

(Without Reference to File)

SENATE THIRD READING

SB 93 (Committee on Budget and Fiscal Review)

As Amended April 12, 2021

Majority vote. Budget Bill Appropriation Takes Effect Immediately

**SUMMARY**

Makes necessary statutory changes to implement the April 2021 early action budget package related to the return rights of hospitality workers impacted by the COVID-19 pandemic.

**Major Provisions**

- 1) Requires an employer to offer its laid-off employees in writing and by email and text message, as specified, all job positions that become available after the effective date of this bill for which the laid-off employees are qualified;
- 2) Specifies that a laid off-employee is qualified for a position if the employee held the same or similar position at the time of the employee's most recent separation from active service with the employer;
- 3) Requires the employer to offer positions to laid-off employees in an order of preference corresponding to the qualification guidelines above, and if more than one employee is entitled to the preference, the employer must offer the position to the laid-off employee with the greatest length of service.
- 4) Provides that a laid-off employee who is offered a position shall have five business days to accept or decline the offer and authorizes the employer to make simultaneous, conditional offers of employment to laid-off employees, with a final offer conditioned on applying the priority system, as specified.
- 5) Requires an employer that declines to recall a laid-off employee citing lack of qualifications, and instead hires someone other than a laid-off employee, to provide the laid-off employee a written notice within 30 days identifying those hired in lieu of that recall, along with reasons for the decision.
- 6) Specifies that these requirements also apply in any of the following circumstances:
  - a) The ownership of the employer changed after the separation from employment of a laid-off employee but the enterprise is conducting the same or similar operations as before the state of emergency.
  - b) The form of organization of the employer changed after the state of emergency.
  - c) Substantially all of the assets of the employer were acquired by another entity which conducts the same or similar operations using substantially the same assets.
  - d) The employer relocates the operations at which a laid-off employee was employed before the state of emergency to a different location.

- 7) Specifies that no employer shall refuse to employ, terminate, reduce in compensation, or take any adverse action against any person for seeking to enforce their rights under these provisions, as specified, including an employee who mistakenly, but in good faith, alleges noncompliance.
- 8) Authorizes an employee or eligible employee to enforce their rights of recall and retention by filing a complaint with the Department of Industrial Relations Division of Labor Standards and Enforcement against the employer.
- 9) Provides that the remedies for violation of an employee's recall and retention rights may include any or all of the following:
  - a) Hiring and reinstatement rights, as specified.
  - b) Front pay or back pay for each day during which the violation continues, to be calculated as specified.
  - c) Value of the benefits the employee or eligible employee would have received under the employer or successor employer's benefit plan.
- 10) Specifies that no criminal penalties shall be imposed for violations.
- 11) Specifies a civil penalty of up \$100 per day for each employee whose rights under these provisions that were violated and an additional \$500 per employee for liquidated damages, with damages paid to the Labor and Workforce Development Fund;
- 12) Authorizes the Department of Industrial Relations to promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of the recall and retention provisions.
- 13) Clarifies that nothing prohibits a local government agency from enacting ordinances that impose greater standards than, or establish additional enforcement provisions to, those prescribed by these provisions.
- 14) Defines, for purposes of its requirements, the following terms, among others:
  - a) "Enterprise" means a hotel, private club, event center, airport hospitality operation, airport service provider, or the provision of building service to office, retail, or other commercial buildings;
  - b) "Building service" means janitorial, building maintenance, or security services;
  - c) "Eligible employee" means any individual i) whose primary place of employment is at an enterprise subject to a change in control, ii) who is employed directly by the incumbent employer, or by an employer who has contracted with the incumbent employer, and iii) who has worked for the incumbent employer for at least one month prior to the execution of the transfer document. "Eligible employee" does not include a managerial, supervisory, or confidential employee;

- d) "Private club" means a private, membership-based business or nonprofit organization that operates a building or complex of buildings containing at least 50 guest rooms or suites, as specified.
  - e) "Event center" means a publicly or privately owned structure of more than 50,000 square feet or 1,000 seats that is used for the purposes of public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers. The term "event center" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the event center's purpose, as specified;
  - f) "Hotel" means a residential building that is designated or used for lodging and other related services for the public, and containing 50 or more guest rooms, as specified. "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building;
  - g) "Laid-off employee" means any employee who was employed by the employer for 6 months or more in the 12 months preceding the state of emergency, and whose most recent separation was due to a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary reason;
- 15) Provides that all of these provisions, or any part of, may be waived in a valid collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms;
- 16) Specifies that these provisions are severable. If any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect;
- 17) Specifies that these provisions would remain in effect until December 31, 2024; and
- 18) Appropriates \$6 million from the Labor and Workforce Development Fund for enforcement activities.

## COMMENTS

This budget trailer bill accompanies an April 2021 early action budget package that is intended to respond to immediate impacts of the COVID-19 pandemic.

This bill would be exclusively enforced by the Division of Labor Standards Enforcement, as opposed to through a private right of action or claim filed under the Private Attorneys General Act.

### According to the Author

This bill provides important workplace protections to hospitality workers that have been impacted by layoffs due to the COVID-19 pandemic.

### Arguments in Support

None on file.

**Arguments in Opposition**

None on file.

**FISCAL COMMENTS**

This bill includes a \$6 million appropriation from the Labor and Workforce Development Fund.

**VOTES**

**SENATE FLOOR: 22-2-15**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Hertzberg, Laird, Leyva, McGuire, Newman, Pan, Portantino, Roth, Rubio, Umberg, Wieckowski, Wiener

**NO:** Nielsen, Wilk

**ABS, ABST OR NV:** Bates, Borgeas, Dahle, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Limón, Melendez, Min, Ochoa Bogh, Skinner, Stern

**UPDATED**

VERSION: April 12, 2021

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