

California Employers Now Required to Offer Open Positions to Employees Laid Off Due to COVID-19



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On April 16, 2021, Governor Newsom signed [legislation](#) that requires all California employers, as defined, to offer open positions to certain former employees laid off due to COVID-19 unless otherwise explicitly waived in a valid collective bargaining agreement. Covered employers are defined as any person, who directly or indirectly or through an agent or other person, including through the services of a temporary service or staffing agency or similar entity, owns or operates a hotel, private club, event center, airport hospitality operation, airport service provider, or the provision of building service to office, retail or other commercial buildings and employs or exercises control over the wages, hours, or working conditions of any employee. Eligible former employees include those who were employed by the employer for 6 or more months in the 12 months preceding January 1, 2020 and are qualified for the position. A laid-off employee is qualified if he or she held the same or similar position with the employer at the time of the employee's most recent layoff with the employer. If more than one eligible former employee is qualified for the position, the one with the greatest length of service takes precedence. Length of service includes periods of time when the employee was on leave or vacation.

The employment offer must be made within 5 business days of establishing a position, and it must be done in writing, either by hand or to the employee's last known physical address, with a copy by email and text message to the extent the employer possesses such information. Likewise, the former employee must be given at least 5 business days to accept the offer. An employer may also make simultaneous conditional offers of employment to laid-off employees, with a final offer of employment conditioned on precedence. This may be useful for those employers having a difficult time filling open positions quickly enough to support business operations.

An employer that declines to recall a laid-off employee on the grounds of lack of qualifications and instead hires someone else shall provide the laid-off employee a written notice within 30 days. This notice must include the length of service with the employer of those hired in lieu of the laid-off employee and all of the reasons for the employer's decision not to recall the laid-off employee.

Employers must also maintain certain records for at least three (3) years, measured from the date of written notice of the layoff, for each laid-off employee. Additionally, employers are prohibited from retaliating against laid-off employees for seeking to enforce their rights in accordance with the new law, for participating in proceedings related to it, for opposing any practice proscribed by it, or otherwise asserting rights under it.

The Division of Labor Standards Enforcement (DLSE) has exclusive jurisdiction to enforce California Labor Code section 2810.8. Remedies include hiring and reinstatement rights in accordance with section 2810.8, front pay or back pay for each day during which the violation continues as set forth therein, and value of the benefits the laid-off employee would have received under the employer's benefit plan. In addition, section 2810.8 provides for civil penalties in the amount of \$100 for each employee whose rights are violated and an additional sum payable as liquidated damages in the amount of \$500, per employee, for each day the rights of an employee are violated and continuing until such time as the violation is cured.

These provisions are effective immediately and remain in effect through December 31, 2024.

For more information about this new law, please consult with counsel.

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