
OLR Bill Analysis

sSB 658

AN ACT REQUIRING EMPLOYERS TO RECALL CERTAIN LAID-OFF WORKERS IN ORDER OF SENIORITY.

SUMMARY

This bill requires private-sector employers with at least five employees to meet certain requirements related to recalling certain employees laid off between March 10, 2020, and December 31, 2024. Among other things, these employers must notify laid-off employees about available positions for which a laid-off employee is qualified and offer the positions first to those who previously held the same or a similar position, then to those who can qualify for the position with the same training as a new employee. If more than one is entitled to preference for a position, the employer must offer it to the employee with the most seniority at the employment site.

If the laid-off employee declines an employer's offer job due to certain reasons (e.g., an underlying health condition), the bill gives the laid-off employee the right to accept the position until the end of the public health and civil preparedness emergencies declared by the governor on March 10, 2020, in response to COVID-19. If an employer hires someone else instead of a laid-off employee, the bill requires the employer to give the laid-off employee a written notice that identifies the other person, including their demographic data, and the reasons for the decision.

The bill prohibits employers from retaliating against laid-off employees for exercising their rights under the bill, and it allows a laid-off employee aggrieved by a violation of the bill to bring a civil action in Superior Court.

EFFECTIVE DATE: Upon passage

COVERED EMPLOYERS AND LAID-OFF EMPLOYEES

An “employer” covered by the bill is any person who conducts an “enterprise” and employs or exercises control over the wages, hours, or working conditions of any employee. It includes corporate officers or executives, acting directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity. An “enterprise” is any income-producing economic activity conducted in the state that employs five or more employees.

A “laid-off employee” covered by the bill is an employee (1) employed by an employer for at least six of the twelve months preceding March 10, 2020, and (2) whose most recent separation from active service with, or whose failure to be scheduled for customary seasonal work by, that employer occurred between March 10, 2020, and December 31, 2024, due to a lack of business or a reduction or furlough of the employer’s workforce; the current COVID-19 public health and civil preparedness emergencies; or other economic, non-disciplinary reasons. “Customary seasonal work” is work performed by an employee for approximately the same portion of each calendar year.

RECALL NOTICE AND PREFERENCE

Notice

The bill requires an employer to send each of its laid-off employees a notice about its available job positions for which the laid-off employee is qualified. Under the bill, laid-off employees are qualified if they (1) held the same or a similar position at the enterprise when they were most recently separated from service with the employer or (2) are or can be qualified for the position with the same training as a new employee hired for the position. The notice must be sent in writing to the laid-off employee’s last known physical address and e-mail address, and by text message to his or her mobile phone. (The bill does not specify when an employer must send the notices or how often it must do so.)

Recall Order of Preference

The bill requires employers to offer positions to laid-off employees

in the same order of preference that they are deemed qualified above: first to those who held the same or a similar position before their separation, then to those who can qualify for the position with the same training as a new employee. If more than one (presumably, laid-off) employee is entitled to preference for a position, the bill requires the employer to offer the position to the (presumably, laid-off) employee with the greatest length of service at the employment site. An employer may offer a position to more than one laid-off employee, with the final offer for the position conditioned upon the same order of preference as described above.

An “employment site” under the bill is the principal physical place where the laid-off employee performed the predominance of his or her duties before being laid off. But for a laid-off employee in construction, transportation, building services, or other industries where work is performed at locations other than the employer’s administrative headquarters, it is any location served by the headquarters. An employee’s “length of service” is the total amount of time that the employee was in active service, including the employee’s time on leave or vacation.

Job Offers

The bill requires that a job offer to a laid-off employee be in the same classification or job title at substantially the same employment site (which may be relocated within 25 miles), and with substantially the same duties, compensation (including fringe benefits), and working conditions that the employee had immediately before March 10, 2020. (It is unclear how this requirement could apply to a former senior employee (e.g., a manager) who, under the bill, must be offered a position for which he or she could qualify with the same training as a new employee (e.g., a cashier).)

Under the bill, an employer must give a laid-off employee who is offered a position at least 10 days to accept or decline the offer. (The bill does not specify what happens if the employee does not respond within 10 days.) If the employee declines due to his or her age, or due to his or her underlying health conditions (or those of a family member

or other person living in his or her household), the employee retains the right to accept the position and all other rights under the bill until the current COVID-19 public health and civil preparedness emergencies, and any extensions of them, expire and the laid-off employee is reoffered the position. The bill requires that a rehired employee be allowed to work for at least 30 days, unless there is just cause for their termination.

Hiring Another Person. If an employer does not rehire a laid-off employee due to a lack of qualifications and instead hires someone else, the bill requires the employer to give the laid-off employee a written notice within 30 days after hiring the other person. The notice must identify the other person, the reasons for the decision, and all demographic data the employer has about the other person and the laid-off employee who was not rehired.

Application of Bill Provisions

The bill specifies that its provisions apply if:

1. the employer's owner changed after the laid-off employee was laid off, but the enterprise continues to conduct the same or similar operations as it did before March 10, 2020;
2. the employer's form of organization changed after March 10, 2020;
3. another entity acquired substantially all of the employer's assets, and conducts the same or similar operations using substantially the same assets; or
4. the employer relocates the operations where the laid-off employee worked before March 10, 2020, to a different employment site within 25 miles of the original employment site.

Collective Bargaining Agreements. The bill also requires that its provisions apply to each laid-off employee, regardless of whether he or she is represented for collective bargaining or covered by a

collective bargaining agreement. But it specifies that it (1) is not a violation for an employer to follow a recall order of preference required by a collective bargaining agreement that is different from the order of preference required by the bill and (2) does not invalidate or limit the rights, remedies, and procedures of any contract or agreement that provides equal or greater protection for laid-off employees.

The bill also allows its provisions to be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. It specifies that unilateral implementation of terms and conditions of employment by either party to an agreement does not constitute and must not be allowed as a waiver.

EMPLOYEE PROTECTIONS AND ENFORCEMENT

The bill prohibits employers from terminating, refusing to reemploy, reducing compensation, or taking any adverse action against anyone seeking to enforce their rights under the bill or for (1) participating in proceedings related to the bill, (2) opposing a violation of it, or (3) otherwise asserting their rights under it. It requires an employer that does so to give the laid-off employee a detailed written statement of the reason why when it takes these prohibited actions. The statement must include all the facts substantiating the employer's reason or reasons for taking the prohibited action, and all facts known to the employer that contradict the substantiating facts.

The bill allows a laid-off employee aggrieved by a violation to bring a civil action in Superior Court. He or she may also designate an agent or representative to maintain the action on his or her behalf. If the court finds that the employer violated the bill, it may enjoin the employer from engaging in the violation and order appropriate affirmative action (e.g., reinstatement or rehiring, back pay, and benefits) and any other relief it deems appropriate.

If a court orders back pay, the bill requires that the laid-off employee's interim earnings or amounts earnable with reasonable diligence be deducted from the back pay. However, any reasonable

amounts that the laid-off employee spent searching for, obtaining, or relocating to new employment must be deducted from the interim earnings before their deduction from the back pay.

Under the bill, the court may also order (1) compensatory and punitive damages if it finds that the employer committed the violation with malice or with reckless indifference to the bill's requirements and (2) treble damages if it finds that the employer terminated the laid-off employee in violation of the bill. It also requires courts to award attorney's fees and costs to a laid-off employee who prevails in a civil action.

BACKGROUND

Related Bills

sHB 6595 (§ 7) and sSB 1002 (§ 7), both reported favorably by the Labor and Public Employees Committee, contain provisions identical to this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/25/2021)