

ANALYSIS

This ordinance adds to the Los Angeles County COVID-19 Worker Protection Ordinance by adding Chapters 8.201 and 8.202 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 pandemic COVID-19 public health crisis and a right of retention for when a business changes ownership or control.

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Atty Initials: eb

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ORDINANCE NO. _____

An ordinance adding Chapters 8.201 (COVID-19 Right of Recall) and 8.202 (COVID-19 Right of Retention) to Division 5 – COVID-19 Worker Protections of Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code.

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

SECTION 1. Chapter 8.201 of Division 5 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 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, or local government agencies shall be exempt from this Chapter.

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. Laid Off Worker does not include employees historically hired through a Temporary Staffing Agency.

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. 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.

The Employer shall offer positions to Laid Off Workers in an order of preference corresponding to categories (1) and (2) in the preceding sentence. Where more than one (1) Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest length of service with the Employer.

B. 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 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 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.

SECTION 2. Chapter 8.202 is hereby added to read as follows:

CHAPTER 8.202 COVID-19 County-Wide Worker Retention.

8.202.010 Purpose.

8.202.020 Definitions.

8.202.030 Business Worker Retention.

8.202.040 Retaliatory Action Prohibited.

8.202.050 Enforcement.

8.202.060 Exemption for Collective Bargaining Agreement,

Express Waiver.

8.202.070 No Waiver of Rights.

8.202.080 Severability.

8.202.090 Expiration of Ordinance.

8.202.100 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 workers to be retained when a business changes ownership or control.

8.202.020 Definitions.

The following definitions shall apply to this Chapter:

A. **"Business"** means a Commercial Property Employer or Hotel Employer, as defined in Chapter 8.201. For purposes of this Chapter, a "Business" does not include non-profit entities. Federal, state, or local government agencies shall be exempt from this Chapter.

B. **"Change in Control"** means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a Business, or a discrete portion of a Business that continues to operate as the same type of Business of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.

C. **"County"** means the County of Los Angeles.

D. **"Employment Commencement Date"** means the date on which a Worker retained by the Successor Business Employer pursuant to this Chapter commences work for the Successor Business Employer in exchange for compensation under the terms and conditions established by the Successor Business Employer or as required by law.

E. **"Incumbent Business Employer"** means the Person who owns, controls, and/or operates a Business prior to the Change in Control.

F. **"Length of Service"** means the total of all periods of time during which a Worker has been in active service, including periods of time when the worker was on leave or vacation.

G. **"Person"** means an individual, corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether

domestic or foreign. Person does not include non-profit organizations or federal, state, or local government agencies who shall be exempt from this Chapter.

H. **"Successor Business Employer"** means the Person who owns, controls, and/or operates a Business after the Change in Control.

I. **"Transfer Document"** means the purchase agreement or other documents creating a binding arrangement to effect the Change in Control.

J. **"Worker"** means an individual employed by the Incumbent Business Employer: (1) who has a Length of Service with the Incumbent Business Employer for six (6) months or more; (2) whose primary place of employment is a Business subject to a Change in Control; (3) who is employed or contracted to perform work functions directly by the Incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business subject to the Change in Control; and (4) who worked for the Incumbent Business Employer on March 1, 2020, prior to the execution of the Transfer Document. "Worker" does not include a managerial, supervisory, or confidential employee.

8.202.030 Business Worker Retention.

A. Business Employer's Responsibilities.

1. The Incumbent Business Employer shall, within fifteen (15) calendar days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A.1 of this Section, and shall be required to hire from that list for a period beginning upon the execution of the Transfer Document and continuing for six (6) months after the Business is open to the public under the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer shall retain written verification of that offer for no fewer than three (3) years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. Transition Employment Period.

1. A Successor Business Employer shall retain each Worker hired pursuant to this Chapter for no fewer than ninety (90) calendar days following the Worker's Employment Commencement Date. During the 90-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a

Worker with a written offer of employment. This offer shall remain open for at least ten business days from the date of the offer.

2. If, within the period established by Section 8.202.030.A.2, the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall offer the position to the Worker in the same occupational classification with the greatest length of service with the Incumbent Business Employer.

3. During the 90-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this Chapter.

4. At the end of the 90-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this Chapter. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer shall consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer shall retain a record of the written performance evaluation period of no fewer than three (3) years.

C. Notice of Change in Control.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five (5) business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six (6) months after the Business is open to the

public under the Successor Business Employer. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of the Successor Business Employer and its contact information, and the effective date of the Change in Control.

2. Notice shall be posted in a conspicuous place at the Business so as to be readily viewed by Workers, other employees, and applicants for employment.

8.202.040 Retaliatory Action Prohibited.

No Incumbent or Successor Business Employer employing a Worker shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to exercise their rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

8.202.050 Enforcement.

A. A Worker may bring an action in the Superior Court of the State of California against an Incumbent Business Employer or the Successor Business Employer for violations of this Chapter and may be awarded:

1. Hiring and reinstatement rights pursuant to this Chapter. For a Worker, the 90-day transition employment period begins on the Worker's Employment Commencement Date with the Successor Business Employer.

2. Front or back pay for each day the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

a. The average regular rate of pay received by the Worker during the last three (3) years of their employment in the same occupation classification; or

b. The most recent regular rate received by the Worker while employed by either the Business, Incumbent Business Employer, or the Successor Business Employer.

3. Value of the benefits the Worker would have received under the Successor Business Employer's benefits plan.

B. A civil action by a Worker alleging a violation of any provision of this Chapter shall commence only after the following requirements have been met:

1. The Worker provided written notice to the Incumbent Business Employer and/or the Successor Business Employer of the provision of the Chapter alleged to have been violated and the facts supporting the alleged violation; and

2. The Incumbent Business Employer and/or the Successor Business Employer is provided 15 days from the receipt of the written notice to cure any alleged violation.

C. The court shall award reasonable attorney's fees and costs to a Worker who prevails in any such enforcement action and to a Business employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.

D. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this Chapter.

8.202.060 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.

8.202.070 No Waiver of Rights.

Except for a collective bargaining agreement provision made pursuant to Section 8.202.070, any waiver by a 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 be a violation of this Chapter.

8.202.080 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.

8.202.090 Expiration of Ordinance.

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.

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