



General Assembly

January Session, 2021

**Amendment**

LCO No. 9197



Offered by:

SEN. KUSHNER, 24<sup>th</sup> Dist.

SEN. LOONEY, 11<sup>th</sup> Dist.

SEN. DUFF, 25<sup>th</sup> Dist.

To: Subst. Senate Bill No. 658

File No. 445

Cal. No. 267

**"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;

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

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

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

42 management or at any state building;

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

45 (11) "Laid-off employee" means any employee who was employed by  
46 the employer for six months or more in the twelve months preceding  
47 March 10, 2020, and whose most recent separation from active service  
48 or whose failure to be scheduled for customary seasonal work by that  
49 employer occurred after March 10, 2020, and before December 31, 2024,  
50 and was due to the lack of business or a reduction or furlough of the  
51 employer's workforce, the public health and civil preparedness  
52 emergencies declared by the Governor on March 10, 2020, or other  
53 economic, nondisciplinary reasons;

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

57 (13) "Lodging house" has the same meaning as provided in section  
58 12-407 of the general statutes; and

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

64 (b) Not later than five days after a job position becomes available at  
65 an employer, the employer shall notify each of its laid-off employees  
66 who are qualified for the position that the position is available. Such  
67 notification shall be sent in writing to the laid-off employee's last known  
68 physical address or electronic mail address, whichever is the usual and  
69 customary means of providing notices between the employer and  
70 employee, and in a text message to the employee's mobile phone. A laid-  
71 off employee is qualified for a position if the employee: (1) Held the  
72 same or similar position at the enterprise at the time of the employee's

73 most recent separation from active service with the employer; or (2) is  
74 or can be qualified for the position with the same training that would be  
75 provided to a new employee hired for such position. The employer shall  
76 offer such positions to laid-off employees in the order of preference set  
77 forth under subdivisions (1) and (2) of this subsection. Where more than  
78 one employee is entitled to preference for a position, the employer shall  
79 offer the position to the employee with the greatest length of service at  
80 the employment site. An employer may make offers of employment for  
81 a position to more than one laid-off employee with the final offer of  
82 employment for such position conditioned upon the order of preference  
83 described in this subsection.

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

93 (d) Any laid-off employee who is offered a position pursuant to this  
94 section shall be given not less than five days in which to accept or  
95 decline the offer. If the laid-off employee does not accept or reject the  
96 offer in the time provided by the employer, the offer shall be considered  
97 declined. If the laid-off employee declines an offer, within the time  
98 period provided by the employer, due to such employee's age or  
99 underlying health conditions of such employee or of a family member  
100 or other individual living in such employee's household, such employee  
101 shall retain his or her right to accept a position and shall retain all other  
102 rights under this section until both (1) the expiration of the public health  
103 and civil preparedness emergencies declared by the Governor on March  
104 10, 2020, and any extension of such emergency declarations, and (2) the  
105 laid-off employee is reoffered the position.

106 (e) Each employer that declines to rehire a laid-off employee on the  
107 grounds of lack of qualifications and instead hires an individual other  
108 than a laid-off employee shall provide to the laid-off employee a written  
109 notice not later than thirty days after the date such other individual is  
110 hired. Such notice shall identify the individual hired in lieu of rehiring  
111 the laid-off employee, the reasons for such decision and all demographic  
112 data the employer has regarding such new hire and the laid-off  
113 employee who was not rehired.

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

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

119 (1) The ownership of the employer changed after a laid-off employee  
120 was laid off, but the enterprise continues to conduct the same or similar  
121 operations it did prior to March 10, 2020;

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

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

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

131 (h) No employer shall terminate, refuse to reemploy, reduce  
132 compensation or otherwise take any adverse action against any  
133 individual seeking to enforce his or her rights under this section or for  
134 participating in proceedings related to this section, opposing the  
135 violation of any provision of this section or otherwise asserting rights

136 under this section.

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

144 (j) (1) A laid-off employee aggrieved by a violation of any provision  
145 of this section may bring a civil action in the Superior Court or may  
146 designate an agent or representative to maintain the action on behalf of  
147 the employee.

148 (2) If the court finds that the employer has violated any provision of  
149 this section, the court may enjoin the employer from engaging in such  
150 violation and may order such affirmative action as the court deems  
151 appropriate, including, but not limited to, the reinstatement or rehiring  
152 of the laid-off employee, with or without back pay and fringe benefits,  
153 or other equitable relief as the court deems appropriate. Interim  
154 earnings or amounts earnable with reasonable diligence by the laid-off  
155 employee who was subjected to the violation shall be deducted from the  
156 back pay permitted under this subdivision and any reasonable amounts  
157 expended by the laid-off employee in searching for, obtaining or  
158 relocating to new employment shall be deducted from the interim  
159 earnings before such earnings are deducted from such back pay. The  
160 court may order (A) compensatory and punitive damages if the court  
161 finds that the employer committed the violation with malice or with  
162 reckless indifference to the provisions of this section, and (B) treble  
163 damages if the court finds that the employer terminated the laid-off  
164 employee in violation of the provisions of subsection (h) of this section.  
165 Any laid-off employee who prevails in a civil action shall be awarded  
166 reasonable attorney's fees and costs to be taxed by the court.

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

168 employee, whether or not such laid-off employee is represented for  
 169 purposes of collective bargaining or is covered by a collective  
 170 bargaining agreement, and may be waived in a bona fide collective  
 171 bargaining agreement but only if the waiver is explicitly set forth in the  
 172 agreement in clear and unambiguous terms. Unilateral implementation  
 173 of terms and conditions of employment by either party to a collective  
 174 bargaining relationship shall not constitute or be permitted as a waiver  
 175 of all or any part of the provisions of this section. Nothing in this section  
 176 shall be construed to invalidate or limit the rights, remedies and  
 177 procedures of any contract or agreement that provides equal or greater  
 178 protection for laid-off employees than provided by this section and it  
 179 shall not be a violation of this section for an employer to follow an order  
 180 of preference for rehiring laid-off employees required by a collective  
 181 bargaining agreement that is different from the order of preference  
 182 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