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May 2020

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City of Los Angeles Adopts Worker Recall and Retention Ordinances

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Certain Los Angeles employers will soon have to contend with a slew of new worker protection laws. On May 3, Mayor Eric Garcetti signed the COVID-19 Right of Recall Ordinance and the COVID-19 Citywide Worker Retention Ordinance, which outline protections afforded to workers impacted by the Coronavirus pandemic. The ordinances will go into effect on June 14, 2020.

Which Businesses Are Affected?

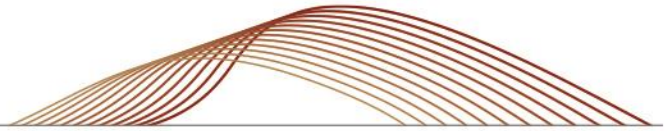
The ordinances have limited applicability, affecting only:

- **AIRPORT EMPLOYERS**—Any company that is not an airline, but (1) operates in an airport, or provides services to a company servicing an airport, in Los Angeles; and (2) is required to pay its workers the rate set by Los Angeles's Living Wage Ordinance.
- **COMMERCIAL PROPERTIES**—Businesses that own, operate, manage, or lease a non-residential property on which they employ 25 or more janitorial, maintenance, or security workers in Los Angeles. However, for these employers, both ordinances apply only to the janitorial, maintenance, and security staff.
- **EVENT CENTERS**—Companies that own, operate, or manage a structure within the City that is over 50,000 square feet, or can seat over 1,000 people; and is used for events like concerts, performance, sporting events, and conventions.
- **HOTEL BUSINESSES**—Hotels with either 50 or more guestrooms, or that earned over more than $5 Million in 2019; and any restaurants physically located within those hotels.

The Right of Recall Ordinance exempts non-profit institutions of higher learning that operate medical centers in the City. For covered employers, the City Council further carved out any workers subject to a collective bargaining agreement already containing a right of recall or worker retention provision. Otherwise, the ordinances apply unless the union explicitly waives them in clean and unambiguous terms.

How Do Covered Employers Comply?

The COVID-19 Right of Recall Ordinance creates recall rights for employees who (1) worked for a covered company for at least six months; (2) spent at least two hours a week working in the City; and (3) were terminated on or after March 4, 2020 for "non-disciplinary" or "economic" reasons.



Employers must offer those workers either the same or similar position at the same site of employment once the worker's position re-opens; or, alternatively, any position for which the worker can become qualified with the same training the employer would provide a new worker. The laid-off worker then has five days to respond before the offer expires. Whenever two or more workers are entitled to the same position, the employer must first offer it to whoever worked there the longest.

The COVID-19 Citywide Worker Retention Ordinance limits the hiring and firing rights of any company that buys a covered employer within two years of March 4, 2020—the day Mayor Garcetti declared a local state of emergency due to the COVID-19 pandemic. Employers must publicly post written notice of a Change in Control within five days of entering into a binding agreement transferring ownership. The seller must then provide the purchaser a list of all non-managerial workers with at least six months of employment with the seller. For the six months following the change in ownership, the successor-employer can only hire workers on that list. Once hired, those workers enjoy a 90-day protection period wherein the owner can only discharge them for cause. At the end of the 90 days, the successor-employer must evaluate each employee's performance, consider offering them continued employment, and retain the written evaluation for three years.

Covered employers also cannot retaliate against workers for exercising the rights guaranteed by, or participating in the enforcement of, either ordinance.

What Happens If a Company Does Not Comply?

Workers can sue a covered employer that violates either ordinance in California Superior Court. However, both require that a worker first provide written notice of the alleged violation to the employer, and give it fifteen days to cure. Under either, a court may award a worker hiring and reinstatement, economic damages, and attorneys' fees. The Right of Recall Ordinance also permits punitive damages.

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