

MOTION

I HEREBY MOVE that Council AMEND the Communication from the City Attorney and Ordinances relative to providing a right of recall and job retention protections to workers laid off during the Coronavirus disease 2019 (COVID-19) pandemic as follows:

AMEND the Ordinance adding Article 4-72J-A via interlineation as follows:

SEC. 200.32 RIGHT OF RECALL.

or electronic mail

A. Priority for Laid Off Workers. An Employer shall offer in writing [^], to the last known address of every Laid Off Worker, any position which is or becomes available after the effective date of this article for which the Laid Off Worker is qualified. A Laid Off Worker is qualified - and must be offered a position in the order below - if the Laid Off Worker: (1) held the same or similar position at the same site of employment at the time of the Laid Off Worker's most recent separation from active service with the Employer; or (2) ~~is or can be qualified for the position with the same training that would be provided to a new worker hired into that position. If more than one Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest length of service with the Employer at the employment site.~~

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this article shall be given no less than ~~ten days~~ 48 hours in which to accept or decline the offer. ~~If Laid Off Worker responds after 48 hours but within ten days, Employer shall place Laid Off Worker on the next tier in order of seniority.~~

SEC. 200.33. ENFORCEMENT.

A. Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article.
2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.
- ~~3. Punitive damage, pursuant to California Civil Code Section 3294.~~
4. Reasonable attorneys' fees and costs, as determined by the court, if the Laid Off Worker is the prevailing party in the action.

B. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.34. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective

bargaining relationship shall not constitute, or be permitted to constitute, a waiver of all or any of the provisions of this article.

~~SEC. 200.35. NO WAIVER OF RIGHTS.~~

~~Except for a collective bargaining agreement provision made pursuant to Section 200.34, any waiver by a Laid Off Worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this article shall constitute a violation of this article.~~

PRESENTED BY _____
JOHN S. LEE
Councilmember, 12TH District

SECONDED BY _____
JOE BUSCAINO
Councilmember, 15th District

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