



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

Frequently Asked Questions

last updated 9.17.20

The San Francisco Board of Supervisors passed the [Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic Emergency Ordinance](#) (Ordinance No. 104-20) known as the “Back to Work” Ordinance on June 23, 2020. The ordinance went into effect on July 3, 2020 and has been extended through November 2, 2020.

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: Employers with 100 or more employees (regardless of location) 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. This notice should be reported within 30 days of when guidance to the ordinance became effective on August 7, 2020, or within 30 days from the date of the layoff, whichever is later.
- **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 did the Ordinance take effect?

A: The Back-to-Work Ordinance took effect on July 3, 2020. It has been extended through November 2, 2020 by the Board of Supervisors. It covers employees who were impacted by layoffs that took place after February 25, 2020.

Covered Employers

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

A: Any for-profit or non-profit business in the City or County of San Francisco that employs 100 or more employees and lays 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 ordinance only apply to businesses with 100 or more 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 during the prior calendar year (2019) and who were laid off due to the COVID-19 emergency on or after February 25, 2020.

Layoffs

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

A: A layoff is a separation of 10 or more employees within a 30-day period commencing on or after February 25, 2020.

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 or lack of work for its employees, resulting from the Public Health Emergency and any shelter in place order.

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 or any shelter in place order (e.g., due to a pre-planned reorganization)?

A: Per the current legislation, the employer only needs to report layoffs during the covered time period due to lack of funds or lack of work resulting from the Public Health Emergency or shelter in place.

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 the Back to Work Ordinance. OEWD will consider all relevant circumstances in determining whether individuals remain employed or have been separated from employment.

Employer Obligations Regarding Layoffs

1. Q: What do employers need to do?

A: Notice to eligible employees

1. 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’s effective date; a summary of the right to reemployment; 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 guidance for the ordinance being posted (August 7, 2020), provide written notice no later than September 6, 2020, of the layoff’s effective date, a summary of the right to reemployment, and the OEWD hotline number to any eligible workers who were laid off.
- 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 layoff of 10 or more eligible workers within a 30-day period within 30 days of the when the layoff begins.
- For layoffs that occurred on or after February 25, 2020 and prior to the August 7, 2020 guidance to this ordinance being posted, provide written notices of all layoffs by September 6, 2020
- 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.

C: Employers must also

- Retain records of all information for at least 2 years.
- Reasonably accommodate and not discriminate against a worker with a Family Care Hardship as defined in Section 8 of the ordinance.

2. Q: Are employers required to notify the OEWD of layoffs that occurred 30+ days prior to the effective date of the ordinance?
A: Yes. Employers have 30 days to report layoffs that occurred between February 25, 2020 and the publication of guidance by OEWD on August 7, 2020.
3. 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 the ordinance.
4. Q: What needs to be included in the written notice of layoff to the employee?
A: The notice must be written in a language that the worker understands. It should include:
2. The date that the layoff becomes effective.
 3. A summary of the right to reemployment provided in the [ordinance](#).
 4. The telephone number for the reemployment hotline operated by OEWD - (415) 701-4817.
5. 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.
6. 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

7. 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.
8. 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) to a position that the laid-off eligible worker had with the employer in the 12 months preceding the layoff, and the laid-off eligible worker is qualified (with any training that would be offered to a new hire), then the employer must first offer the position to that laid-off eligible worker.

9. 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.

10.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 laid off an eligible worker between February 25, 2020 and July 3, 2020 and hired another person for the laid-off worker's position.

11.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 7 of the Ordinance.

12.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 7 of the Ordinance.

13.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

14.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 September 2, 2020, for layoffs that occurred on or after February 25, 2020 and prior to the August 7, 2020 guidance to this ordinance being posted, and for layoffs on or after August 7, 2020, within 30 days after initiation of the layoff. The Notice of Layoff will include:
 - Information about the business
 - The address(es) where the layoff occurred
 - Whether the layoff is permanent or temporary
 - Whether the layoff is the result of the business closing
 - The total number of employees located in San Francisco affected by the layoff
 - The date of the first separation
 - The job classification, hire date, and date of separation for each laid-off eligible worker

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

15.Q: What records do employers need to retain?

A: The employer needs to retain the following records for at least 2 years for each eligible worker:

- Full legal name
- Job classification at the time of layoff
- Date of hire
- Last known address

- Last known email address
- Last known telephone number
- Copy of the written notice regarding the layoff provided to the eligible worker

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

A: The Office of Labor Standards and Enforcement may issue regulations regarding any violations. In addition, the eligible worker may bring action against the employer that may result in hiring and reinstatement rights, back pay or some other value of benefits that the worker may have received.

Questions

If you are an employer - Please submit questions to 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 or contact the OEWD hotline at (415) 701-4817.

For assistance with legal issues related to the Back to Work Ordinance, please contact Legal Aid at Work at (866) 864-8208.

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 [Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic Emergency Ordinance](#).

Application of the Ordinance in particular circumstances may depend on the specific facts presented. Review the [final ordinance](#) for additional detail. The legislation has been extended for 60 days by the Board of Supervisors and is currently extended through November 2, 2020.