

1 [Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to  
2 COVID-19 Pandemic]

3 **Emergency Ordinance temporarily creating a right to reemployment for certain**  
4 **employees laid off due to the COVID-19 pandemic if their employer seeks to fill the**  
5 **same position previously held by a laid-off worker, or a substantially similar position,**  
6 **as defined.**

7

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

12

13 Be it ordained by the People of the City and County of San Francisco:

14

15 Section 1. Name of Ordinance.

16 This emergency ordinance shall be known as the “Back to Work” emergency  
17 ordinance.

18 Section 2. Declaration of Emergency Pursuant to Charter Section 2.107.

19 ~~(a)~~ Section 2.107 of the Charter authorizes passage of an emergency ordinance in  
20 cases of public emergency affecting life, health, or property, or for the uninterrupted operation  
21 of any City or County department or office required to comply with time limitations established  
22 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists  
23 that requires the passage of this emergency ordinance.

24 ~~(b)~~ ~~On February 25, 2020, Mayor London Breed proclaimed a state of emergency in~~  
25 ~~response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of~~

1 ~~Supervisors concurred with the February 25 Proclamation and the actions taken by the Mayor~~  
2 ~~to meet the emergency.~~

3 ~~(c) On March 16, 2020, to mitigate the spread of COVID-19, the Local Health Officer~~  
4 ~~issued Order No. C19-07, subsequently replaced by Order No. C19-07b on March 31, 2020,~~  
5 ~~directing San Franciscans to “shelter in place.” These Orders generally require individuals to~~  
6 ~~stay in their homes through May 3, and require businesses to cease all non-essential~~  
7 ~~operations at physical locations in the City. On April 27, 2020, the Public Health Officers for~~  
8 ~~the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and~~  
9 ~~the City of Berkeley advised that they will issue a revised shelter-in-place orders that largely~~  
10 ~~keep the current restrictions in place and extend them through May. On May 1, 2020, the~~  
11 ~~Public Health Officers for the same above-referenced counties issued Order No. C19-07c,~~  
12 ~~thereby replacing Order Nos. C19-07 and C19-07b. The most recent Order generally extends~~  
13 ~~the prior Orders’ requirements that individuals generally stay in their homes and that~~  
14 ~~businesses cease all non-essential operations at physical locations in the City, with some~~  
15 ~~limited additional exceptions, including that: certain outdoor businesses may resume~~  
16 ~~operations if they can do so safely; individuals may engaged in additional forms of recreation;~~  
17 ~~and construction may resume, provided it can be done safely. The most recent Order is~~  
18 ~~effective until May 31, 2020.~~

19 ~~(d) Due to the public health emergency related to COVID-19 and the actions required~~  
20 ~~to respond to the emergency, a growing number of employees across the City are unable to~~  
21 ~~work (including telework) due to illness, exposure to others with the coronavirus, business~~  
22 ~~closures or reductions in force, and family caregiving obligations related to the closure of~~  
23 ~~schools and care facilities including an inability to secure alternate caregiving assistance.~~  
24 ~~These conditions pose a severe and imminent threat to the health, safety, and economic well-~~  
25 ~~being of San Franciscans and those who work in San Francisco.~~

1           (e) This emergency ordinance is necessary to mitigate the severe economic harm for  
2 individuals unable to work due to the public health emergency.

3  
4           Section 3. Findings and Purpose.

5           ~~(a) On March 4, 2020, the Governor for the State of California issued a proclamation,~~  
6 ~~declaring a State of Emergency to exist in California as a result of the threat posed by COVID-~~  
7 ~~19. On March 6, 2020, the Health Officer for the San Francisco Department of Public Health~~  
8 ~~issued a similar declaration of local health emergency regarding the novel coronavirus~~  
9 ~~disease COVID-19.~~

10           ~~(b) On March 16, 2020, the Health Officer for the San Francisco Department of Public~~  
11 ~~Health issued Order No. C19-07, directing in part that all individuals living in the City to shelter~~  
12 ~~in their place of residences until April 7, 2020. The order also directed businesses with a~~  
13 ~~facility in the City, except essential businesses as defined in the order, to cease all activities at~~  
14 ~~facilities located within the City except minimum basic operations, as defined in the order. As~~  
15 ~~a result of the order, a substantial number of businesses operating in the City have been~~  
16 ~~required to temporarily or permanently close their physical locations in the City or to~~  
17 ~~permanently close their businesses entirely, or have had to temporarily or permanently lay off~~  
18 ~~employees. On March 31, 2020, the City issued Order No. C19-07b, superseding the March~~  
19 ~~16, 2020 order and extending the new order until May 3, 2020. On May 1, 2020, the City~~  
20 ~~issued Order No. C19-07c, superseding the March 31, 2020 order and extending the new~~  
21 ~~order until May 31, 2020.~~

22           ~~(c) On March 19, 2020, the Governor issued Executive Order N-33-20 to preserve~~  
23 ~~public health and safety and ensure the healthcare delivery system is capable of serving all,~~  
24 ~~and prioritizing those at the highest risk and vulnerability, ordering in part that all residents~~  
25 ~~heed the order from the State Public Health Officer ordering all individuals living in the State of~~

1 California to stay home or at their place of residence for an indefinite period of time except,  
2 among other terms, to maintain continuity of operations of identified federal critical  
3 infrastructure sectors.

4 ~~(d) As a consequence of the local and State shelter in place shelter-in-place and stay  
5 at home stay-at-home orders, many employees working in the City have been or likely will be  
6 laid off from their jobs. The City has received notice of some of those layoffs, as required  
7 under the federal Worker Adjustment and Retraining Notification (“WARN”) Act, 29 U.S.C. §§  
8 2101-2109, and the California Worker Adjustment and Retraining Notification (“Cal-WARN”)  
9 Act, Cal. Labor Code §§ 1400-1408. The WARN Act requires employers to provide 60 days’  
10 notice in advance of a plant closing or mass layoff. The WARN Act applies to employers with  
11 100 or more employees, to the extent such employees have been employed for at least six of  
12 the last 12 months and have, on average, worked more than 20 hours per week. The WARN  
13 Act defines a mass layoff as a layoff of 50 or more employees at a single site of employment.  
14 The Cal-WARN Act requires employers to provide 60 days’ notice in advance of a mass  
15 layoff, relocation, or termination at a covered establishment. The Cal-WARN Act applies to  
16 employers that employ, or have employed in the preceding 12 months, 75 or more full-time or  
17 part-time employees, to the extent such employees have been employed for at least six  
18 months of the 12 months preceding the date of the required notice. The Cal-WARN Act  
19 defines a mass layoff as a layoff during any 30-day period of 50 or more employees at a  
20 covered establishment.~~

21 ~~(e) Between March 1, 2020 and May 1, 2020, the City has received 293 layoff notices  
22 from private employers operating in San Francisco pursuant to the WARN Act and the Cal-  
23 WARN Act. The federal WARN Act and the Cal-WARN Act notices, however, only reflect  
24 mass layoffs or business closures implemented by employers that are subject these statutes  
25 and thus significantly underestimate the actual number of employees in the City experiencing~~

1 layoffs as a result of the COVID-19 pandemic. Indeed, an untold number of employees  
2 employed by businesses with less than 100 employees or 75 employees at their business  
3 facility in San Francisco have been affected by a layoff due to COVID-19. Based on  
4 anecdotal evidence being shared with the City, it appears that many City employers have laid-  
5 off at least 10 employees during a 30-day period since Mayor Breed declared the public  
6 health emergency as a result of COVID-19 on February 25, 2020; as such, it is intent of this  
7 emergency ordinance to provide the protections set forth herein to eligible employees affected  
8 by a layoff of this size.

9 (f) The layoffs now occurring in large numbers in San Francisco are quickly pushing  
10 unemployment in our community to uncommonly high numbers. Between February 25, 2020  
11 and April 18, 2020, over 83,000 San Franciscans filed claims for unemployment insurance  
12 with the State of California. The City anticipates that many more in the San Francisco  
13 workforce will seek unemployment insurance in the coming weeks and months as result of a  
14 separation from employment, including due to a mass layoff or location closure caused by the  
15 COVID-19 pandemic. It is entirely possible—even likely, according to some economists—that  
16 the unemployment rate in San Francisco and surrounding areas will reach levels higher than  
17 at any time since the Great Depression of the 1930s. Unemployment statistics, even when  
18 documenting a massive surge, do not adequately convey the human suffering that attends  
19 joblessness on such a large scale. The loss of employment for individuals laid off as a result  
20 of the COVID-19 pandemic typically places them and their families in economic peril.

21 (g) Layoffs caused by the COVID-19 pandemic also pose a substantial risk to public  
22 health because layoffs can cause a loss of private health insurance benefits for affected  
23 employees and their families. The loss of private health insurance during normal times—let  
24 alone in the midst of a pandemic—can put seemingly or actually insurmountable pressure on  
25 a family’s fiscal, physical, and mental health. While an employee may be entitled to extend

1 ~~their health insurance benefits temporarily pursuant to the Consolidated Omnibus Budget~~  
2 ~~Reconciliation Act (“COBRA”), 29 U.S.C. §§ 1161-68 (1994), COBRA continuation coverage~~  
3 ~~is often more expensive than the amount that active employees are required to pay for group~~  
4 ~~health coverage. If an employer offers health insurance benefits to its employees, the cost of~~  
5 ~~such benefits are typically shared by the employer and employee. A separated employee,~~  
6 ~~however, typically must pay both the employee’s and the employer’s share of health~~  
7 ~~insurance benefits in order to receive continuation coverage pursuant to COBRA. As such,~~  
8 ~~COBRA continuation coverage is typically much more expensive than the cost of an~~  
9 ~~employee’s health insurance premiums while the employee was employed. In the direst~~  
10 ~~circumstances, a loss of one’s job and the related employment benefits can force a family to~~  
11 ~~choose between paying for COBRA continuation coverage, paying rent, or putting food on the~~  
12 ~~table. This emergency ordinance, therefore, is intended to decrease the number of laid-off~~  
13 ~~employees who will be without employer-sponsored health insurance as a result of the~~  
14 ~~COVID-19 pandemic by requiring employers subject to the emergency ordinance to rehire~~  
15 ~~eligible employees if rehiring begins, thereby resuming such employees’ access to their prior~~  
16 ~~health insurance benefits.~~

17 ~~(h) Layoffs caused by the COVID-19 emergency also pose a substantial risk to public~~  
18 ~~health in the City by potentially forcing laid off employees to seek out the City’s public health~~  
19 ~~resources, in event that they are not eligible for COBRA or COBRA continuation benefits are~~  
20 ~~too costly for their family to secure. This emergency ordinance, therefore, is intended to~~  
21 ~~alleviate the burden that layoffs of employees working in the City place on the City’s public~~  
22 ~~health system.~~

23 ~~(i) The loss of employment for individuals laid off as a result of the COVID-19~~  
24 ~~pandemic poses a substantial threat to the City’s economy and the economic livelihood of~~  
25 ~~affected employees and their families. The COVID-19 pandemic has created a substantial~~

1 financial crisis for the City collectively and for individuals living and working in the City, likely  
2 causing an economic recession or depression in the City, and likely lasting well after the State  
3 and City stay at home and shelter in place orders are lifted. After the emergency ceases, the  
4 City will endeavor to support the reemergence of all non-essential businesses operating in the  
5 City to the extent it is financially feasible for such business to resume operations.

6 Reemployment of laid off employees also provides economic relief directly to the affected  
7 employees and their families, giving them the opportunity for reemployment as soon as  
8 practicable, aiding their own personal economic recovery following their previous separation  
9 from employment, and strengthening and providing continuity for the communities in which  
10 they live. With the benefit of resumed income, such employees will likely frequent local  
11 businesses, thereby aiding in the revitalization of the City economy and the greater local  
12 economy.

13 (j) The COVID-19 pandemic has created unique challenges on caretakers, including  
14 working parents whose children are no longer able to attend school or childcare facilities, or  
15 whose regular care givers are not available as well as those responsible to care for a child,  
16 parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, or registered  
17 domestic partner when such person is ill, injured, or receiving medical care. Employees who  
18 are responsible for the care of children or the others mentioned above may have even more  
19 difficulty obtaining reemployment following a layoff.

20 (a) Intent. The novel coronavirus and the resulting disease COVID-19 (collectively  
21 “COVID-19”) has had unprecedented detrimental effects on employees in the City and County  
22 of San Francisco (“the City”), nationwide, and worldwide. To ameliorate the local effects of  
23 this global pandemic, this emergency ordinance creates a right to reemployment for eligible  
24 laid-off workers if their prior employers resume business operations and seek to rehire staff.  
25 As defined more specifically in this emergency ordinance, eligible workers generally include

1 qualified employees who were previously employed by an employer with 100 or more  
2 employees and who suffered a layoff, as defined, after Mayor London Breed declared a state  
3 of emergency on February 25, 2020. By facilitating reemployment, the emergency ordinance  
4 aims to curb the long-term, adverse effects that job loss can cause on the financial, physical,  
5 and mental health of employees and their families and thus our greater community.

6 (b) Declaration of Emergency in the City and Resulting Health Orders in the City and  
7 Other Bay Area Counties. On February 25, 2020, Mayor London Breed proclaimed a state of  
8 emergency in response to the spread and threat of further spread of COVID-19. On March 3,  
9 2020, the Board of Supervisors concurred with the February 25 Proclamation and the actions  
10 taken by the Mayor to meet the emergency.

11 Thereafter, the Health Officer of the City and County of San Francisco (“Health  
12 Officer”), acting in coordination with the health officers in other counties in the San Francisco  
13 Bay Area, issued a series of orders consistent with the Mayor’s proclamation in order to  
14 protect public health. On March 6, 2020, the Health Officer issued a declaration of local  
15 health emergency regarding COVID-19. On March 16, 2020, to mitigate the spread of  
16 COVID-19, the Health Officer issued Order No. C-19-07, directing in part that all individuals  
17 living in the City shelter in their places of residence until April 7, 2020. The order also directed  
18 businesses with a facility in the City, except essential businesses as defined in the order, to  
19 cease all activities at facilities located within the City except minimum basic operations, as  
20 defined in the order. On March 31, April 29, May 18, and May 22, 2020, the Health Officer  
21 issued further orders to extend the shelter in place directive and to authorize certain, select  
22 businesses to resume operations. The May 22 order, subject to certain updates, remains in  
23 effect and has no expiration date. As a result of these orders, a substantial number of  
24 businesses operating in the City have had to temporarily or permanently close their physical  
25



1 locations in the City, to permanently close their businesses entirely, or have had to temporarily  
2 or permanently lay off employees.

3 (c) Declaration of Emergency in the State of California and Resulting State Health  
4 Orders. Similar to the City, the State of California declared a state of emergency and issued  
5 health orders requiring citizens to stay at home and requiring a cessation of business  
6 operations. On March 4, 2020, the Governor issued a proclamation, declararing a state of  
7 emergency to exist in California as a result of the threat to public health posed by COVID-19.  
8 On March 19, 2020, the Governor issued Executive Order N-33-20 to preserve public health  
9 and safety and to ensure that the healthcare delivery system is capable of serving all, and  
10 prioritizing those at the highest risk of vulnerability, ordering in part that all residents heed the  
11 order from the State Public Health Officer that all individuals living in the State of California  
12 stay home or at their place of residence for an indefinite period except, among other terms, to  
13 maintain continuity of operations of identified federal critical infrastructure sectors. The  
14 Governor subsequently published a “pandemic roadmap,” outlining a four-stage plan to  
15 administer phased reopenings of California’s government, businesses, and society overall.  
16 The four stages include: safety and preparation (Stage 1), reopening of lower-risk workplaces  
17 and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3),  
18 and finally easing of final restrictions to the end of the stay at home order (Stage 4). The  
19 Governor has since issued subsequent orders, authorizing localities to ease certain  
20 restrictions or to seek variances from the order to authorize certain activities. The statewide  
21 stay at home order, however, remains in place.

22 (d) Immediate Impact on Ability to Work. Due to the public health emergency related  
23 to COVID-19 and the actions required to respond to the emergency, an unprecedented  
24 number of individuals who work for employers operating in the City are unable to work  
25 (including telework) due to illness, exposure to others with the coronavirus, business closures

1 or reductions in force, and family caregiving obligations related to the closure of schools and  
2 childcare facilities, including an inability to secure alternative caregiving assistance. These  
3 conditions pose a severe and imminent threat to the health, safety, and economic well-being  
4 of San Franciscans and those who work in San Francisco. The emergency ordinance is  
5 necessary to mitigate the severe, long-term economic harm for individuals unable to work due  
6 to the public health emergency.

7 (e) Layoffs Caused by COVID-19 Pandemic. As a consequence of the local and  
8 State shelter in place and stay at home orders, tens of thousands of employees working in the  
9 City have been or likely will be laid off from their jobs. The City has received notice of some of  
10 those layoffs, as required under the federal Worker Adjustment and Retraining Notification  
11 ("WARN") Act, 29 U.S.C. §§ 2101-2109, and the California Worker Adjustment and Retraining  
12 Notification ("Cal-WARN") Act, Cal. Labor Code §§ 1400-1408. The WARN Act applies to  
13 employers with 100 or more employees, employed for six of the preceding 12 months and  
14 who work more than 20 hours per week. The Cal-WARN Act applies to employers that  
15 currently employ or have employed in the last 12 months, 75 or more full-time or part-time  
16 employees for six of the last 12 months. In the span of less than three months, between  
17 March 16, 2020 and June 5, 2020, pursuant to the WARN Act and Cal-WARN Act, the City  
18 has received 352 notices of layoffs that have occurred during that period by San Francisco  
19 employers and which have affected 38,994 employees. An untold number of employees of  
20 San Francisco businesses that are not subject to the WARN Act of the Cal-WARN Act have  
21 also been affected by layoffs due to COVID-19.

22 (f) Unemployment Rates. The COVID-19 pandemic has already caused an  
23 unprecedented spike in unemployment at national, state, and local levels, the likes of which  
24 the country has not seen since the Great Depression of the 1930s. Nationally, in April 2020,  
25 the unemployment rate rose to 14.7%, as compared to a rate of approximately 4.0% during

1 the prior quarter. In May 2020, the rate declined, but remained at a staggering 13.3%  
2 nationally. In April 2020, the country lost an estimated 20.5 million nonfarm payroll jobs. That  
3 figure rose by 2.5 million in May 2020. As of June 11, 2020, workers nationwide have filed  
4 over 36 million claims for unemployment insurance during the prior two months.

5 In California, the impact of the COVID-19 pandemic has been especially acute,  
6 particularly compared to other states. Statewide, in April 2020, the unemployment rate rose to  
7 15.5% as a result of the loss of over 2.3 million nonfarm jobs. The April 2020 unemployment  
8 rate constituted a 10% increase from just the month prior. As of the week ending April 25,  
9 2020, Californians had filed almost 4.9 million claims for unemployment insurance (not  
10 seasonally adjusted), accounting for 27% of all unemployment insurance claims filed  
11 nationwide during this same period—more than any other state in the union. As a result, over  
12 \$26.6 billion in unemployment benefits have been paid to California workers since mid-March  
13 2020 through June 11, 2020.

14 The City is similarly experiencing dramatic rates of unemployment. For April 2020, the  
15 State of California preliminarily estimated that 69,400 San Franciscans were unemployed,  
16 resulting in a county-wide unemployment rate of 12.6%. Between February 25, 2020 and May  
17 30, 2020, approximately 141,000 San Franciscans filed claims for unemployment insurance  
18 with the State of California. As of May 15, 2020, the San Francisco Bay Area had lost almost  
19 2.7% of its 4.1 million jobs over the prior two-and-a-half months, resulting in more than  
20 136,000 layoffs through the region.

21 These numbers—while staggering—unfortunately fail to reflect the total impact of the  
22 COVID-19 pandemic on the labor market. Traditional unemployment estimates have long  
23 been critiqued for applying overly restrictive criteria to track unemployment, including the  
24 requirement that the unemployed person be actively seeking work. According to the U.S.  
25 Department of Labor, individuals are classified as unemployed if they do not have a job, have

1 actively looked for work in the prior four weeks, and are currently available for work.  
2 Estimates, therefore, do not account for a large pool of “missing workers,” also known as  
3 “marginally attached” workers, defined as potential workers who, because of weak job  
4 opportunities, are neither employed nor actively seeking a job. Traditional unemployment  
5 metrics also fail to account for the underemployed—those who may prefer to work full-time,  
6 but can only acquire part-time work. Accounting for those marginally attached and the  
7 underemployed, the U.S. Department of Labor estimates the unemployment rate to be 21.2%  
8 (seasonally adjusted) for May 2020. Accordingly, the COVID-19 pandemic is likely having an  
9 even more detrimental effect on the job market in San Francisco than estimated under  
10 traditional metrics.

11 Moreover, unemployment statistics, even when documenting a massive surge in  
12 joblessness, do not adequately convey the human suffering that attends joblessness on such  
13 a large scale. The loss of employment for individuals laid off as a result of the COVID-19  
14 pandemic typically places them and their families in great economic peril.

15 (g) Impact of Layoffs on Public Health. Layoffs caused by the COVID-19 pandemic  
16 also pose a substantial risk to public health because layoffs can cause a loss of private health  
17 insurance benefits for affected employees and their families. The loss of private health  
18 insurance during normal times—let alone during a pandemic—can put insurmountable  
19 pressure on a family’s fiscal, physical, and mental health. While an employee may be entitled  
20 to extend health insurance benefits temporarily under the Consolidated Omnibus Budget  
21 Reconciliation Act (“COBRA”), 29 U.S.C. §§ 1161-68 (1994), COBRA continuation coverage  
22 is often more expensive than what the employee paid for group health coverage while  
23 employed. A loss of one’s job and the related employment benefits can force a family to  
24 choose between paying for COBRA continuation coverage, paying rent, or putting food on the  
25 table. This emergency ordinance, therefore, is intended to decrease the number of laid-off

1 employees who will be without employer sponsored health insurance as a result of the  
2 COVID-19 pandemic by requiring employers subject to the emergency ordinance to rehire  
3 eligible employees if rehiring begins, thereby resuming such employees' access to their prior  
4 health insurance benefits.

5 Layoffs caused by the COVID-19 emergency also pose a substantial risk to public  
6 health in the City by potentially forcing laid-off employees to seek out the City's public health  
7 resources, if they are not eligible for COBRA or if COBRA continuation benefits are too costly  
8 for them to secure. This emergency ordinance, therefore, is intended to alleviate the burden  
9 that layoffs of employees covered by this emergency ordinance may have on the City's public  
10 health system.

11 (h) Short-Term Impact on Caretakers. The COVID-19 pandemic has created unique  
12 challenges for caretakers, including working parents whose children are unable to attend  
13 school, summer camp, or childcare facilities, or whose regular caregivers are not available.  
14 The pandemic is also putting substantial pressure on workers who must care for a family  
15 member who becomes ill due to the novel coronavirus. These workers will have even more  
16 difficulty obtaining reemployment following a layoff.

17 (i) Potential Long-Term Adverse Impacts on Workers Who Experience Layoffs. The  
18 COVID-19 pandemic has created a substantial financial crisis for the City collectively and for  
19 individuals living or working in the City. The pandemic has already caused a severe  
20 nationwide recession, which may evolve into an economic depression; but regardless, the  
21 pandemic's economic effects are likely to last well after the State and City stay at home and  
22 shelter in place orders are lifted. The loss of employment for individuals laid off as a result of  
23 the COVID-19 pandemic poses a substantial threat to the City's economy and the economic  
24 livelihood of affected employees and their families. The loss of a job results not only in lost  
25 wages in the short term, but can permanently suppress an employee's wages and earning

1 potential for the duration of their working life. For comparison's sake, excess unemployment  
2 during the Great Recession of 2008-2009 is projected to lead to long term wage losses for  
3 displaced high tenure workers (i.e., those who had the same job for more than three years),  
4 totaling more than \$1 trillion over a 20-year period (or roughly \$50 billion annually).

5 Job loss can also increase an individual's risk of physical and mental health problems  
6 and can correlate with higher mortality rates. Workers who lose their jobs involuntarily  
7 experience worse health outcomes and, during severe economic downturns, these effects can  
8 lead to life expectancy reductions of 1 to 1.5 years. Finally, job loss for a parent has been  
9 shown to hamper the educational progress of the parent's children and, as a result, to  
10 suppress the future wages of those children.

11 These consequences from prolonged job loss are amplified by growing evidence that  
12 employers may discriminate against applicants during the hiring process for having been  
13 previously laid off, despite the absence of evidence that a prolonged period of unemployment  
14 diminishes a worker's productivity upon reemployment.

15 (j) Importance of Rehiring Upon Resumption of Business Operations. The City will  
16 endeavor to support the reemergence of all non-essential businesses operating in the City.  
17 Reemployment of laid-off employees will provide economic relief directly to the affected  
18 employees and their families, giving them the opportunity to start working again as soon as  
19 practicable. Reemployment aids not only their own personal economic recovery, but also  
20 strengthens and provides continuity for the communities in which they live because the  
21 employee's resumed income will likely flow back into local businesses that the employee can  
22 once again frequent. Such economic activity will aid in the revitalization of the City's economy  
23 and the greater local economy.

24  
25 Section 4. Definitions.

1 For purposes of this emergency ordinance, the following terms shall have the following  
2 meanings:

3 “Beginning of the Public Health Emergency” means ~~Mayor London Breed’s February~~  
4 ~~25, 2020, proclamation of a state of emergency in response to the spread of the novel~~  
5 ~~coronavirus COVID-19. February 25, 2020, the date on which Mayor London Breed~~  
6 ~~proclaimed a state of emergency in response to the spread of the novel coronavirus COVID-~~  
7 ~~19.~~

8 “City” means the City and County of San Francisco.

9 “~~Conclusion of the Public Health Emergency~~” means: (1) ~~the date on which the~~  
10 ~~Governor for the State of California terminates or rescinds, without replacement, Emergency~~  
11 ~~Order N-33-20; or (2) the date on which the City terminates or rescinds, without replacement,~~  
12 ~~Order No. C19-07c, or takes similar action to end the current shelter in place and the~~  
13 ~~prohibition on operation of the business activities as set forth in Order No. C19-07c, whichever~~  
14 ~~date is later.~~

15 “Employer” means any person who directly or indirectly owns or operates a for-profit  
16 business or non-profit in the City and, commencing on or after February 25, 2020, that  
17 employed or employs 10100 or more employees as of the earliest date that an employer  
18 Separated or Separates one or more employees that subsequently resulted or results in a  
19 Layoff. “Employer” does not include any federal, state, or local or other public agency or an  
20 employer that provided or provides services that qualified or qualify as healthcare operations,  
21 as defined in Order of the Health Officer No. C19-07e to include hospitals, clinics, COVID-19  
22 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and  
23 biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare  
24 service providers, mental health providers, or any related and/or ancillary healthcare services,  
25 as well as veterinary care and all healthcare service providers to animals.

1 "Eligible Worker" means a person: (1) employed by ~~the~~their Employer for at least 90  
2 days of the calendar year preceding the date on which ~~an~~their Employer provided or provides  
3 written notice to the employee of a ~~layoff caused by the Public Health Emergency~~Layoff; and  
4 (2) who was or is separated from employment Separated due to a ~~layoff caused by the Public~~  
5 ~~Health Emergency or the SIP Orders~~ Layoff.

6 "Family Care Hardship" means an Eligible Worker who is unable to work due to either:  
7 (1) a need to care for their child whose school or place of care has been closed, or whose  
8 childcare provider is unavailable, as a result of the Public Health Emergency, and no other  
9 suitable person is available to care for the child during the period of such leave; (2) or any  
10 grounds stated in Administrative Code § 12W.4(a) for which a person may use paid sick leave  
11 to provide care for someone other than themselves. For the purpose of this definition, "child"  
12 means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person  
13 standing *in loco parentis*, who is under 18 years of age, or a child 18 years of age or older  
14 who is incapable of self-care because of a mental or physical disability.

15 "Layoff" means a ~~separation~~Separation of 10 or more employees during any 30-day  
16 period, commencing on or after February 25, 2020, by an Employer, as defined, from  
17 ~~employment by an Employer of 10 or more employees during any 30-day period, commencing~~  
18 ~~on or after February 25, 2020, and which is caused by the Employer's lack of funds or lack of~~  
19 ~~work for its employees, resulting from the Public Health Emergency and~~ any SIP OrdersOrder.  
20 This definition includes any ~~layoff~~Layoff-conducted in conjunction with the closure or cessation  
21 of an Employer's business operations in the City.

22 "Public Health Emergency" means the states of emergency declared by the ~~State of~~  
23 ~~California or the City~~Governor and the Mayor in response to the novel coronavirus COVID-19.

24 "Separate" and "Separation" means the termination or end of employment.  
25



1           “SIP Orders~~Order~~” mean orders issued by the State and City, including without  
2 limitation ~~State Executive Order N-33-20 and City~~ any order of the Health Officer of the City  
3 and County of San Francisco directing residents to stay at home and shelter in place and  
4 prohibiting operation of any business activities other than those expressly authorized,  
5 including without limitation Order Nos. C19-07, C19-07b, and C19-07c, C19-07d, and C19-  
6 07e and any subsequent superseding orders or updates to such orders.

7  
8           Section 5. Records Regarding Layoff.

9           (a) Written Notice of Layoff and Right to Reemployment for Existing Employees.

10          When an Employer implements a Layoff after the Beginning of the Public Health Emergency,  
11 the Employer shall provide all ~~affected employees~~ Eligible Workers with written notice of the  
12 Layoff at or before the time when the Layoff becomes effective. The Employer shall provide  
13 notice to each ~~affected employee~~ Eligible Worker in a language understood by the ~~affected~~  
14 ~~employee~~ Eligible Worker. ~~The written notice shall include below-listed terms.~~

15                 ~~(1) A notice of the Layoff and the Layoff’s effective date.~~

16                 ~~—— (2) A summary of the right to reemployment created by this emergency~~  
17 ~~ordinance.~~

18                 ~~—— (3) A telephone number for a hotline, to be operated by the Office of Labor~~  
19 ~~Standards and Enforcement (“OLSE”), which affected employees may call to receive~~  
20 ~~information regarding the right to reemployment created by this emergency ordinance, as well~~  
21 ~~as navigation services and other City resources related to unemployment.~~

22                 ~~—— (4) A hyperlink to a website, to be operated by OLSE, where affected~~  
23 ~~employees may complete an online form reflecting their name, Employer, date of Layoff,~~  
24 ~~telephone number, email address, and address of residence, which, with an affected~~  
25 ~~employee’s consent, OLSE may use to contact an affected employee regarding navigation~~

1 ~~services and other resources related to unemployment. The form shall also include an option~~  
2 ~~for an affected employee to withhold their consent from being contacted by OLSE regarding~~  
3 ~~such services. An affected employee's decision to withhold such consent shall not adversely~~  
4 ~~affect any right to reemployment under this emergency ordinance.~~

5 ~~\_\_\_\_\_ (5) A request that an affected employee authorize their Employer to provide~~  
6 ~~their name and contact information to the City. The request must advise an affected~~  
7 ~~employee that: the California Constitution recognizes a right to privacy with respect to~~  
8 ~~personal information, including contact information; the City wishes to obtain such information~~  
9 ~~so that OLSE may contact affected employees in order to provide information about~~  
10 ~~navigation services and other City resources regarding unemployment and so that the City~~  
11 ~~may gather comprehensive data regarding the number of layoffs occurring in San Francisco~~  
12 ~~as a result of the Public Health Emergency; the Employer requests the affected employee's~~  
13 ~~written consent to disclose to the City the employee's full legal name, last known address of~~  
14 ~~residence, last known telephone number(s), and last known email address(es). The consent~~  
15 ~~form shall also include an attestation from the employee, indicating which of the above-listed~~  
16 ~~categories of personal information they consent for the Employer to disclose to the City and~~  
17 ~~the affected employee's signature authorizing such disclosure. The Employer shall include a~~  
18 ~~pre-addressed and stamped envelope with the written notice required by this Section 5 to~~  
19 ~~facilitate the employee's return of the requested information. The request shall also state that,~~  
20 ~~should an affected employee consent to disclosure of their contact information, the employee~~  
21 ~~is directed to return the written authorization to the Employer within seven days of the affected~~  
22 ~~employee's receipt of the Employer's notice of Layoff. The written notice shall include: a~~  
23 ~~notice of the Layoff and the Layoff's effective date; a summary of the right to reemployment~~  
24 ~~created by this emergency ordinance; and a telephone number for a hotline, to be operated by~~  
25 ~~the Office of Economic and Workforce Development ("OEWD"), which Eligible Workers may~~

1 call to receive information regarding the right to reemployment created by this emergency  
2 ordinance, as well as navigation services and other City resources related to unemployment.

3 (b) Written Notice of Layoff and Right to Reemployment for Former Employees. ~~To~~  
4 ~~the extent an Employer has Separated any affected employee before this emergency~~  
5 ~~ordinance becomes effective, the Employer shall provide written notice of the Layoff,~~  
6 ~~consistent with the requirements set forth in subsection (a) of this Section 5, to each affected~~  
7 ~~employee who the Employer Separated due to Layoff within 30 days of the effective date of~~  
8 ~~this emergency ordinance. An Employer shall provide written notice, consistent with the~~  
9 ~~requirements set forth in subsection (a) of this Section 5, to any Eligible Worker who the~~  
10 ~~Employer Separated due to Layoff before the effective date of this emergency ordinance. An~~  
11 ~~Employer shall provide such notice within 30 days of the effective date of this emergency~~  
12 ~~ordinance.~~

13 (c) Notification to the City Regarding Layoff. An Employer shall provide written notice  
14 to ~~OLSE-OEWD~~ of a Layoff. An Employer shall provide such notice within 30 days of the date  
15 it initiates a Layoff. In the event, however, that an Employer did not foresee that Separation of  
16 employees would result in a Layoff, as defined in ~~this emergency ordinance~~, the Employer  
17 shall provide such written notice within seven days of its Separation of the tenth employee in a  
18 30-day period as a result of Public Health Emergency and any SIP Orders~~Order~~. Written  
19 notice to ~~OLSE-OEWD~~ shall identify: the total number of employees located in San Francisco  
20 affected by the Layoff; the job classification at the time of Separation for each ~~affected~~  
21 ~~employee~~Eligible Worker; the original hire date for each ~~affected employee~~Eligible Worker;  
22 and the date of Separation from employment for each ~~affected employee~~Eligible Worker. ~~To~~  
23 ~~the extent any Separated employee expressly consents to disclosure of their full legal name,~~  
24 ~~last known address of residence, last known telephone number(s), and/or last known email~~  
25 ~~address(es), as provided for in subsection (a) of this Section 5, the Employer shall include~~

1 ~~such information in its notice to OLSE. To the extent an Employer receives written~~  
2 ~~authorization from any Separated employee after the Employers notifies the City of the Layoff~~  
3 ~~in accordance with this subsection (c), the Employer shall provide to OLSE, on a~~  
4 ~~supplemental basis, any information an affected employee authorizes for disclosure to the~~  
5 ~~City.~~

6 (d) Retention of Records. Where an Employer initiates a Layoff after the Beginning of  
7 the Public Health Emergency, an Employer must retain the following records for at least two  
8 years regarding each ~~affected employee~~ Eligible Worker: ~~the employee's Eligible Worker's~~ full  
9 legal name; the ~~employee's~~ job classification at the time of Separation from employment; the  
10 ~~employee's~~ date of hire; the ~~employee's~~ last known address of residence; the ~~employee's~~ last  
11 known email address; the ~~employee's~~ last known telephone number; and a copy of the written  
12 notice regarding the Layoff provided to the ~~employee~~. For the purpose of this Section 5, two  
13 years is measured from the date of the written notice provided by the Employer to a ~~laid-off~~  
14 employee the Eligible Worker, as required by subsections (a) and (b) of this Section 5.

15  
16 Section 6. Employer's Obligation to Make Offer of Reemployment to Eligible Workers  
17 Following Layoff.

18 (a) Offer of Reemployment Following Layoff to Same Position. Where an Employer  
19 has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently  
20 seeks to hire a person to a position formerly held by an Eligible Worker, the Employer shall  
21 first offer the Eligible Worker an opportunity for reemployment to their former position before  
22 offering the position to another person.

23 (b) Offer of Reemployment Following Layoff to Similar Position. Where an Employer  
24 has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently  
25 seeks to hire a person to any position that is substantially similar to the Eligible Worker's

1 former position and the position is also located in the City, an Employer shall first offer the  
2 Eligible Worker an opportunity for reemployment to the substantially similar position before  
3 offering the position to another person. For the purpose of this Section 6, a “substantially  
4 similar position” includes any of the following: a position with comparable job duties, pay,  
5 benefits, and working conditions to the Eligible Worker’s position at the time of Layoff; any  
6 position in which the Eligible Worker worked for the Employer in the 12 months preceding the  
7 Layoff; and any position for which the Eligible Worker would be qualified, including a position  
8 that would necessitate training that an Employer would otherwise make available to a new  
9 employee to the particular position upon hire.

10 (c) Offers of Reemployment Made in Order of Seniority. In the event an Employer  
11 intends to offer reemployment to an Eligible Worker, and the Employer Separated more than  
12 one Eligible Worker from the same job classification, the Employer shall make offers of  
13 reemployment to such Eligible Workers based on their former seniority with the Employer.  
14 For the purpose of this subsection (c), seniority with the Employer shall be based upon an  
15 Eligible Worker’s earliest date of hire with the Employer.

16 ~~(d) Exception for Hires Made Prior to Effective Date. The right to an offer of~~  
17 ~~reemployment created by this emergency ordinance as stated in this Section 6, and the~~  
18 ~~attendant rights and remedies set forth in Sections 7, 8, 9 and 11 of this emergency~~  
19 ~~ordinance, shall not apply where an Employer initiated a Layoff after the Beginning of the~~  
20 ~~Public Health Emergency and hired a person other than an Eligible Worker to a position~~  
21 ~~formerly held by an Eligible Worker on or before the effective date of this emergency~~  
22 ~~ordinance. Exceptions. An Employer may withhold an offer of reemployment under the~~  
23 ~~following circumstances.~~

24 (1) Misconduct. An Employer may withhold an offer of reemployment if, based  
25 on information learned subsequent to the Layoff of an Eligible Worker, the Employer learns

1 that the Eligible Worker engaged in any act of dishonesty, violation of law, violation of policy  
2 or rule of the Employer or other misconduct during their employment with the Employer.

3 (2) Severance Agreement. An Employer may withhold an offer of  
4 reemployment if: (A) the Employer Separated an Eligible Worker between the Beginning of  
5 the Public Health Emergency and the effective date of this emergency ordinance as part of a  
6 Layoff; and (B) the Employer and the Eligible Worker executed a severance agreement as a  
7 result of the Eligible Worker's Separation due to Layoff, provided that the parties executed  
8 such agreement before the effective date of this emergency ordinance and that, in exchange  
9 for adequate consideration, the Eligible Worker agreed to a general release of claims against  
10 the Employer.

11 (3) Rehiring. An Employer may withhold an offer of reemployment if: (A) the  
12 Employer Separated an Eligible Worker between the Beginning of the Public Health  
13 Emergency and the effective date of this emergency ordinance as part of a Layoff; and (B)  
14 prior to the effective date of this emergency ordinance, the Employer hired a person other  
15 than the Eligible Worker to the Eligible Worker's former position or to a substantially similar  
16 position, as defined in subsection (b) of this Section 6.

17  
18 Section 7. Notice of Offer and Acceptance.

19 (a) ~~Method of Delivery. An Employer shall transmit an offer of reemployment to an~~  
20 ~~Eligible Worker to the Eligible Worker's last known address of residence by reasonable means~~  
21 ~~identified by an Employer, including, without limitation, first class mail or personal delivery.~~  
22 ~~With the Eligible Worker's consent and confirmation of receipt, an Employer may transmit an~~  
23 ~~offer of reemployment to an Eligible Worker by email. Methods of Delivery for Offer of~~  
24 Reemployment. An Employer shall engage in good faith efforts to notify Eligible Workers by  
25 telephone and email of offers of reemployment extend offers of reemployment to all Eligible

1 Workers, consistent with the terms set forth in this Section 7. If an Employer does not have  
2 telephone or email contact information for an Eligible Worker or is unable to make contact with  
3 an Eligible Worker by telephone or email, then an Employer shall attempt to contact an  
4 Eligible Worker by certified mail or courier delivery, consistent with the terms set forth in this  
5 Section 7.

6 (1) Delivery of Offer Following Initial Contact by Telephone. If an Employer has  
7 a record of an Eligible Worker's last known telephone number, the Employer shall attempt to  
8 notify the Eligible Worker of an offer of reemployment by telephone by contacting the Eligible  
9 Worker at their last known telephone number. An Employer shall notify an Eligible Worker  
10 that: it wishes to extend an offer of reemployment; it seeks an Eligible Worker's consent to  
11 transmit a written offer of reemployment by email; and, if an Eligible Worker consents, the  
12 Eligible Worker must provide an Employer with written confirmation of their consent by text  
13 message or email no later than 5:00 p.m. Pacific Standard Time on the business day  
14 immediately following the date on which the Employer and Eligible Worker spoke by  
15 telephone. If the Eligible Worker consents to receiving the offer by email, the Employer shall  
16 transmit such offer by no later than 5:00 p.m. Pacific Standard Time of the first business day  
17 following receipt of the Eligible Worker's communication confirming such consent. If the  
18 Eligible Worker does not consent to receiving the offer by email within the prescribed  
19 timeframe, the Employer shall transmit a written offer of reemployment to the Eligible Worker's  
20 last known address of residence by certified mail or courier delivery. The offer shall remain  
21 open for at least two business days following delivery by certified mail or courier.

22 (2) Delivery of Offer Following Initial Contact by Email. If an Employer has a  
23 record of an Eligible Worker's last known email address, the Employer shall attempt to notify  
24 the Eligible Worker of an offer of reemployment by email. In the email communication, the  
25 Employer shall state that: it wishes to extend an offer of reemployment; it seeks the Eligible

1 Worker's consent to transmit a written offer of reemployment by email; and, if an Eligible  
2 Worker consents, the Eligible Worker must provide the Employer with written confirmation of  
3 their consent by text message or email no later than 5:00 p.m. Pacific Standard Time the next  
4 business day. If the Eligible Worker consents to receiving the offer by email, the Employer  
5 shall transmit such offer by no later than 5:00 p.m. Pacific Standard Time the first business  
6 day following receipt of the Eligible Worker's communication confirming such consent. If the  
7 Eligible Worker does not consent to receiving the offer by email within the prescribed  
8 timeframe, the Employer shall transmit a written offer of reemployment to the Eligible Worker's  
9 last known address of residence by certified mail or courier delivery. The offer shall remain  
10 open for at least two business days following delivery by certified mail or courier.

11 (3) Delivery of Offer by Mail or Courier. If an Employer cannot obtain an Eligible  
12 Worker's consent to receive an offer of reemployment by email, the Employer shall transmit  
13 the offer to the Eligible Worker's last known address of residence by certified mail or courier  
14 delivery. The offer shall remain open for at least two business days following delivery by  
15 certified mail or courier. Under such circumstances, the courier is authorized to deliver the  
16 offer to the address of residence without obtaining proof of receipt by the Eligible Worker.

17 (b) Order of Delivery of Offers. Where more than one Eligible Worker is eligible for an  
18 offer of reemployment, as set forth in subsections (a) and (b) in Section 6, an Employer shall  
19 transmit offers to Eligible Workers in their order of seniority, as set forth in subsection (c) in  
20 Section 6.

21 ~~(c) Notification by Telephone. In addition to the transmittal requirement of subsection~~  
22 ~~(a) of this Section 7, an Employer shall make a good faith effort to notify the Eligible Worker of~~  
23 ~~the offer by telephone at the Eligible Worker's last known telephone number.~~

24 ~~(d) Duration of Offer.~~



1           ~~\_\_\_\_\_ (1) If the Employer makes contact with the Eligible Worker by telephone, and~~  
2 ~~the Eligible Worker consents to receiving the offer by email, the offer shall remain open for~~  
3 ~~two business days following the telephone call, provided that, at the time the Employer makes~~  
4 ~~contact with the Eligible Worker by telephone, the Employer notifies the Eligible Worker of the~~  
5 ~~two business days duration for which the offer shall remain open.~~

6           ~~\_\_\_\_\_ (2) If the Employer is unable to make contact with the Eligible Worker by~~  
7 ~~telephone or the Eligible Worker does not consent to receiving the offer by email, the offer~~  
8 ~~shall remain open for seven calendar days after the date of confirmed receipt by mail or~~  
9 ~~personal delivery. If the Eligible Worker does not confirm receipt by mail or personal delivery,~~  
10 ~~the offer shall remain open for ten calendar days after the date on which the offer is sent by~~  
11 ~~the Employer by mail or personal delivery.~~

12           ~~(e)(c)~~ Acceptance. An Eligible Worker shall accept an offer of reemployment by  
13 providing a response to the Employer in writing by reasonable means identified by the  
14 Employer including, without limitation, returning a signed version of an offer letter by any  
15 reasonable method of delivery or, if authorized by an Employer, by applying an electronic  
16 signature and transmitting acceptance of the offer to an Employer by email or other  
17 reasonable electronic method. If the Eligible Worker notifies the Employer by other means,  
18 including but not limited to by telephone or text message, of their intent to accept the offer, the  
19 Employer must allow the Eligible Worker two business days from that date to respond in the  
20 written reasonable means identified by the Employer. If the Eligible Worker fails to respond to  
21 an offer of reemployment within the timeframes prescribed under subsection ~~(d)~~-(a) of this  
22 Section 7, then the Eligible Worker shall be deemed to have rejected the offer of  
23 reemployment, and then the Employer is permitted to offer the position to the next most senior  
24 Eligible Worker, as set forth under subsection (c) of Section 6, or, if there are no alternative  
25 Eligible Workers, then to offer the position to alternative job candidate.

1           ~~(f)(d)~~ Extension by Mutual Agreement. An Employer and Eligible Worker may extend  
2 the offer or acceptance periods beyond the timeframes prescribed in this Section 7 by mutual  
3 agreement.

4  
5           ~~Section 8. Terms of Reemployment.~~

6           ~~(a) 90-Day Reemployment Period. An Eligible Worker shall be entitled to~~  
7 ~~reemployment for a period of 90 days after the date the Eligible Worker resumes employment.~~  
8 ~~An Employer may, however, based on clear and convincing evidence, Separate an Eligible~~  
9 ~~Worker during the 90-day reemployment period:~~

10           ~~—— (1) based on information learned subsequent to rehiring the Eligible Worker that~~  
11 ~~would disqualify the Eligible Worker from their position, including, without limitation, acts of~~  
12 ~~dishonesty, violations of law, violations of a policy or rule of the Employer, or other~~  
13 ~~misconduct;~~

14           ~~—— (2) for acts of dishonesty, violations of law, violations of a policy or rule of the~~  
15 ~~Employer, or other misconduct committed by the Eligible Worker after the Eligible Worker has~~  
16 ~~resumed employment; or~~

17           ~~—— (3) if the Employer suffers a demonstrable financial hardship or other event~~  
18 ~~pertaining to the operations of the Employer's business that necessitates Separation of the~~  
19 ~~Eligible Worker.~~

20           ~~(b) Minimum Terms of Reemployment. With the exception of the term of employment~~  
21 ~~defined in subsection (a) of this Section 8, an Employer shall offer reemployment based on at~~  
22 ~~least the same terms and conditions that the Employer previously provided to the Eligible~~  
23 ~~Worker at the time of the Eligible Worker's Separation due to Layoff. For the purpose of this~~  
24 ~~subsection, terms and conditions of prior employment include, without limitation, job duties,~~  
25 ~~pay, benefits, and working conditions. An Employer shall comply with this subsection (b)~~

1 ~~unless, as a result of the economic impact caused by the Public Health Emergency to the~~  
2 ~~Employer's business, offering reemployment to the Eligible Worker at one or more of their~~  
3 ~~former terms of employment would cause the Employer demonstrable financial hardship.~~  
4 ~~Nothing in this subsection shall be interpreted to limit an Eligible Worker's rights to benefits~~  
5 ~~under the Families First Coronavirus Response Act, Public Law 116-127 ("FFCRA"),~~  
6 ~~Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 ("CARES Act"), the~~  
7 ~~Public Health Emergency Leave ("PHEL") Ordinance, S.F. Emergency Ordinance No.~~  
8 ~~200355, or any other law providing benefits to employees that were not available prior to April~~  
9 ~~1, 2020.~~

10  
11 Section 98. Non-Discrimination and Duty to Reasonably Accommodate Eligible  
12 Workers Experiencing a Family Care Hardship.

13 For the purpose of this emergency ordinance, an Employer shall not discriminate  
14 against or take an adverse employment action against an Eligible Worker as a consequence  
15 of an Eligible Worker experiencing a Family Care Hardship. An Eligible Worker shall be  
16 entitled to reasonable accommodation of a job duty or job requirement if a Family Care  
17 Hardship impacts their ability to perform a job duty or to satisfy a job requirement. An  
18 Employer shall, in response to a request for accommodation by an Eligible Worker, make  
19 good faith efforts to reasonably accommodate an Eligible Worker during the period in which  
20 they experience a Family Care Hardship. For the purpose of this Section 98, to "reasonably  
21 accommodate" includes, without limitation, modifying an Eligible Worker's schedule, modifying  
22 the number of hours to be worked, or permitting telework, to the extent operationally feasible,  
23 to accommodate the Eligible Worker's Family Care Hardship. This duty to accommodate shall  
24 expire upon expiration of this emergency ordinance.

1 Section ~~409~~. Notification to City of Offers of Reemployment.

2 An Employer shall notify the Office of ~~Labor Standards Enforcement~~ Economic and  
3 Workforce Development in writing of all offers of reemployment made under this emergency  
4 ordinance, in addition to all acceptances and rejections by Eligible Workers of such offers or  
5 reemployment.

6  
7 Section 10. Regulations.

8 The Office of Labor Standards and Enforcement may issue regulations regarding this  
9 emergency ordinance.

10  
11 Section 11. Remedies for Violations.

12 (a) An Eligible Worker may bring an action in the Superior Court of the State of  
13 California against an Employer for violating this emergency ordinance, and may be awarded  
14 the following relief:

15 (1) Hiring and reinstatement rights, ~~whereupon the 90-day reemployment period~~  
16 ~~referenced in Section 8 of this ordinance shall not commence until the date the Employer~~  
17 ~~rehires an Eligible Worker;~~

18 (2) Back pay for each day of the violation and front pay for each day during  
19 which the violation will continue. Back pay and front pay shall be calculated at a rate of pay  
20 not less than the higher of: (A) if employed for less than three years prior to the Eligible  
21 Worker's date of Separation due to Layoff, the average regular rate received by the Eligible  
22 Worker during the Eligible Worker's employment; (B) if employed for more than three years  
23 prior to the Eligible Worker's date of Separation due to Layoff, the average regular rate  
24 received by the Eligible Worker during the last three years of the Eligible Worker's

1 employment; or (C) the most recent regular rate received by the Eligible Worker as of the date  
2 of Separation due to Layoff; and

3 (3) The value of the benefits the Eligible Worker would have received under the  
4 Employer’s benefit plan had the violation not occurred.

5 (b) If the Eligible Worker is the prevailing party in any legal action taken pursuant to  
6 this Section ~~40~~11, the court shall also award reasonable attorneys’ fees and costs.

7  
8 Section 12. No Limitation on Other Rights and Remedies.

9 This emergency ordinance does not in any way limit the rights and remedies that the  
10 law otherwise provides to Eligible Workers, including without limitation, the rights to be free  
11 from wrongful termination and unlawful discrimination.

12  
13 Section 13. Waiver Through Collective Bargaining.

14 This emergency ordinance shall not apply to Eligible Workers covered by a bona fide  
15 collective bargaining agreement to the extent that the requirements of this emergency  
16 ordinance are expressly waived in the collective bargaining agreement in clear and  
17 unambiguous terms.

18  
19 Section 14. Preemption.

20 Nothing in this emergency ordinance shall be interpreted or applied so as to create any  
21 right, power, or duty in conflict with federal or state law. The term “conflict” as used in this  
22 Section 14 means a conflict that is preemptive under federal or state law.

23  
24 Section 15. Severability.

1 If any section, subsection, sentence, clause, phrase, or word of this emergency  
2 ordinance, or any application thereof to any person or circumstance, is held to be invalid or  
3 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
4 affect the validity of the remaining portions or applications of this emergency ordinance. The  
5 Board of Supervisors hereby declares that it would have passed this emergency ordinance  
6 and every section, subsection, sentence, clause, phrase, and word not declared invalid and  
7 unconstitutional without regard to whether any other portion of the emergency ordinance or  
8 application thereof would be subsequently declared invalid or unconstitutional.

9  
10 Section 16. Effective Date; Expiration.

11 Consistent with Charter Section 2.107, this emergency ordinance shall become  
12 effective immediately upon enactment, and shall expire upon ~~whichever of the two following~~  
13 ~~occurrences happens first: (a) the 61st day following enactment unless the emergency~~  
14 ~~ordinance is reenacted as provided by Section 2.107; or, (b) the Conclusion of the Public~~  
15 ~~Health Emergency and rescission of the SIP Orders.~~ Enactment occurs when the Mayor  
16 signs the emergency ordinance, the Mayor returns the emergency ordinance unsigned or  
17 does not sign the emergency ordinance within ten days of receiving it, or the Board of  
18 Supervisors overrides the Mayor's veto of the emergency ordinance.

19  
20 Section 17. Supermajority Vote Required.

21 In accordance with Charter Section 2.107, passage of this emergency ordinance by the  
22 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By: /s/ \_\_\_\_\_  
JON GIVNER  
Deputy City Attorney

i.e., n:\govern\as2013\1200339\00848008.doc