



General Assembly

Amendment

January Session, 2021

LCO No. 10402



Offered by:
REP. PORTER, 94th Dist.

To: Subst. Senate Bill No. 658

File No. 445

Cal. No. 552

(As Amended)

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

4 (1) "Building services enterprise" means a person providing janitorial,
5 building maintenance or security services under contract to office, retail
6 or other commercial or state buildings;

7 (2) "Compensation" means an employee's average weekly earnings
8 for the twelve-month period immediately preceding the date of the

9 employee's last day of active employment with an employer, including
10 wages or salary, payments to an employee while on vacation or on
11 leave, allocated or declared tip income, bonuses or commissions,
12 contributions or premiums paid by the employer for fringe benefits,
13 overtime or other premium payments and allowances for expenses,
14 uniforms, travel or education;

15 (3) "Customary seasonal work" means work performed by an
16 employee for approximately the same portion of each calendar year;

17 (4) "Employer" means any person, including a corporate officer or
18 executive, who directly or indirectly or through an agent or any other
19 person, including through the services of a temporary service or staffing
20 agency or similar entity, conducts an enterprise and employs or
21 exercises control over the wages, hours or working conditions of any
22 employee;

23 (5) "Employment site" means the principal physical place where a
24 laid-off employee performed the predominance of the employee's duties
25 prior to being laid off, or, in the case of a laid-off employee in building
26 services or other industries where work is performed at locations other
27 than the employer's administrative headquarters from which such
28 assignments were made, any location served by such headquarters;

29 (6) "Enterprise" means a hotel, lodging house, food service contractor
30 or building services enterprise, including such a business located at a
31 publicly or privately operated highway service plaza, that employs
32 fifteen or more employees. "Enterprise" does not include cruise line
33 companies;

34 (7) "Food service" means the on-site preparation, service and cleanup
35 of food or beverages;

36 (8) "Food service contract" means a contract for a term of not less than
37 six months for the provision of food service that requires the food
38 service contractor to provide all food service workers;

39 (9) "Food service contractor" means any person who enters into a food
40 service contract to provide food service at any commercial, industrial,
41 institutional or mixed-use business facility in the state in a single
42 building or in contiguous buildings under common ownership or
43 management or at any state building;

44 (10) "Hotel" has the same meaning as provided in section 12-407 of
45 the general statutes;

46 (11) "Laid-off employee" means any employee who was employed by
47 the employer for six months or more in the twelve months preceding
48 March 10, 2020, and whose most recent separation from active service
49 or whose failure to be scheduled for customary seasonal work by that
50 employer occurred after March 10, 2020, and before May 1, 2022, and
51 was due to lack of business or a reduction or furlough of the employer's
52 workforce due to the COVID-19 pandemic, and including executive
53 orders issued pursuant to the COVID-19 public health emergency and
54 the civil preparedness emergency declared by the Governor on March
55 10, 2020;

56 (12) "Length of service" means the total of all periods of time during
57 which an employee has been in active service, including periods of time
58 when the employee was on leave or on vacation;

59 (13) "Lodging house" has the same meaning as provided in section
60 12-407 of the general statutes;

61 (14) "Person" means an individual, corporation, partnership, limited
62 partnership, limited liability partnership, limited liability company,
63 business trust, estate, trust, association, joint venture, agency,
64 instrumentality or any other legal or commercial entity, either domestic
65 or foreign; and

66 (15) "COVID-19" means the respiratory disease designated by the
67 World Health Organization on February 11, 2020, as coronavirus 2019,
68 and any related mutation thereof recognized by said organization as a
69 communicable respiratory disease.

70 (b) (1) Not later than thirty days after the layoff of an employee before
71 May 1, 2022, an employer shall submit to the Labor Department an
72 affidavit stating the reasons for the decision.

73 (2) Not later than five days after a job position becomes available at
74 an employer, the employer shall notify each of its laid-off employees
75 who are qualified for the position that the position is available. Such
76 notification shall be sent in writing to the laid-off employee's last known
77 physical address or electronic mail address, whichever is the usual and
78 customary means of providing notices between the employer and
79 employee, and in a text message to the employee's mobile phone if such
80 phone number is maintained by the employer. Where more than one
81 employee is qualified for an available position, the employer shall offer
82 the position to the employee with the greatest length of service at the
83 employment site. A laid-off employee is qualified for a position if the
84 employee: (A) Held the same or similar position at the enterprise at the
85 time of the employee's most recent separation from active service with
86 the employer; or (B) is or can be qualified for the position with the same
87 training that would be provided to a new employee hired for such
88 position.

89 (c) An offer of employment to a laid-off employee pursuant to this
90 section shall be at substantially the same employment site, subject to
91 relocation as provided in subdivision (4) of subsection (g) of this section.
92 If the laid-off employee held the same or similar position at the
93 enterprise at the time of the employee's most recent separation from
94 active service with the employer, such offer shall be in the same
95 classification or job title and with substantially the same duties,
96 compensation, benefits and working conditions as applied to the laid-
97 off employee immediately prior to March 10, 2020.

98 (d) Any laid-off employee who is offered a position pursuant to this
99 section shall be given not less than five days in which to accept or
100 decline the offer. If the laid-off employee does not accept or reject the
101 offer in the time provided by the employer, the offer shall be considered
102 declined. If a laid-off employee declines an offer of a position, within the

103 time period provided by the employer, due to underlying conditions
104 related to contracting COVID-19 diagnosed on or before May 1, 2021, as
105 evidenced by a medical note to the employer, such laid-off employee
106 shall retain the right to accept an available position for which the
107 employee is qualified pursuant to subdivision (2) of subsection (b) of
108 this section, and shall retain all other rights under this section until both
109 (1) the expiration of the public health and civil preparedness
110 emergencies declared by the Governor on March 10, 2020, and any
111 extension of such emergency declarations, and (2) the laid-off employee
112 is reoffered a position.

113 (e) Each employer that declines to rehire a laid-off employee on the
114 grounds of lack of qualifications and instead hires an individual other
115 than a laid-off employee shall provide to the laid-off employee a written
116 notice not later than thirty days after the date such other individual is
117 hired. Such notice shall include the reasons for such decision.

118 (f) A laid-off employee rehired pursuant to this section shall be
119 permitted to work for not less than thirty work days, unless there is just
120 cause for the employee's termination.

121 (g) The requirements of this section shall apply under any of the
122 following circumstances:

123 (1) The form of organization of the employer changed after March 10,
124 2020;

125 (2) Substantially all of the assets of the employer were acquired by
126 another entity that conducts the same or similar operations using
127 substantially the same assets; or

128 (3) The employer relocates the operations at which a laid-off
129 employee was employed prior to March 10, 2020, to a different
130 employment site not greater than twenty-five miles away from the
131 original employment site.

132 (h) No employer shall terminate, refuse to reemploy, reduce

133 compensation or otherwise take any adverse action against any
134 individual seeking to enforce his or her rights under this section or for
135 participating in proceedings related to this section, opposing the
136 violation of any provision of this section or otherwise asserting rights
137 under this section.

138 (i) An employer that terminates, refuses to reemploy or takes any
139 other adverse action against any laid-off employee shall provide to the
140 employee, at or before the time of the termination, refusal to reemploy
141 or other adverse action, a detailed written statement of the reason or
142 reasons for the termination, refusal to reemploy or other adverse action,
143 including all the facts substantiating the reason or reasons and all facts
144 known to the employer that contradict the substantiating facts.

145 (j) (1) A laid-off employee aggrieved by a violation of any provision
146 of this section may bring a civil action in the Superior Court.

147 (2) If the court finds that the employer has violated any provision of
148 this section, the court may enjoin the employer from engaging in such
149 violation and may order such affirmative action as the court deems
150 appropriate, including the reinstatement or rehiring of the laid-off
151 employee, with or without back pay and fringe benefits, or other
152 equitable relief as the court deems appropriate. Interim earnings or
153 amounts earnable with reasonable diligence by the laid-off employee
154 who was subjected to the violation shall be deducted from the back pay
155 permitted under this subdivision and any reasonable amounts
156 expended by the laid-off employee in searching for, obtaining or
157 relocating to new employment shall be deducted from the interim
158 earnings before such earnings are deducted from such back pay. The
159 court may order compensatory and punitive damages if the court finds
160 that the employer committed the violation with malice or with reckless
161 indifference to the provisions of this section. Any laid-off employee who
162 prevails in a civil action shall be awarded reasonable attorney's fees and
163 costs to be taxed by the court.

164 (k) The provisions of this section shall apply to each laid-off

165 employee, whether or not such laid-off employee is represented for
 166 purposes of collective bargaining or is covered by a collective
 167 bargaining agreement, and may be waived in a bona fide collective
 168 bargaining agreement but only if the waiver is explicitly set forth in the
 169 agreement in clear and unambiguous terms. Unilateral implementation
 170 of terms and conditions of employment by either party to a collective
 171 bargaining relationship shall not constitute or be permitted as a waiver
 172 of all or any part of the provisions of this section. Nothing in this section
 173 shall be construed to invalidate or limit the rights, remedies and
 174 procedures of any contract or agreement that provides equal or greater
 175 protection for laid-off employees than provided by this section and it
 176 shall not be a violation of this section for an employer to follow an order
 177 of preference for rehiring laid-off employees required by a collective
 178 bargaining agreement that is different from the order of preference
 179 required by this section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section