

FYI[®]

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San Francisco issues guidance on new reemployment rights

San Francisco's "Back to Work" Emergency Ordinance took effect on July 3, requiring employers with 100 or more employees to offer reemployment to workers laid off for COVID-19 related reasons when rehiring for the same or similar jobs. On August 7, the San Francisco Office of Economic and Workforce Development issued guidance on the ordinance along with FAQs and form notices employers may use to satisfy related reporting requirements.

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Background

On June 23, the San Francisco Board of Supervisors passed the Temporary Right to Reemployment Following Layoff Due to the COVID-19 Pandemic Emergency Ordinance (also known as the "[Back to Work](#)" [Emergency Ordinance](#)). The ordinance applies to employers operating in San Francisco that employ at least 100 employees (regardless of location) and covers employees whom they employed in San Francisco for at least 90 days in 2019 and laid off on or after February 25, 2020 due to the pandemic and the city's stay-at-home and shelter-in-place orders. It requires employers to offer laid-off eligible workers reemployment when rehiring for the same or substantially similar jobs. Employers subject to the new ordinance are also required to provide employees with written notice of layoff and their right to reemployment and to report covered layoffs and offers of reemployment to the city. The ordinance became effective on July 3 without the mayor's signature and will expire on September 1, 2020 unless the Board of Supervisors extends it. (See our [July 17, 2020 FYI](#).)

OEWD guidance

On August 7, San Francisco's Office of Economic and Workforce Development (OEWD) issued [guidance](#) on the city's "Back to Work" Ordinance. Along with an overview of the ordinance, it offered additional details on how employers could comply with related reporting requirements to the city. OEWD also released frequently asked questions ([FAQs](#)) that provide further information about the ordinance, employee eligibility, and employer obligations.

Reporting requirements

To assist employers in meeting the new reporting obligations to the city, OEWD has provided fillable [Notice of Layoffs](#) and [Notice of Reemployment Offers](#) forms. Along with the Notice of Layoffs, employers must also submit a list of each laid-off employee's:

- Job classification at time of separation
- Original hire date
- Date of separation

The attachment should not include personally identified information (i.e. employee names). In addition to confirming how many workers were laid off due to the COVID emergency on or after February 25, 2020, the Notice of Reemployment Offers must indicate how many of those were offered, accepted, or declined reemployment. Both the layoff and reemployment notices should be submitted to the city by email to backtowork@sfgov.org.

The FAQs clarify that not all layoffs are reportable to the OEWD. Rather, the reporting requirement extends only to layoffs of 10 or more employees that took place during any 30-day period on or after February 25, 2020 due to the employer's lack of funds or lack of work for its employees, resulting from the Public Health Emergency and any shelter-in-place order. Employers should report covered layoffs that occurred prior to August 7 by September 6, 2020. Covered layoffs occurring after August 7 should be reported to OEWD within 30 days from the date of the layoff. Both employers and employees may contact the OEWD hotline at (415) 701-4817 with questions. Employers may also submit questions to backtowork@sfgov.org.

Employee notices

Unlike the notifications to the city, the OEWD did not provide a template for the required notice to employees at or before the time their layoff becomes effective. While employers may determine the format of the employee notice, the FAQs specify that it must include: a notice of the layoff's effective date; a summary of the right to reemployment; and the OEWD hotline number. Eligible workers laid off on or after February 25, 2020 and prior to August 7, 2020 must be provided notice no later than September 6, 2020. Former employees are not eligible for notice if they worked for a shorter period in the city or were laid off prior to February 25, 2020.

With limited exceptions, an employer that is hiring for the same position previously held by a laid-off eligible worker must first offer reemployment to that worker in order of seniority. If the employer is hiring for a substantially similar position to that which the laid-off eligible worker had in the 12 months preceding the layoff, and the worker is qualified (with any training that would be offered to a new hire), then the employer generally must first offer the position to that laid-off eligible worker. Specific requirements for contacting the laid-off employee and for offers of reemployment are set forth in ordinance.

Nondiscrimination and reasonable accommodation

The FAQs remind employers that they may not discriminate against a worker and, if requested, must provide reasonable accommodation due to a family care hardship such as the need to care for a child whose school is closed or childcare is unavailable or other situations where they need to provide care for someone else. Reasonable accommodation may include modifying a worker's schedule, modifying the number of hours worked, or permitting telework if feasible.

Recordkeeping

Employers need to retain the following records for at least two years for each eligible worker:

- Full legal name
- Job classification at the time of layoff
- Date of hire
- Last known address, email address, and telephone number
- Copy of the written layoff notice provided to the worker

Violations

Finally, the FAQs indicate that the Office of Labor Standards and Enforcement may issue regulations regarding violations. For now, aggrieved workers may bring an action against the employer that may result in hiring and reinstatement rights, back pay, or other benefits that the worker may have received.

In closing

San Francisco's "Back to Work" Emergency Ordinance took effect on July 3 and will expire on September 1, 2020 unless the Board of Supervisors extends it. Until then, employers operating in San Francisco that employ at least 100 employees will be required to first offer reemployment to workers laid off for COVID-related reasons before rehiring for the same or similar jobs.

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