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## OLR Bill Analysis

**sSB 658 (File 445, as amended by Senate "A" and House "A")\***

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

#### **SUMMARY**

This bill requires hotels, lodging houses, food service contractors, and building service enterprises with at least 15 employees to meet certain requirements related to recalling certain employees laid off between March 10, 2020, and May 1, 2022. Among other things, these employers must notify laid-off employees about available positions for which they are qualified and offer the positions to those with the most seniority at the employment site.

If the laid-off employee declines an employer's offer job due to underlying conditions related to contracting COVID-19, the bill gives the employee the right to accept an available position with the employer 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 includes the reasons for the decision.

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

\*Senate Amendment "A" (1) limits the employers covered by the bill to hotels, lodging houses, food service contractors, and building service enterprises with at least 15 employees, rather than all private-sector employers with at least five employees; (2) sets a five-day deadline for employers to notify qualified laid-off employees about an open position; (3) requires employers to give laid-off employees at

least five days, rather than 10 days, to accept or decline a job offer; (4) limits the requirement that a job offer to a laid-off employee be in the same classification or job title, with substantially the same duties, compensation, and working conditions to instances in which the laid-off employee previously held the same or similar position; and (5) makes various minor and conforming changes.

\*House Amendment "A" among other things, (1) requires employers to (a) submit to the Department of Labor an affidavit stating the reasons for laying off an employee and (b) offer available positions to qualified laid-off employees with the most seniority, rather than first to those who previously held the same position, then to those who can qualify with the same training as a new employee; (2) tightens the criteria under which a laid-off employee qualifies for rights under the bill; (3) limits the information an employer must provide when it hires someone other than a qualified laid-off employee; and (4) removes a provision that would have allowed a court to award treble damages under certain circumstances.

EFFECTIVE DATE: Upon passage

## **COVERED EMPLOYERS AND LAID-OFF EMPLOYEES**

### ***Employers***

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. A "person" under the bill is an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, either domestic or foreign.

### ***Enterprises***

Under the bill, an "enterprise" is a hotel, lodging house, food service contractor, or building service enterprise that employs 15 or

more employees, including those businesses located at a publicly- or privately-operated highway service plaza. The bill specifies that an enterprise does not include cruise line companies.

**Hotel.** A hotel is any building that (1) is regularly used and open to feed and lodge guests, where anyone who conducts themselves properly and who is able and ready to pay for these services is received if there are accommodations and (2) derives the major portion of its operating receipts from renting rooms and selling food. It includes any apartment hotel in which apartments are rented for fixed periods of time, furnished or unfurnished, while the keeper of the hotel supplies food to the occupants, if required, but it does not include a bed and breakfast establishment (CGS § 12-407).

**Lodging House.** A “lodging house” is any building or portion of one, other than a hotel, an apartment hotel, or a bed and breakfast establishment, in which people are lodged for hire with or without meals (e.g., motels). It does not include (1) privately owned and operated convalescent homes, residential care homes, homes for the infirm, indigent, or chronically ill; (2) religious or charitable homes for the aged, infirm, indigent, or chronically ill; (3) privately owned and operated children’s summer camps; (4) children’s summer camps operated by religious or charitable organizations; (5) lodging accommodations at educational institutions; or (6) lodging accommodations at a facility operated by and in the name of a nonprofit charitable organization, as long as the income from the facility’s lodging accommodations are exempt from federal income taxes.

**Food Service Contractor.** A “food service contractor” is a person who enters into a food service contract to provide food service at a commercial, industrial, institutional, or mixed-use business facility in the state in a single building or in contiguous buildings under common ownership or management, or at any state building. The applicable food service contract must be for providing food service (on-site preparation, service, and cleanup of food or beverages) for a term of at least six months and require the food service contractor to provide all

food service workers.

***Building Services Enterprise.*** A “building services enterprise” under the bill is a person providing janitorial, building maintenance, or security services under contract to office, retail, or other commercial or state buildings.

***Laid-Off 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 May 1, 2022, because of lack of business or a reduction or furlough of the employer’s workforce due to the COVID-19 pandemic, which includes the executive orders issued under the current COVID-19 public health and civil preparedness emergencies. “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, within 30 days after laying off an employee before May 1, 2022, to submit an affidavit to the Department of Labor stating the reasons for the decision.

It also requires an employer, within five days after a job position becomes available, to notify each laid-off employee who is qualified for the position that the position is available. The notification must be sent in writing (1) to the laid-off employee’s last known physical address or e-mail address, whichever is the usual and customary means for providing notices between the employer and employee, and (2) by text message to the employee’s mobile phone, if the employer maintains the phone number.

Under the bill, laid-off employees are qualified for a position 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.

***Recall Order and Job Offers***

If more than one employee is qualified for a position, the bill requires an employer to offer it to the employee with the greatest length of service at the employment site. An “employment site” under the bill is the principal physical place where the laid-off employee performed the majority of his or her duties before being laid off. But for a laid-off employee in 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.

The bill requires that a job offer to a laid-off employee be at substantially the same employment site (which may be relocated within 25 miles). If the laid-off employee held the same or a similar position at the enterprise when he or she most recently separated from active service with the employer, the job offer must also be in the same classification or job title, and have substantially the same duties, compensation (including fringe benefits), and working conditions that the employee had immediately before March 10, 2020.

Under the bill, an employer must give a laid-off employee who is offered a position at least five days to accept or decline the offer. If the employee does not respond within the time provided by the employer, the offer is considered declined. If the employee timely declines due to underlying conditions related to contracting COVID-19 diagnosed by May 1, 2021, as evidenced by a medical note to the employer, the employee retains the right to accept an available position for which he or she is qualified and all other rights under the bill. The employee retains these rights until the current COVID-19 public health and civil preparedness emergencies, and any extensions of them, expire and the laid-off employee is reoffered a 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 Individual.** 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 individual. The notice must include the reasons for the decision.

**Application of Bill Provisions**

The bill specifies that its provisions apply if:

1. the employer's form of organization changed after March 10, 2020;
2. another entity acquired substantially all of the employer's assets, and conducts the same or similar operations using substantially the same assets; or
3. 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. 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 compensatory and punitive damages if it finds that the employer committed the violation with malice or with reckless indifference to the bill's requirements. 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 (File 463, § 7) and sSB 1002 (File 464, § 7), both reported favorably by the Labor and Public Employees Committee, contain provisions similar to this bill (and identical to the unamended bill (File 445)).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/25/2021)

Judiciary Committee

Joint Favorable

Yea 24 Nay 14 (05/03/2021)