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May 12, 2020

Agenda No. 14
04/28/20

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**Re: Ordinance Adding Chapter 8.201 of Title 8 - Consumer
Protection, Business and Wage Regulations of the
Los Angeles County Code**

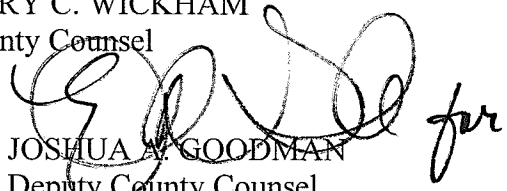
Dear Supervisors:

Pursuant to your Board's motion of April 28, 2020, enclosed please find for your consideration the analysis and ordinance adding Chapter 8.201 to Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, which establishes a right of recall for janitorial, maintenance, security service, and hospitality workers who are laid off as a result of the pandemic COVID-19 public health crisis.

Very truly yours,

MARY C. WICKHAM
County Counsel

By


JOSHUA W. GOODMAN
Deputy County Counsel
Labor & Employment Division

APPROVED AND RELEASED:


LAWRENCE L. HAFETZ
Chief Deputy

JAG:vn
Enclosures

ANALYSIS

This ordinance adds to the Los Angeles County COVID-19 Worker Protection Ordinance by adding Chapter 8.201 to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code, establishing a right of recall for janitorial, maintenance, security service, and hospitality workers who are laid off as a result of the COVID-19 pandemic public health crisis.

MARY C. WICKHAM
County Counsel

By *Joshua A. Goodman*

JOSHUA GOODMAN
Deputy County Counsel
Labor and Employment Division

JAG:eb

Requested: 5/5/20
Revised: 5/8/20

ORDINANCE NO. _____

An ordinance adding Chapter 8.201 (COVID-19 Right of Recall) to Division 5 – COVID-19 Worker Protections of Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, establishing a right of recall for janitorial, maintenance, security service, and hospitality workers who are laid off as a result of the COVID-19 pandemic public health crisis.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 8.201 is hereby added to read as follows:

Chapter 8.201 COVID – 19 Right of Recall.

8.201.010 Purpose.

8.201.020 Definitions.

8.201.030 Right of Recall.

8.201.040 Retaliatory Action Prohibited.

8.201.050 Enforcement.

8.201.060 Regulations.

8.201.070 No Preemption of Higher Standards.

8.201.080 Exemption for Collective Bargaining Agreement,

Express Waiver.

8.201.090 No Waiver of Rights.

8.201.100 Severability.

8.201.110 Report.

8.201.010 Purpose.

As a result of the COVID-19 pandemic and "Safer at Home" declarations by California Governor Gavin Newsom and the County Board of Supervisors, issued to protect the public health and welfare, many workers in the County of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the County hereby enacts legal protections for certain workers laid off due to the pandemic.

In addition, the COVID-19 pandemic has caused janitorial, maintenance, security service, and hospitality employers in the County to discharge, layoff and furlough workers at a massive scale. Many thousands of janitorial, maintenance, security service, and hotel workers have been separated from their jobs already during the pandemic, and many thousands more are expected to face separation in the coming months. While federal, state, and local programs, and efforts by non-profits, have provided some support to janitorial, maintenance, security service, and hospitality workers in the short-term, what these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns. Ensuring that janitorial, maintenance, security service, and hospitality service employers honor their former employees' right to return will speed the transition back to a functioning labor market and will lessen the damage to the County's economy.

8.201.020 Definitions.

The following definitions shall apply to this Chapter:

- A. "County" means the unincorporated areas of the County of Los Angeles.
- B. "Commercial Property Employer" means an owner, operator, manager or lessee, including a contractor, subcontractor or sublessee, of a non-residential property in the County 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 Chapter.
- C. "Employer" means a Commercial Property Employer and a Hotel Employer. For purposes of this Chapter, an "Employer" does not include non-profit entities. Federal, state, and local government agencies shall be exempt from this Chapter. The private contractors of an Employer are not exempt.
- D. "Hotel Employer" means an owner, operator or manager of a residential building in the County 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.
- E. "Laid Off Worker" means any person who, in a particular week, performs at least two hours of work within the geographical boundaries of the County 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.

F. "Length of Service" means the total of all periods of time during which an employee has been in active service for an Employer, including periods of time when the Employee was on leave or vacation.

8.201.030 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, email, and text message phone number, to the extent the Employer possesses such information, of any position which is or becomes available after this Chapter's effective date 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 positions to the Laid Off Worker with the greatest Length of Service in (1) and then (2) of this Section with the Employer at the employment site.

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this Chapter shall be given no less than five (5) business days in which to accept or decline the offer. A "business day" is any day except Saturday, Sunday, or official state holidays.

8.201.040 Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this Chapter. This Section shall also apply to any Laid Off Worker who mistakenly, but in good faith, alleges noncompliance with this Chapter.

8.201.050 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 Chapter and may be awarded:

1. Hiring and reinstatement rights pursuant to this Chapter.
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 Chapter alleged to have been violated and the facts to support the alleged violation; and

2. The Employer is provided fifteen (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 Chapter.

8.201.060 Regulations.

The County of Los Angeles may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations and interpretations shall have the force of law and may be relied upon by Employers, Laid Off Workers, and other persons to determine their rights and responsibilities under this Chapter.

8.201.070 No Preemption of Higher Standards.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the County. This Chapter shall not be construed to limit

a discharged Employee's right to bring a common law cause of action for wrongful termination.

8.201.080 Exemption for Collective Bargaining Agreement,

Express Waiver.

All of the provisions of this Chapter, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this Chapter.

8.201.090 No Waiver of Rights.

Except for a collective bargaining agreement provision made pursuant to Section 8.201.080, any waiver by a Laid Off Worker of any or all provisions of this Chapter 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 Chapter shall constitute a violation of this Chapter.

8.201.100 Severability.

If any subsection, sentence, clause or phrase of this Chapter 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 Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and

every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

8.201.110 Report.

Before March 1, 2022, the Chief Executive Office shall report to the Board on the effectiveness of the provisions of this Chapter in protecting workers' stability of employment, recommendations for additional protections that further the intent of this Chapter, and whether the provisions of the Chapter are still necessary based on the County's recovery from the impacts of the COVID-19 pandemic.

[CH8201JGCC]