

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### San Francisco extends reemployment rights for laid-off workers

Last year, a San Francisco emergency ordinance created a temporary right to reemployment for certain employees who were laid off due to the COVID-19 pandemic. On April 6, the Board of Supervisors passed a new “Back to Work” ordinance, which extends rehire protections and makes several changes to the emergency ordinance that expired on March 2, 2021. The ordinance becomes effective on May 16.

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**Authors**

Nancy Vary, JD

Abe Dubin, JD

#### Background

On February 25, 2020, San Francisco Mayor London Breed proclaimed a state of emergency in response to the spread of COVID-19. Shortly thereafter, the Health Officer of the City and County of San Francisco declared a local health emergency and ordered residents to shelter in place and businesses to cease nonessential operations in the city. As a result, a substantial number of businesses had to temporarily or permanently close and many employees working in the city were laid off. While the Health Officer’s order has been amended several times to allow certain business activities to resume, it remains in effect with no expiration date.

On June 23, 2020, the San Francisco Board of Supervisors passed the “Temporary Right to Reemployment Following Layoff Due to the COVID-19 Pandemic Emergency Ordinance.” The emergency ordinance applied to employers with at least 100 employees (regardless of location) and covered workers 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 shelter-in-place orders. It required employers to offer eligible workers reemployment before hiring new employees for the same or substantially similar jobs and to report both covered layoffs and offers of reemployment to the city. The ordinance became effective on July 3, 2020 and expired on March 2, 2021. (See our July 17, 2020 FYI.)

**Buck comment.** Other California cities have also adopted “right-to-recall” ordinances, including Long Beach, Los Angeles, Carlsbad, Oakland, Pasadena, and Sacramento. Cities outside California have also adopted such laws, including Baltimore, Minneapolis, and Philadelphia.

## Right to Reemployment Ordinance

On April 6, 2021, the Board of Supervisors passed the Right to Reemployment Following Layoff Due To COVID-19 Pandemic Ordinance (the “Back to Work” ordinance). It amends the Police Code to extend rehire protections for certain employees laid off due to the COVID-19 pandemic and to reasonably accommodate employees who are unable to work because of a family care hardship. The ordinance becomes effective on May 16 and makes several changes to the emergency ordinance that expired on March 2.

### Covered employers and employees

The “Back to Work” ordinance applies to restaurants with at least 200 employees at a single establishment, hotels with at least 100 rooms, grocery stores over 15,000 square feet in size, large food service operations, and formula retail establishments with 20 or more employees in the city and at least 40 retail sales establishments worldwide. It also applies to businesses in other categories with 100 or more employees, excluding certain employers providing services that qualify as healthcare operations.

The ordinance covers full-time, part-time, and temporary employees who were employed in San Francisco for at least 90 days prior to receiving a written layoff notice and who were laid off due to the COVID-19 emergency on or after February 25, 2020. For these purposes, a layoff is a separation of 10 or more workers in San Francisco within a 30-day period beginning on or after February 25, 2020 that is caused by an employer’s lack of funds, lack of work, closure, or cessation of operation resulting from the public health emergency.

### Rehire requirement

The “Back to Work” ordinance requires covered employers to give laid-off workers the first right of refusal for their old job or a substantially similar job when businesses seek to hire — with limited exceptions for employee misconduct, a previously executed severance agreement, or because another person was hired for the job between March 3 and May 16. When hiring for the same or a similar position, the employer must offer reemployment in order of seniority.

The ordinance also requires employers to reasonably accommodate employees who are unable to work because of a family care hardship — such as the need to care for a child whose school is closed or childcare is unavailable due to the public health emergency. Reasonably accommodating may include modifying a worker’s schedule, delaying their start date or reemployment, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible. The new measure extends rehire protections until May 16, 2022 or until the city’s February 25, 2020 state of emergency ends, whichever comes later.

### Employer notice obligations

For layoffs that occurred on or after February 25, 2020 but before the effective date of the ordinance, employers will have 30 days to provide layoff notices to eligible workers if they had not already done

so under the emergency ordinance. Similarly, employers have until June 16 to notify the San Francisco Office of Economic and Workforce Development (OEWD) of all layoffs that occurred on or after February 25, 2020 — including those that occurred between March 2 and May 16, 2021 — if the employer has not already done so. Employers should also ensure that they have notified OEWD of reemployment offers made to eligible workers and that they are retaining appropriate records for at least two years.

**Buck comment.** On April 16, California enacted legislation ([SB 93](#)) that generally imposes rehire requirements on certain hospitality businesses. It applies to hotels, private clubs, event centers, airport hospitality operations, and airport service providers, as well as to providers of janitorial, building maintenance, and security services to office, retail, or other commercial buildings. The law, which took effect immediately, affords recall rights until December 31, 2024 to workers who were employed by a covered employer for at least six months in 2019 and were laid off for COVID-related reasons. Notably, SB 93 does not preempt local right-to-recall ordinances with greater employee rights or additional enforcement provisions.

## In closing

San Francisco's new "Back to Work" ordinance, which takes effect May 16, will require covered employers to offer reemployment to certain workers laid off for COVID-related reasons before hiring others for the same or similar jobs. As businesses resume operations in San Francisco, they should ensure compliance with these and other COVID-19 related obligations.

### American Rescue Plan Act two-part webinar series

Replays of both of our recent ARPA webinars are available. In the first, our team of experts explored the [impact of the Act on pension plan funding](#) and in the second, we addressed the [Act's compliance implications on employment, health, and welfare benefits](#).

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