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California's Statewide Right to Recall Ordinance

On April 16, 2021, Governor Newsom signed a statewide right to recall ordinance ([SB 93](#)) into law. SB 93 is *effective immediately*. SB 93 codifies Labor Code section 2810.8 and requires hotels with more than 50 guestrooms to recall laid-off employees based on hire-date seniority.

REHIRING AND RETENTION

Hotel employers (and airport, building service, event center, and private club employers) must recall qualified laid-off employees by hire-date seniority. A laid-off employee is entitled to recall if they held the same or similar position at the time of the employee's most recent layoff with the employer.

When a position becomes open, employers must ensure the following:

- The position must be offered to qualified laid-off employees within 5 days of establishing the position;
- The offer must be via mail, text, and email;
- Laid-off employees have 5 BUSINESS days to respond to the recall; and
- The most senior laid-off employee who accepts the position must be hired.

If the employer declines to recall an employee due to that employee's lack of qualifications, and the employer instead hires someone else, the employer MUST provide the laid-off employee 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 reasons for the decision.

Employers must retain the following records for at least 3 years (measured from the date of the written notice regarding the layoff) for each laid-off employee:

- The employee's full legal name;
- The employee's job classification at the time of separation from employment;
- The employee's date of hire;
- The employee's last known address of residence;
- The employee's last known email address;
- The employee's last known telephone number; and
- A copy of the written notices regarding the layoff provided to the employee and all records of communications between the employer and the employee concerning offers of employment made pursuant to SB 93.

[Questions? Contact Stokes Wagner.](#)

PENALTIES

The Division of Labor Standards Enforcement (“DLSE”) has exclusive jurisdiction to enforce SB 93. Enforcement may be through either a Labor Commissioner hearing or by civil action in superior court.

If a laid-off employee files a complaint with the DLSE, the available awards include:

- Hiring and reinstatement;
- Front/back pay at a rate of compensation that is the highest of the following:
 - The average regular rate of pay during the last 3 years that the employee was in the same occupation classification;
 - The most recent regular rate;
 - The regular rate paid to the employee who was hired in place of the laid-off employee.
- Value of the benefits the laid-off employee would have received;
- Civil penalty of \$100 for each employee whose rights were violated;
- Liquidated damages of \$500 per employee for each day that the employee’s rights are violated (i.e., until the violation is cured).

Note that there is no employer right to cure as there are with other local ordinances.

RECOMMENDATIONS

To effectively comply with the requirements of SB 93, employers must carefully and consistently document their recall efforts. Hotel employers should create and use standardized forms to recall laid-off employees. Hotel employers should also document the dates on which offers of employment are made and the laid-off employees’ deadline to respond to the offer. Offers of employment must be mailed, texted, and emailed.

FAQs

Has the state published any FAQs?

No. There are a lot of questions that are unanswered by the law. Thus, for the time being, we recommend strict compliance with the law until state FAQs are published.

Who qualifies as a hotel employer?

Hotels with 50+ guest rooms. It also applies to any contracted, leased, or sublet premises operated in conjunction with the hotel.

Who qualifies as a laid-off employee?

ANY employee who:

- Was employed for 6 months+ between 1/1/2019 and 1/1/2020;
- Who worked for at least 2 hours in any week between 1/1/2019 and 1/1/2020; and
- Who was separated from employment due to a reason related to the COVID-19 pandemic, including a reduction in force.

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What makes an employee “qualified” for a position?

An employee is qualified for a position if the employee held the same or similar position at the time of the most recent layoff.

What if more than 1 employee is qualified?

Preference for the position must go to the employee with the greatest length of service at the hotel. In other words, priority is given by hire-date seniority (not position seniority). SB 93 does allow employers to make simultaneous, conditional offers of employment to laid-off employees so long as a final offer of employment is based on hire-date seniority.

Does it apply to exempt employees?

Yes.

How must an offer of employment be made to a laid-off employee?

An offer of employment must be made in [1] writing to the employee’s last known address, [2] email to the employee’s last known email address, and [3] text to the employee’s last known cell phone number. These should be done simultaneously and on the same day.

How long does a laid-off employee have to respond to the recall?

5 business days. The employer should count 5 business days starting the date after the offer is made. A “business day” is any day except Saturday, Sunday, or any official state holiday.

Does it apply to employees who were part of a RIF?

Yes.

Does SB 93 apply to furloughed employees too?

Yes, under California case law, the recall includes furloughed employees. Therefore, laid-off employees and furloughed employees should be treated the same for the purposes of compliance with SB 93.

Does a severance agreement change the law’s application?

This issue remains unclear. SB 93 allows for its waiver by a CBA but is silent as to waivers in other contexts. Certain local ordinances, for example Los Angeles County, specifically prohibit the waiver of recall rights.

Are union hotels exempt from the law?

ONLY IF they obtain a specific waiver from the union.

Who is responsible for SB 93 violations?

The employing entity as well as corporate officers and executives. SB 93 arguably allows for personal liability of these corporate officers and executives.

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I am in a location where a local recall ordinance was passed. Do I have to comply with this statewide law as all?

Yes, in as much as SB 93 imposes stricter standards. SB 93 specifically states, “nothing in this section shall prohibit a local government agency from enacting ordinances that impose greater standards than, or establish additional enforcement provisions to, those proscribed by this section.” Thus, a local ordinance sets lower standards than SB 93, compliance with SB 93 is required.

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