



# Right to Reemployment Following Layoff Due to COVID-19 Pandemic Emergency Ordinance

## Frequently Asked Questions

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On April 6, 2021, the Board of Supervisors passed the [Right to Reemployment Following Layoff Due to COVID-19](#) ordinance amending the Police Code to create a right to reemployment for certain employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

The ordinance requires **certain** employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 pandemic and the related Stay-at-Home and Shelter-in-Place orders issued by the City.

**Reporting Requirement to City of San Francisco: Covered** Employers (see question 2 below) are required to report the following to the San Francisco Office of Economic & Workforce Development (OEWD):

- **A Notice of Layoffs** when an employer lays off 10 or more employees since February 25, 2020, who work in San Francisco, unless this notice was provided under the previous emergency ordinance.
- **All Notices of Reemployment Offers** made and whether they were accepted or rejected for all Eligible Workers in San Francisco who received layoff notices since **February 25, 2020**.

[Notice of Layoffs forms are available \*\*HERE\*\*](#)

[Notices of Offers of Reemployment forms are available \*\*HERE\*\*](#)

## Operative Date

1. Q: When does the Ordinance take effect?

A: The Right to Reemployment Ordinance will take effect on May 16, 2021. It covers all Eligible Workers who were impacted by layoffs due to COVID-19 that took place after February 25, 2020. It will remain in effect either until July 3, 2021 (one year from the effective date of the Back to Work emergency ordinance) or the termination of the February 25, 2020 state of emergency, whichever is latest.

## Covered Employers

2. Q: What employers are covered by the Ordinance?

A: Different types of employers have different thresholds to determine if the ordinance applies to them. The following types of employers must comply:

- Restaurants: 200 or more employees at a single establishment
- Hotels: 100 or more guest rooms (regardless of how many employees). Does not include residential hotels
- Grocery Stores: over 15,000 square feet in size (regardless of how many employees)
- Large food service operation: event concession at facilities with a seating capacity of 5,000 or more, at which 100 or more persons employed at food/beverage concessions
- Formula retail: 20 or more employees in the City and 40 retail sales establishments worldwide
- Certain contractors for security, janitorial, or building maintenance services that employ 25 or more persons.
- Other businesses: Any for-profit or non-profit businesses who are not in any of the above categories with 100 or more employees that lay off 10 or more employees working in San Francisco within a 30-day period beginning on or after February 25, 2020.

Certain employers that provide healthcare operations are excluded, as are local, state, and federal public agencies.

3. Q: Does the 100 or more employee threshold for other businesses include only employees in San Francisco?

A: No. The ordinance applies to all employers with 100 or more employees (regardless of location) who lay off 10 or more workers in San Francisco.

## Covered Employees

4. Q: What employees are covered by the Ordinance?

A: "Eligible Workers" are those who were employed at a worksite located 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. This includes full-time, part-time, and temporary workers who meet

the conditions listed above.

## **Layoffs**

5. Q: What is the definition of a layoff?

A: A layoff is a separation of 10 or more Eligible Workers within a 30-day period 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.

6. Q: Do employers need to report all layoffs to the City of San Francisco?

A: Employers are required to report to the San Francisco Office of Economic and Workforce Development layoffs of 10 or more employees that took place during any 30-day period on or after February 25, 2020 due to the Employer's lack of funds, lack of work for its employees, closure, or cessation of operations resulting from the Public Health Emergency.

7. Q: Does a covered employer need to report a layoff during the covered time period that was not due to the employer's lack of funds or lack of work for its employees resulting from the Public Health Emergency (e.g., due to a pre-planned reorganization)

A: The employer only needs to report layoffs during the covered time period due to lack of funds, lack of work, closure, or cessation of operations resulting from the Public Health Emergency.

8. Q: Is a "furlough" considered a Layoff?

A: There is no standard definition as to what constitutes a "furlough" for private employers in California. Note that a temporary separation from employment that is labeled a furlough may be considered a layoff under the California WARN Act and this Ordinance. OEWD will consider all relevant circumstances in determining whether individuals remain employed or have been separated from employment.

## **Employer Obligations Regarding Layoffs**

9. Q: What do employers need to do?

#### A. Notice to eligible employees

- Provide written notice of the layoff to the Eligible Worker at or before the time when the layoff becomes effective. The written notice shall include: a notice of the layoff and the layoff's effective date; a summary of the right to reemployment as defined by this ordinance; and a telephone number to the OEWD hotline: (415) 701- 4817. The City does not have a template for this information, but the employer must include all required information.
- For layoffs that occurred on or after February 25, 2020 and prior to when this ordinance goes into effect, the employer will have 30 days to provide written notice along with the information provided above to former employees who are Eligible Workers if they had not already done so under the Right to Reemployment Emergency ordinance.
- Make a reemployment offer to laid-off workers in order of seniority if the employer is hiring for the same or similar position.

#### B. Notice to the Office of Economic and Workforce Development

- Provide written notice of a layoffs of 10 or more Eligible Workers within a 30-day period within 30 days of the when the layoff begins. This notice should include the total number of Eligible Workers affected by the layoff and the job classification at the time of separation, the original hire date, and the date of separation for each Eligible Worker.
- For layoffs that occurred on or after February 25, 2020, of which the employer has not yet notified the City, the employer should provide the same written notice to OEWD by June 16, 2021.
- Provide written notice of all reemployment offers, indicating acceptances or rejections, for all workers in San Francisco who were laid off due to the COVID emergency on or after February 25, 2020. The written notice of reemployment offers should not contain any information that could disclose the identity of any individual job candidates.

#### C. Retain Records

- Retain the following records for each Eligible Worker it separated due to a layoff for each Eligible Worker it separated due to a layoff for at least two years: full legal name; job classification at the time of separation, date of hire, last known address of residence, email address, and telephone number, and a copy of the written notice regarding the layoff provided to the Eligible Worker.

#### D. Reasonably Accommodate Eligible Workers Experiencing A Family Care

## Hardship

- Reasonably accommodate includes modifying an Eligible Worker's schedule, delaying the start date or reemployment, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible.

10. Q: Are employers required to notify the OEWD of layoffs that occurred after the Emergency Ordinance expired on March 2, 2021

A: Yes. Employers have until June 16, 2021, to report all layoffs that occurred between March 2, 2021, and when this new ordinance became effective on May 16, 2021.

11. Q: Are employers required to notify former employees of their rights if they are not Eligible Workers due to a shorter period of employment in the City or were laid off prior to February 25, 2020?

A: No. Employers are only required to notify Eligible Workers of those workers' rights under the ordinance.

12. Q: Does an employer need to report a layoff during the covered time period that was not due to the employer's lack of funds or lack of work for its employees resulting from the Public Health Emergency or any Shelter-in-Place order (e.g., due to a pre-planned reorganization)?

A: No. The employer only needs to report layoffs during the covered time period due to a lack of funds or lack of work resulting from the Public Health Emergency or Shelter-in-Place.

13. Q: Does the City have a template for the written notice to affected employees?

A: No. The employer may determine the format of the notice as long as all of the required information is included.

## Offers of Reemployment

14. Q: What if an employer is hiring for the same position that a worker was laid off from?

A: If an employer seeks to rehire for the same position previously held by a laid-off Eligible Worker, the employer must first offer the opportunity to that laid-off Eligible Worker.

15. Q: What if an employer is hiring for a position similar to one that a laid-off Eligible Worker was laid off from?

A: If an employer seeks to rehire for a substantially similar position (comparable job duties, pay, benefits and working conditions) or any position that the laid-off Eligible Worker had with the employer at the time of layoff or in the 12 months preceding the layoff, then the employer must first offer the position to that laid-off Eligible Worker.

16. Q: Can an employer choose which of its former employees to rehire?

A: If the employer is offering reemployment to the same job classification, the employer must make a reemployment offer in order of seniority with that employer based on the earliest hire date.

17. Q: Are there circumstances in which an employer is not required to offer reemployment to a laid-off Eligible Worker?

A: An employer can withhold a reemployment offer for the following reasons:

- Misconduct – If the employer learns after the lay-off that the Eligible Worker engaged in any act of dishonesty, violation of the law, violation of a policy or rule of the employer or other misconduct that occurred while the worker was employed.
- Severance Agreement – If the employer and worker executed a severance agreement due to a layoff between February 25, 2020 and July 3, 2020.
- Rehiring – If the employer hired another person for the laid-off worker's position before the effective date of the emergency ordinance (between February 25, 2020, and July 3, 2020), or after the expiration of the emergency ordinance and before the effective date of this Ordinance (between March 2, 2021 and May 16, 2021).

18. Q: How does an employer notify a laid-off worker of a reemployment offer?

A: The employer must make a good faith effort to notify all eligible laid-off workers by phone and email. If the employer is unable to make contact via phone or email, they should contact the worker by certified mail or courier delivery. Specific requirements for contacting the laid off employee can be found

in Section 3300K.5 Notice of Offer and Acceptance of the Ordinance.

19. Q: How long does the reemployment offer have to remain open?

A: Once a reemployment offer is made, it must remain open for at least 2 business days unless extended by both the employer and Eligible Worker by mutual agreement. Eligible Workers must notify the employer in writing if they wish to accept the position. If the worker fails to respond within two business days, it will be considered a rejection of the offer. The employer is then permitted to offer the position to the next most senior Eligible Worker. Specific requirements for offers of reemployment can be found in Section 3300K.5 Notice of Offer and Acceptance of the Ordinance.

20. Q: Does the employer need to make any accommodations for reemployed workers?

A: Employers may not discriminate against a worker and must provide reasonable accommodation if the worker requests an accommodation due to a Family Care Hardship such as the need to care for a child whose school is closed, or childcare is unavailable or any other situation where a worker needs to provide care for someone else. Reasonable accommodation may include modifying a worker's schedule, modifying the number of hours worked, or permitting telework if feasible.

## **Notification to the City and Compliance**

21. Q: What information needs to be reported to the City of San Francisco?

A: Employers are required to report to the Office of Economic & Workforce Development:

- A Notice of Layoff by June 16, 2021, for all layoffs of 10 or more Eligible Workers that occurred on or after February 25, 2020, unless the employer provided notice under the emergency ordinance. The Notice of Layoff will include:
  - the total number of Eligible Workers affected by the layoff;
  - the job classification of each laid off worker at the time of separation;
  - the original hire date, and
  - the date of separation for each Eligible Worker.

- A Notice of Reemployment Offer. This will include the:
  - Number of offers of reemployment made
  - Number of acceptances of reemployment
  - Number of rejections of reemployment

The written Notice of Reemployment Offers to the Office of Economic & Workforce Development should not contain any information that could disclose the identity of any individual job candidates.

22. Q: What if an employer does not comply?

A: The Eligible Worker may bring action against the employer that may result in hiring and reinstatement rights, back pay or someother value of benefits that the worker may have received.

23. Q: How long with the ordinance be in effect?

A: This ordinance shall expire either July 3, 2021 (one year from the effective date of the emergency ordinance) or the date on which the state of emergency is terminated, whichever is later.

## **Questions**

**If you are an employer** - Please submit questions to [backtowork@sfgov.org](mailto:backtowork@sfgov.org) or contact the OEWD hotline at (415) 701-4817.

**If you are an employee** – Please submit your questions to [workforceconnections@sfgov.org](mailto:workforceconnections@sfgov.org) or contact the OEWD hotline at (415) 701-4817.

These FAQs will be updated regularly. Please check back for additional information.

This document is intended to provide general guidance to employers and employees about the [Right to Reemployment Following Layoff Due to COVID-19 Pandemic Ordinance](#).

Application of the Ordinance in particular circumstances may depend on the specific facts presented. Review the final ordinance for additional detail.