) last known address of residence; (5) last known email address; (6) last known telephone number; and (7) a copy of the written notice regarding the ***Layoff*** provided to the eligible employee.

Required Offers of Reemployment Following Layoff

Covered employers that initiate a ***Layoff*** and opt to refill the position that an eligible worker held must follow the following protocol:

- To fill a **same position** formerly held by an eligible worker, the employer must first offer the position to the former eligible employee before offering it to another individual;
- To fill a ***substantially similar position*** formerly held by an eligible worker, the covered employee must first offer the position to the former eligible worker before offering the position to another individual. *The ordinance defines "substantially similar position" to include any of the following: a position with comparable job duties, pay, benefits, and working conditions to the eligible worker's position at the time of Layoff; any position in which the eligible worker worked for the covered employer in the 12 months preceding the* ***Layoff****; and any position for which the eligible worker would be qualified, including a position that would necessitate training that a covered employer would otherwise make available to a new employee to the particular position upon hire*.
- If a covered employer desires to offer reemployment to ***more than 1 eligible workers that held the same job classification***, the employee must make the offer in order of seniority based on earliest date of hire with the employer for the former employees.

Covered employers are required to make good-faith efforts to notify eligible workers of offers of reemployment—***first*** via telephone and email, or ***subsequently*** via certified mail or courier delivery.

Covered employers may withhold an offer to a former eligible worker for the following circumstances (1) eligible worker engaged in misconduct; (2) eligible worker executed a severance agreement; or (3) the employer hired another worker for the position or a substantially similar position before July 3, 2020. Covered employers must notify the OEWD of all offers of reemployment, acceptances and rejections.

Prohibition Against Family Care Hardship Discrimination & Duty to Reasonably Accommodate

Covered employers are prohibited from discriminating against or taking any adverse employment action against an eligible employee as a consequence of an eligible employee's inability to work due to a family care hardship, including the following:

1. Need to care for a child whose school or place of care has been closed, or whose childcare provider is unavailable, due to the COVID-19 PHE, and no other suitable person is available to provide care during the leave period; and
2. For any reason the San Francisco Paid Sick Leave Ordinance covers to provide care for others.

Further, covered employees must provide eligible workers with reasonable accommodation of a job duty or requirement if a family care hardship impacts their ability to perform a job duty or satisfy a job requirement. This duty to accommodate will expire with the expiration of the ordinance.

Expiration of Ordinance

Unless reenacted, the ordinance will remain in effect for 60 days.

Please contact your HR Consultant if you have questions.