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## ***COVID-19 Right of Recall Ordinance Guidelines: Too Little, Too Late.***

On **June 16, 2020**, nearly seven weeks after the COVID-19 Right of Recall Ordinance was adopted by the Los Angeles City Council, the [Department of Public Works, Bureau of Contract Administration, Office of Wage Standards](#) (“OWS”) finally published long-awaited [guidelines](#) to help employers understand their new responsibilities under the Recall Ordinance.

Just as the County of Los Angeles begins reopening, the OWS guidelines, published two days after the Ordinance’s effective date, provide little additional clarity for employers seeking to comply with the Ordinance and avoid the intentionally harsh penalties that would result.

The OWS guidelines clarify the exception that managers and confidential employees are not covered by the Recall Ordinance by defining managerial and supervisory employees as those employees who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. Confidential employees are those whose duties involve access to confidential information usually in regard to the employer's labor relations.

But the guidelines also muddle the meaning of the Right of Recall. Specifically, the [Ordinance](#) language provides that an employer shall make an offer “of any position which is or becomes available after the effective dates of this article for which the Laid Off Worker is qualified.” [Sec. 200.32(A)]. But Regulation No. 3 of the OWS guidelines say that an employer shall make the offer “if a position becomes available after the effective date of the Ordinance...” This subtle but important inconsistency leaves many employers questioning how they fill those positions that became available before the Recall

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Ordinance's effective date of **June 14, 2020** without putting themselves at risk of unnecessary and costly litigation.

Now that the ordinance is in effect, it still remains unclear whether furloughed workers or independent contractors fall within the definition of "Laid Off Worker". If a Laid Off Worker declines the Recall offer of their original job, what then becomes the employer's obligation under the Ordinance? Must the employer place the worker at the bottom of the recall list or must they offer a second position that does not require additional skill set training? What must an employer do if the worker responds to a Recall offer one date late versus ten days late? By simply restating most of the language from the Ordinance itself, the OWS guidelines create more questions than answers.

As employers begin reopening their businesses, facing a new economy and uncertain future, the OWS guidelines leave many City of Los Angeles employers in the dark at a time when guiding light is so desperately needed. We look forward to more answers and will continue to monitor the latest guidance available from OWS.

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