
EMPLOYMENT LAW ALERT

Right of Recall and Rehire – Senate Bill 93

On Friday, April 16, 2021, Governor Gavin Newsom signed Senate Bill 93 which requires covered employers to offer employees laid-off due to the COVID-19 pandemic written job offers for available positions. Senate Bill 93 took effect immediately and is codified in Labor Code section 2810.8.

Who is a “covered employer”?

Currently, “covered employers” are employers who operate hotels, private clubs, event centers, airport hospitality services, or building services to office, retail, or other commercial buildings”. In each of these industries, however, there are specific additional requirements. For example, a hotel is a “covered employer” if it contains 50 or more guest rooms. A private club must operate in a building or complex of buildings containing at least 50 guest rooms that are offered for overnight lodging to be considered a “covered employer”. The building services that make one a “covered employer” include janitorial, building maintenance and security services provided to office, retail or other commercial buildings.

Who is a “laid-off employee” under SB 93?

For an employee to be considered a “laid-off employee” pursuant to SB 93, an employee must have (1) worked two (2) hours or more per week for a covered employer; (2) been employed by a covered employer for “6 months or more in the 12 months preceding January 1, 2020”; and (3) been “separated from active service ... due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason related to the COVID-19 pandemic.”

What are the obligations of the “Covered Employer”?

Simply, a covered employer must offer laid-off employees all employment opportunities that become available for which the employee is qualified. Laid-off employees are automatically deemed qualified if the employee held the same or similar position at the time of lay-off. A written offer for the position must be delivered to the laid-off employee “by hand or mail to their last known physical address, and by email and text message” if that information is known to the employer.

Offers may be made simultaneously to more than one laid-off employee. The laid-off employee has five (5) business days, from the date of receipt of the written offer, to accept or decline. If more than one (1) laid-off employee accepts the offer, the employee with the greatest length of service based on the employee’s previous date of hire is awarded the position.

If an employer declines to “recall” a laid-off employee on the grounds of lack of qualifications, the employer must provide written notice to the laid-off employee of (1) all the employees hired for the position, (2) their length of service with the employer and (3) an explanation as to why the employer did not rehire the employee.

Records Must be Retained for Three (3) Years.

For three (3) years after the laid-off employee received written notice regarding the lay-off, the covered employer must retain information regarding the laid-off employee including (1) employee's full legal name; (2) job classification at the time of layoff, (3) date of hire; (4) last known address of residence; (5) last known email address; and (6) last known telephone number. Additionally, the employer must retain layoff notices and all communications between the employer and employee regarding employment offers made pursuant to SB93.

Enforcement.

The Division of Labor Standards Enforcement ("DLSE") will have exclusion jurisdiction over Labor Code section 2810.8. A laid-off employee may file a complaint requesting that the DLSE order (1) hiring and reinstatement rights, (2) front or back pay, (3) the value of the employer's benefits that the laid-off employee would have received under the benefit plan, and (4) interest.

In addition, the DLSE may impose civil penalties of \$100 for each individual whose rights the employer violated and \$500 per day of liquidated damages for each individual whose rights were violated for every day "until such time as the violation is cured."

Compliance.

Covered employers will want to pay close attention to their hiring efforts as the economy reopens. To the extent that employers are filling positions that were laid-off due to the pandemic, consideration and communication with laid-off employees will be imperative. Businesses will need to educate their hiring managers and establish procedures to ensure that open positions are offered to "laid-off employees" before being offered to the general public.

If you need assistance, please contact us or your designated employment counsel.



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