

CLIENT ALERT

New California Law Requires Re-Hiring of Laid-off Hospitality and Business Services Workers for Open Positions Through 2024

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On April 16, 2021, California Governor Gavin Newsom [signed SB 93](#) into law. This statute establishes a statewide requirement that employers in the hospitality and business services industries, including hotels, airports, building service providers, and large event centers, provide written offers to rehire workers laid off by the COVID-19 pandemic within five business days of job openings becoming available for which they are qualified. The law, to be codified as Section 2810.8 of the California Labor Code, became effective immediately and will remain in effect until December 31, 2024. Section 2810.8 will be exclusively enforced by the California Division of Labor Standards Enforcement (“DLSE”). There is no private right of action, although employees can file a complaint with the DLSE and recover damages through a DLSE enforcement action.

The law defines “laid-off employee” as any employee who was employed for six months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic. Qualifying reasons include a public health directive, a government shutdown order, a lack of business, a reduction in force, or other economic, non-disciplinary reason related to the COVID-19 pandemic. A laid-off employee is considered “qualified” for a position if the employee held the “same or similar position,” a phrase undefined by Section 2810.8, at the time of the employee’s most recent layoff from employment with the employer.

If more than one laid-off employee is qualified, the covered employer must offer the position to the laid-off employee with the greatest length of service. An employer may make simultaneous, conditional offers of employment to laid-off employees with a final offer of employment conditioned on relative length of service compared to the other offerees. The law requires that the offers be provided in writing, either by hand or to the employee(s) last known address, and by email and text message to the extent the employer possesses that information. Laid-off employees must be given at least five business days from receipt of the offer to decline or accept it. The law has a December 31, 2024 sunset provision.

The statute is unclear as to whether an employer must continue to extend offers to laid-off employees who decline or fail to respond to an initial offer, or if a single offer will suffice. The law is also ambiguous regarding the issue of how employers should assess the question of qualification for recall in, for example, situations involving reorganizations and performance issues. Guidance expected to be issued by the DLSE may answer these and other questions regarding Section 2810.8.

Any covered employer that declines to recall a laid-off employee due to the employee’s lack of qualifications, and instead hires someone else, is required to provide the laid-off employee with a written notice within 30 days, to include the length of service of those hired along with “all reasons for the decision.” Retaliation against any laid-off employees for their attempt to enforce their rights under Section 2810.8 is prohibited.

The law further requires employers to maintain records of job offers issued to laid-off employees for three years from the date of written notice regarding the layoff. Violation of Section 2810.8 will trigger civil penalties against employers, including corporate officers or executives who, directly or indirectly, own or operate a covered business and employ or exercise control

over employees' wages, hours, or working conditions. These civil penalties total \$100 for each employee whose rights are violated and additional liquidated damages of \$500 per laid-off employee for each day that the employee's rights are violated until the violation is cured. The DLSE may also order reinstatement, front or back pay for every day that the violation continues, and the value of the benefits that the laid-off employee would have received under the employer's benefit plan.

The law applies to employers with a unionized work force, but allows the provisions to be waived if "explicitly set forth in [the collective bargaining agreement] in clear and unambiguous terms."

Employers in the covered industries should immediately review any job openings that have been posted since April 16 and determine whether any employees previously laid off for pandemic-related reasons qualify before moving forward with other candidates. Going forward, covered employers should ensure that positions are not filled without the employer first providing compliant offers to qualified laid-off employees as required by Section 2810.8. Covered employers who choose not to recall such employees should also be prepared to provide the required written notice specifying "all reasons for that decision." Because such notices may be used in other proceedings challenging the hiring decision, care should be taken to issue complete, accurate and timely notices where required.

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