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## City of Los Angeles Enacts COVID-19-Related Ordinances Regarding Worker Rights of Recall and Retention

On May 3, 2020, Mayor Eric Garcetti signed into law two COVID-19-related ordinances regarding worker recall and retention rights. The ordinances apply to certain workers employed by or contracted to provide service to covered businesses, including airports, event centers (of more than 50,000 square feet or with a capacity of 1,000 seats or more), commercial properties (with 25 or more janitorial, maintenance or security service workers) and hotels (with 50 or more guestrooms or gross receipts exceeding \$5 million in 2019) operating in the city of Los Angeles.

### COVID-19 Right of Recall Ordinance

The COVID-19 Right of Recall Ordinance applies to “laid off worker[s],” defined as any person who: (i) in a particular week, performs at least two hours of work in the city of Los Angeles for a covered employer; (ii) has worked for the covered employer for at least six months; and (iii) whose most recent termination occurred on or after March 4, 2020, due to lack of business, a reduction in workforce or other economic, non-disciplinary reason(s). The definition of “laid off worker” excludes managers, supervisors, confidential employees and individuals who perform sponsorship sales for an event center.

Under the Right of Recall Ordinance, employers are required to offer laid off workers, in writing, any position that becomes available after June 14, 2020, for which a laid off worker is qualified. The employer must give laid off workers no less than five business days to accept the offer. A laid off worker is considered qualified if he or she held the same or similar position at the same site of employment at the time of employment separation or could be qualified for the position with the same training that would be provided to a new hire for that position. If multiple laid off workers are qualified for the same position, the employer is required to offer the position to the laid off worker with the greatest length of service.

A laid off worker may bring a civil action against an employer for a violation of the Right of Recall Ordinance once the laid off worker has provided the covered employer with written notice of the alleged violation and allowed the covered employer 15 days to cure the alleged violation. The laid off worker may seek reinstatement, the greater of actual damages or statutory damages in the amount of \$1,000, punitive damages, and reasonable attorneys’ fees and costs if the worker prevails. Under the Right of Recall Ordinance, collective bargaining agreements that contain a right of recall provision shall supersede the terms of the ordinance.

## **COVID-19 Worker Retention Ordinance**

The COVID-19 Worker Retention Ordinance requires incumbent business employers, meaning those employers who operate a covered business prior to a change in control, to provide successor business employers with a list of workers to be hired in preferential order following a change in control. A change in control is defined as any sale, assignment, transfer, contribution or other disposition of all, or substantially all, of the assets of a business. For the purposes of the Worker Retention Ordinance, “worker” means an individual employed by an incumbent business employer who: (i) has worked for the employer for at least six months; (ii) has a primary place of employment that is subject to a change in control; (iii) is employed or contracted to perform work by the incumbent business employer or a person who has contracted with the incumbent business employer; and (iv) has worked for the incumbent business employer on or after March 4, 2020, and prior to the transfer document that effectuated the change in control. The definition of worker excludes managers, supervisors or confidential employees.

An incumbent business employer is required, within 15 days after a transfer document is executed, to provide the successor business employer with a list of covered workers, including their names, addresses, dates of hire and occupation classifications. The successor business employer is required to hire from this list for a six-month period following the execution of the purchase agreement effectuating the change of control, and must keep a written verification of all offers made for three years. The covered worker will have at least 10 business days

to accept the offer, and the successor business employer must retain each covered worker hired for at least 90 days following the worker’s employment start date, unless there is cause to discharge the covered worker. Following the 90-day transition period, the successor business employer should perform a written performance evaluation regarding whether to offer the covered worker continued employment. If the successor business employer requires fewer covered workers than the incumbent business employer had prior to the change of control, the successor business employer should offer the available positions to the covered workers with the greatest length of service.

The Worker Retention Ordinance requires the incumbent business employer to post a written notice of the change in control at the business within five business days following the execution of the purchase agreement effectuating the change of control. This notice should remain posted for six months following the business being open to the public under the successor business employer.

A covered worker may bring a civil action against an incumbent or successor business employer for violations of the Worker Retention Ordinance once the covered worker has provided the employer with written notice of the alleged violation and allowed the employer 15 days to cure the alleged violation. The covered worker may seek reinstatement, front and back pay, and the value of the benefits the worker would have received under the successor business employer’s benefits plan. Collective bargaining agreements that contain a worker retention provision supersede the terms of the Worker Retention Ordinance.