

What You Need to Know About New York City's Law on Severance Pay for Hotel Service Employees

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Under a new New York City law ([Int. 2397-2021-A](#)), hotels with at least 100 rooms must pay weekly severance of \$500 per employee per week to laid-off employees for up to 30 weeks if their hotel either (1) experienced a mass layoff of 75% or more of their workforce employed as of March 1, 2020, during any 30 day period or (2) closed to the public on or after March 1, 2020, and have not yet (a) as of October 11, 2021, recalled 25% or more of its employees employed as of March 1, 2020, and (b) reopened to the public by November 1, 2021.

The City has not issued guidance on the interpretation and enforcement of the law.

Triggering Events

Under the law, the severance pay obligation is triggered where the hotel experienced a covered "closure" or "mass layoff."

A closure that would trigger the severance pay obligation means that the hotel:

1. Was closed to the public on or after March 1, 2020;
2. Did not, by October 11, 2021, recall at least 25% of the employees employed as of March 1, 2020; and
3. Did not reopen to the public by November 1, 2021.

A "mass layoff," which also would trigger the obligation, means a reduction in force that is not the result of a closure, lockout, or strike and that resulted in a layoff by a hotel employer during any 30-day period of at least 75% of the employees engaged in hotel service at the hotel as of March 1, 2020.

Covered Employees

The law provides for severance payments of \$500 per week to "covered hotel service employees," up to a maximum of 30 weeks.

"Covered hotel service employees" include individuals who were:

1. Employed for at least one year by the hotel on March 1, 2020;
2. Employed to provide work in connection with the operation of the hotel; and
3. Laid off after March 1, 2020, due to a closure or a mass layoff.

"Covered hotel service employees" expressly excludes managerial, supervisory, or confidential employees and those who exercise control over the management of the hotel.

The obligation to pay severance ceases at the later of when either the employee is recalled, or, if the hotel that experienced a closure reopens, on the date when the hotel is reopened to the public and has recalled at least 25% of its employees employed as of March 1, 2020.

Calculating Percentage of Employees

While "covered hotel service employees" is expressly defined, the term "employees" is not. Accordingly, all references to percentages (*i.e.*, mass layoffs of at least 75% employees or the recall of at least 25% employees) may need to include all employees, not just those defined as "covered hotel service employees."

Other Uncertainties

The new law also has a number of vague terms giving rise to legal uncertainty. For example:

- It is unclear if severance needs to be paid to employees of vendors or concessionaires operating within a hotel.

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- It is unclear how employees who leave voluntarily, or refused to return when recalled, are to be treated.
- It is unclear under what circumstance an employee is excluded as a “managerial, supervisory or confidential employee.” This is a common issue for positions like a “housekeeping supervisor” who typically inspects the work of others.

Remedies

The consequences of failing to comply with the law can be significant. As a result, many hotels are complying with the law despite its legal uncertainty. Severance payments are required within five days of the end of the week for each week the employee is entitled to severance.

The law provides for a private right of action and the employee would be entitled to double damages plus reasonable attorney’s fees and costs.

Hotels Permanently Closed, Converted

Hotels that are permanently closed or converted (or in the process of converting) to alternative use are exempted from the severance pay provision, so long as they offer covered hotel service employees severance of 20 days per year of service and the severance is tied directly to the conversion. This severance must be paid at the same rate the covered hotel service employee is paid for paid days off.

A lawsuit was filed by the Hotel Association of New York City on October 8, 2021, challenging the validity of the law and seeking declaratory and injunctive relief. However, absent some action to enjoin the implementation of the law, the lawsuit itself did not prevent the law from going into effect.

Please contact a Jackson Lewis attorney with any questions about the New York City law or other workplace developments.

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