

SB 93 “California Right to Recall Statute” and Local Ordinances

	SB 93 “California Right to Recall Statute” ¹	City of Los Angeles “Right of Recall” Ordinance ²	San Francisco “Right to Reemployment Following Layoff Due to COVID-19 Pandemic” Ordinance ³	City of San Diego “COVID-19 Worker Recall and Retention” Ordinance ⁴	City of Long Beach “COVID-19 Worker Recall” Ordinance	City of Oakland “Hospitality and Travel Worker Right to Recall” Ordinance
Covered Employers⁵	<ul style="list-style-type: none"> ▪ Hotel businesses ▪ Private clubs ▪ Event centers ▪ Airport hospitality operations ▪ Airport service providers ▪ Building service providers, defined as businesses that provide janitorial, building maintenance, or security services to office, retail, or other commercial buildings 	<ul style="list-style-type: none"> ▪ Airport employers ▪ Event center employers ▪ Hotel employers ▪ Commercial property employers in the city that employ 25 or more janitorial, maintenance, or security service workers 	<ul style="list-style-type: none"> ▪ Restaurants: 200 or more employees at a single establishment ▪ Hotels: 100 or more guest rooms ▪ Grocery stores: over 15,000 square feet in size ▪ Large food service operation ▪ Formula retail: 20 or more employees in the City <u>and</u> 40 retail sales establishments worldwide 	<ul style="list-style-type: none"> ▪ Hotel employers ▪ Event center employers ▪ Commercial property employer that employs 25 or more janitorial, maintenance, or security service employees 	<ul style="list-style-type: none"> ▪ Commercial property employers that provide janitorial services and employ 25 or more employees (not just 25 or more janitorial employees) ▪ Hotel employers with 25 or more employees 	<ul style="list-style-type: none"> ▪ Airport hospitality employers ▪ Airport service providers ▪ Event center employers ▪ Hotel employers ▪ Restaurant employers that employ more than 500 employees whether through franchisor/franchisee relationships or a network of franchises

¹ SB 93 does not pre-empt local right-to-recall ordinances. The statute specifically states that any local government agency can adopt its own ordinances that create **greater** employee rights or additional enforcement provisions than those prescribed by the statute. Notable differences between the local ordinances and SB 93 are bolded in this table.

² LA City also passed “The Worker Retention Ordinance” which seeks to protect workers’ jobs when there is a change of ownership or control within two years following the declaration of emergency resulting from the COVID-19 pandemic. Specifically, within 15 days of the execution of a “transfer document” as defined in the ordinance, the incumbent business employer must provide a list of its workers (including name, address, date of hire, and occupation classification) to the successor business employer, who is required to place the workers on a preferential hiring list.

³ On April 6, 2021, the San Francisco Board of Supervisors passed the “Right to Reemployment Following Layoff Due To COVID-19 Pandemic Ordinance.” This ordinance becomes effective on **May 16, 2021** and makes several changes to the “Temporary Right to Reemployment Emergency Ordinance” which expired on March 2, 2021.

⁴ Similar to LA city’s retention ordinance, City of San Diego also passed a worker retention ordinance, that provides protections to employees of certain business that undergoes an ownership transfer.

⁵ Although categories of covered employers may appear to be similar on this chart, one should consult the statute or local ordinance for the full definition of each category, as definitions of each category vary. The main differences are noted here.

			<ul style="list-style-type: none"> Other businesses: Any for-profit or non-profit businesses who are not in any of the above categories with 100 or more employees (regardless of location) that lay off 10 or more employees working in San Francisco within a 30-day period beginning on or after February 25, 2020 			
Covered Employees	<p>“Laid-off employees” who:</p> <ul style="list-style-type: none"> Who worked for a covered company for at least 6 months in the 12 months preceding January 1, 2020; Worked two hours or more per week for a covered employer; AND Were terminated for any reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or any other economic, 	<p>“Laid- off workers” who:</p> <ul style="list-style-type: none"> In a particular week perform at least 2 hours of work within the geographical boundaries of LA City for a covered employer; Have worked with the Covered Employer for 6 months or more; AND Whose most recent separation from active employment by the Employer occurred on or after March 4, 2020, as a result of a lack of business, a 	<p>“Eligible Workers” are those who:</p> <ul style="list-style-type: none"> 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, 	<p>“Laid-off employees” who:</p> <ul style="list-style-type: none"> Perform at least 2 hours of work within the geographic boundaries of the City of San Diego for a covered employer, Have worked with the covered employer for 6 months or more in the 12 months preceding March 4, 2020, or in the case of an event center employee, 3 months or more in the 12 months preceding March 4, 2020; AND Whose most recent separation 	<p><i>Same as LA ordinance; except laid off employees must have worked at least 2 hours a week within the city of Long Beach for a covered employer.</i></p>	<p>“Laid-off Employees” who:</p> <ul style="list-style-type: none"> Who were employed by an Employer for at least 6 months in the 12 months preceding January 31, 2020, AND Whose most recent separation from employment occurred after January 31, 2020, and was due to an economic, non-disciplinary reason, including but not limited to a lack of business due to a government-issued stay-at-home order,

	nondisciplinary reason due to the COVID-19 pandemic.	reduction in workforce or other economic, non-disciplinary reason. The ordinance creates a rebuttable presumption that any termination occurring on or after March 4, 2020, was due to a non-disciplinary reason unless the Employer has documentation that shows otherwise. Managerial employees, supervisory employees, and confidential employees are not covered by the LA ordinance.		from active service, or failure to be scheduled for customary seasonal work , occurred on or after March 4, 2020, and was due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason The definition of laid-off employee excludes managers, supervisors, or confidential employees.		bankruptcy, or reduction in force.
Type of Notice at Termination	N/A	N/A	Employers must provide written notice of the layoff to the Eligible Worker at or before the time when the layoff becomes effective ⁶ . The written notice shall include: <ul style="list-style-type: none"> ▪ The effective date of layoff ▪ A summary of the right to reemployment as 	Employers must provide each laid-off employee with a written notice of the date of their layoff and their rights under the ordinance.	N/A	N/A

⁶ For layoffs that occurred on or after February 25, 2020 and prior to May 16, 2021, 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.

			<p>defined by the ordinance; and</p> <ul style="list-style-type: none"> A telephone number to the OEWD hotline 			
A Covered Employer must make a reemployment offer to:	Qualified Employees	Qualified Employees	Laid-off workers in order of seniority if the employer is hiring for the same or similar position.	Qualified Employees	Qualified Employees	Qualified Employees
Definition of a "qualified employee"	A laid-off employee is qualified for a position if the employee held the same or similar position at the business at the time of the employee's most recent layoff from the employer. Laid-off employees must be offered the position in order of seniority.	<p>A laid off worker is qualified for a position if:</p> <ul style="list-style-type: none"> The laid off worker held the same or similar position at the same site of employment at the time of the laid off worker's most recent separation from active service with the employer OR The laid off worker can be qualified for the position if the laid off worker receives the same training that would be provided to a new worker hired into that position. 	N/A	<p>A laid off worker is qualified for a position if:</p> <ul style="list-style-type: none"> The laid off worker held the same or similar position at the site of employment at the time of the laid-off employee's most recent separation from active service with the employer OR The laid off worker can be qualified for the position with the same training that would be provided to a new employee hired into that position. 	<i>Same as LA ordinance</i>	<i>Same as LA ordinance</i>
Recall Process	Simultaneous, conditional offers of employment may be made to more than one laid-off employee, with the final determination of which laid-off	If more than one laid-off worker is entitled to preference for a position, the employer must first offer the position (1) to the laid off worker with the	If an employer seeks to rehire for any position that the laid-off Eligible Worker had with the employer at the time of layoff or in the 12 months	If more than one laid-off employee is entitled to preference for a position, the employer must offer the position to the laid-off employee with	<i>Same as LA ordinance.</i>	<i>Same as LA ordinance</i>

	employee gets the position determined by seniority.	greatest length of service who held the same position and then (2) to the laid-off worker with the greatest length of service who can become qualified for the position with the same training that would be provided to a new worker hired into that position.	preceding the layoff OR for a substantially similar position (comparable job duties, pay, benefits and working conditions), then the employer must first offer the position to that laid-off Eligible Worker. If the employer is offering reemployment to the same job classification, the employer must make an offer in order of seniority. An employer can, however, withhold a reemployment offer for 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.	the greatest length of service for the employer. Simultaneous, conditional offers of employment may be made to more than one laid-off employee, with the final determination of which laid-off employee gets the position determined by seniority.		
Length of time an offer must remain open	<i>5 business days</i>	<i>5 business days</i>	<i>2 business days</i>	<i>3 business days</i>	<i>5 business days</i>	<i>10 days</i>
Notice to laid off employees who are not recalled	If a covered employer chooses not to recall laid off employees for a position based on the grounds that they lack qualifications, the	N/A	N/A	If a covered employer chooses not to recall an employee because the individual is unqualified and the employer hires	N/A	<i>Same as San Diego ordinance; the employer shall make such record available to the City of Oakland upon request</i>

	<p>employer must provide written notice explaining the reasons for the decision within 30 days.</p>			<p>someone else instead, the employer “must provide the laid-off employee a written notice of the non-selection within 30 days” of the hiring of the other individual, and the notice must include the reason or reasons for the decision. The employer must keep records related to the hiring for at least 3 years and make them available to the City of San Diego or the laid-off employee upon request.</p>		
<p>Accommodations for reemployed workers</p>	<p>N/A</p>	<p>N/A</p>	<p>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.</p> <p>Reasonable accommodation may include modifying a worker’s schedule, modifying the number of hours worked, or permitting telework if feasible.</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Right to Cure	N/A	Before bringing a lawsuit to enforce rights under the ordinance, a worker must provide written notice to the employer of the alleged violations and a statement of facts to support the claimed violation. The employer then has 15 days from receipt of that notice to cure any alleged violation.	N/A	N/A	<i>Same as LA ordinance</i>	N/A
Enforcement and Penalties	<p>An employee may file a complaint with the DLSE, which has exclusive jurisdiction to enforce the law.</p> <p>The DLSE may award the complainant the following:</p> <ul style="list-style-type: none"> ▪ Hiring and reinstatement rights ▪ Front or back pay ▪ Value of the benefits the complainant “would have received under the employer’s benefit plan” <p>In addition, the DLSE may impose civil penalties of \$100 for each individual whose rights the employer violated. The statute also provides the DLSE with the discretion to impose liquidated</p>	If an employer refuses to remedy the violation under the ordinance, a worker can file a lawsuit with potential damages including hiring and reinstatement; the greater of either lost pay and benefits or statutory damages up to \$1,000; punitive damages; and attorneys’ fees and costs.	An Eligible Worker may bring action against an employer that may result in hiring and reinstatement rights, back pay, or some other value of benefits that the worker may have received.	<i>Same as LA ordinance</i>	<i>Same as LA ordinance</i>	Employers that willfully retaliate against employees will be subject to triple the damages attributable to lost income due to the violation.

	damages of \$500 per day for each individual whose rights the employer violated “until such time as the violation is cured.”					
Recordkeeping	Requires an employer to keep records for 3 years, including records of communications regarding the offers to laid off employees.	N/A	Employers must retain records for each Eligible Worker it separated due to a layoff for at least 2 years, including a copy of the written notice regarding the layoff provided to the Eligible Worker.	Employers must retain records for each laid off employee for at least 3 years, including a copy of the written layoff notice provided to each employee	N/A	N/A
Date of Expiration	Effective until December 31, 2024	Prior to March 1, 2022, the city will create a report assessing the effectiveness of the ordinance and whether the protections are still necessary.	The ordinance will expire either May 16, 2022 or the date on which the state of emergency is terminated, whichever is later.	Effective until March 8, 2022	Ordinance became effective May 19, 2020, unclear when it was renewed or when it will expire.	On or before January 31, 2022, the Department of Workplace and Employment standards shall report to the City Council on the effectiveness of the ordinance. No expiration date listed.

*** **Cities not included in the chart above:** Pasadena and Santa Clara also have “right of recall” ordinances. Pasadena’s recall ordinance is the same as the LA’s ordinance except Pasadena’s ordinance applies only to “Hotel Employers.” Santa Clara’s recall ordinance is the same as LA’s recall ordinance except for the following differences: 1) it only applies to food service employers (with 25 or more employees in California), hotel employers, and building service employers, and 2) it applies to laid-off workers who, among other requirements, perform at least *eight* hours of work a week within Santa Clara.