

New City of Chicago Ordinance Gives Right to Return to Hotel Workers Laid Off During Pandemic

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As the hotel industry recovers, the City of Chicago has enacted a ['Right to Return to Work'](#) ordinance. The ordinance, which is effective on June 25, 2021, requires Chicago hotels to rehire qualified employees laid off in the wake of the COVID-19 pandemic before hiring new employees. These protections for hotel workers will remain in place until December 31, 2023.

Coverage

The ordinance applies to all businesses in Chicago used or advertised as an inn, hotel, motel, or any similar business where sleeping accommodations are provided for a fee, and in which at least seven sleeping rooms are maintained for the accommodation of guests. Certain establishments are not covered. In addition, the law includes provisions dealing with change in licensees, as well as licensees who move operations to a different location within Chicago.

A former hotel employee is protected by the ordinance if they (1) worked with the hotel for at least six months within the 12-month period before they were laid off; (2) performed, in a particular workweek, at least two hours of work for the hotel within the City of Chicago; and (3) were laid off on or after January 31, 2020, for a non-disciplinary reason.

A laid-off employee is considered qualified if they (1) held the same or similar position at the hotel when laid off or (2) if the job is within the same division or department of the hotel and the former employee can meet the position's job requirements with training that would be provided for a new employee.

Requirements

Hotels must first offer any open positions, in writing, to laid-off employees who held the same or similar position and then to those who can meet the job requirements with training that would be provided for any new employees. If more than one person is entitled to the position based on these guidelines, the position must be offered based on seniority.

Return-to-work offers must be made in writing and sent by registered mail to the former employee's last known address, as well as by email and text message if the employer possesses that information.

A laid-off employee offered a position under the ordinance must be provided no less than five business days to decide whether to accept the offer to return. If a hotel fails to provide a laid-off employee a position due to lack of qualifications, the hotel must provide that employee with written notice within 30 days, identifying the reasons for its decision.

Burden of Proof, Penalties, Enforcement

The ordinance includes a rebuttal presumption of a violation where (1) a laid-off employee exercised rights under the ordinance and (2) a hotel employer refuses to rehire (or takes adverse action against that employee including, but not limited to, discharge or demotion) within 60 days after such exercise. In that case, the burden shifts to the employer to prove a legitimate business reason for the adverse action; however, the employee may rebut the hotel's asserted business reason by showing that it was, in fact, a pretext.

Violators are subject to fines of not less than \$250 to not more than \$500 per offense. While fines cannot exceed \$500 per offense, each day a violation continues constitutes a separate offense.

The ordinance also provides a private right of action in state courts for any violations, following notice and a 15-day cure period. All remedies available under the law and in equity are available to a prevailing employee, including reasonable attorneys' fees, expert witness fees, and costs.

Unionized Workforce

Finally, rights under the ordinance may be waived in a *bona fide* collective bargaining agreement if the waiver is explicit and unambiguous.

Hotel employers with operations in Chicago should review the ordinance and update their hiring practices accordingly. For more information about the ordinance and its requirements, please contact the Jackson Lewis attorney with whom you regularly work.

(Summer law clerk Emma Graham contributed significantly to this article.)

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