

(9-2020)

Article 11: City of San Diego COVID-19 Worker Recall and Retention**Division 2: City of San Diego COVID-19 Worker Retention Ordinance**

*(“City of San Diego COVID-19 Worker Retention Ordinance” added 9-8-2020
by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)*

§311.0201 Purpose and Intent

Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused many building service, hospitality, and travel-related employers in the *City* to discharge, lay off, and furlough workers. Through this Division, the City seeks to ensure fair employment practices for workers when a *business* changes ownership during this time of economic uncertainty.

(“Purpose and Intent” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0202 Citation

This Division shall be cited as the City of San Diego COVID-19 Worker Retention Ordinance.

(“Citation” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0203 Definitions

For purposes of this Division defined terms appear in italics. The following definitions apply in this Division:

Business means a *commercial property business* or *hotel business*.

Change in control means any sale, assignment, transfer, bankruptcy, contribution or other disposition of all or substantially all of the assets used in the operation of the *business*.

City means the City of San Diego.

Commercial property business means an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the *City* that employs 25 or more janitorial, maintenance, or security service employees.

Employment commencement date means the date on which an *eligible employee* commences work for the *successor business employer* in exchange for compensation under the terms and conditions established by the *successor business employer* or as required by law.

Eligible employee means an individual employed by the *incumbent business employer*:

- (1) who has a *length of service* with the *incumbent business employer* of six months or more;
- (2) whose primary place of employment is a *business* subject to a *change in control*;
- (3) who is employed or contracted to perform work functions directly by the *incumbent business employer*, or by a *person* who has contracted with the *incumbent business employer* to provide services at the *business* subject to the *change in control*; and
- (4) who worked for the *incumbent business employer* on or after March 4, 2020, and prior to the execution of the *transfer document*. *Eligible employee* does not include a managerial, or supervisory, or confidential employee.

Hotel business means the owner, operator, or manager of a building in the *City* with at least 200 guest rooms that provides temporary lodging in the form of overnight accommodations to transient patrons, and may provide additional services, such as conference and meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. A *hotel business* also includes the owner, operator, manager, or lessee of any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purposes, or providing services to the building.

Incumbent business employer means any *person* who owns, controls, or operates a *business* prior to a *change in control*.

Length of service means the total of all periods of time during which an employee has been in active service, including periods of time when the employee was on leave or on vacation.

Person has the same meaning as defined in Municipal Code section 11.0210.

Successor business employer means the *person* who owns, controls, or operates a *business* after a *change in control*.

(9-2020)

Transfer document means the purchase agreement or other documents creating a binding agreement to affect the *change in control*.

(“Definitions” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0204 Employee Retention

- (a) Employer Responsibilities.
- (1) The *incumbent business employer* must, within 15 days after execution of a *transfer document*, provide to the *successor business employer* the name, address, date of hire, and job classification of each *eligible employee*.
 - (2) The *successor business employer* must maintain a preferential hiring list of *eligible employees* identified by the *incumbent business employer* as set forth in subsection (a)(1) of this section, and will be required to hire from that list for a period beginning upon the execution of the *transfer document* and continuing for 6 months after the *business* is open to the public under the *successor business employer*.
 - (3) If the *successor business employer* extends an offer of employment to an *eligible employee*, the *successor business employer* must retain written verification of that offer for no fewer than three years from the date the offer was made. The verification will include the name, address, date of hire, and occupation classification of each *eligible employee*.
- (b) Transition Employment Period.
- (1) A *successor business employer* must retain each *eligible employee* hired pursuant to this Division for no fewer than 90 days following the *eligible employee’s employment commencement date*, provided the *successor business employer* continues operating for 90 days. During the 90-day transition employment period, an *eligible employee* must be employed under terms and conditions of employment established by the *successor business employer* or as required by law. The *successor business employer* must provide an *eligible employee* with a written offer of employment for the transition period. This offer must remain open for at least 3 business days from the date of the offer.

(9-2020)

- (2) If, within the period established by subsection (a)(2) to this section, the *successor business employer* determines that it requires fewer employees than were required by the *incumbent business employer*, the *successor business employer* must offer the position to the *eligible employee* in the same occupational classification with the greatest *length of service* with the *incumbent business employer*.
 - (3) During the 90-day transition employment period, the *successor business employer* must not discharge without cause an *eligible employee* retained pursuant to this Division.
 - (4) At the end of the 90-day transition employment period, the *successor business employer* must perform a written performance evaluation for each *eligible employee* retained pursuant to this Division. If the *eligible employee's* performance during the 90-day transition employment period is satisfactory, the *successor business employer* must consider offering the *eligible employee* continued employment under the terms and conditions established by the *successor business employer* or as required by law. The *successor business employer* must retain a record of the written performance evaluation for a period of no fewer than 3 years.
- (c) Notice of Change in Control.
- (1) The *incumbent business employer* or *successor business employer* must post written notice of the *change in control* at the location of the affected *business* within five business days following the execution of the *transfer document*. Notice must remain posted during any closure of the *business* and for six months after the *business* is open to the public under the *successor business employer*.
 - (2) Notice must include, but not be limited to, the name of the *incumbent business employer* and its contact information, the name of the *successor business employer* and its contact information, and the effective date of the *change in control*. Notice must be posted in a conspicuous place at the *business* visible to *eligible employees*, other employees, and applicants for employment.

(“Employee Retention” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

(9-2020)

§311.0205 Retaliatory Action Prohibited

No *incumbent business employer* or *successor business employer* may refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any *eligible employee* for seeking to enforce his or her rights under this Division by any lawful means, for participating in proceedings related to this Division, for opposing any practice proscribed by this Division, or for otherwise asserting rights under this Division.

(“*Retaliatory Action Prohibited*” added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0206 Enforcement

This Division may be enforced as follows:

- (a) An *eligible employee* may bring an action in the Superior Court of the State of California against an *incumbent business employer* or *successor business employer* for violations of this Division and may be awarded all of the following, as appropriate:
 - (1) Hiring and reinstatement rights pursuant to this Division. For purposes of this Division, the 90-day transition employment period may not commence until the *eligible employee’s employment commencement date* with the *successor business employer*.
 - (2) Front or back pay for each day the violation continues, which must be calculated at a rate of compensation not less than the higher of:
 - (i) The average regular rate of pay received by the *eligible employee* during the last year of their employment in the same job classification;
 - (ii) The most recent regular rate received by the *eligible employee* while employed by either the *incumbent business employer* or *successor business employer*;
 - (iii) The regular rate received by the individual in the position during the time that the *eligible employee* should have been employed.
 - (3) Value of the benefits the *eligible employee* would have received under the *successor business employer’s* benefit plans.

(9-2020)

(4) If an *eligible employee* is the prevailing party in any legal action taken pursuant to this Division, the court will award reasonable attorney's fees and costs.

(b) No criminal penalties will be imposed for violation of this Division.

("Enforcement" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0207 No Preemption of Higher Standards

The purpose of this Division is to ensure minimum labor standards. This Division does not preempt or prevent the establishment of superior employment standards or the expansion of coverage by ordinance, resolution, contract, or any other action adopted by the City Council or the Port of San Diego. This Division may not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

("No Preemption of Higher Standards" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0208 Report

On or before 60 days prior to the expiration of this Division, the Mayor must report to the City Council on the effectiveness this Division in promoting employment stability and on the status of recovery of employment and business in the affected industries to a state comparable to that which existed prior to March 4, 2020, and will advise the City Council on the need for further action.

("Report" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)

§311.0209 Sunset Provision

This Division will be effective immediately from the date of adoption by the City Council and will remain effective for 6 months from the date of adoption and as of that date is repealed unless California Assembly Bill 3216 is chaptered, in which case, this Division will be repealed on January 1, 2021, unless Council adopts a resolution that extends that date.

("Sunset Provision" added 9-8-2020 by Emergency Ordinance O-21231 N.S.; effective 9-8-2020.)