

# CITY OF LOS ANGELES



## RULES AND REGULATIONS IMPLEMENTING THE COVID-19 RIGHT OF RECALL ORDINANCE

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Department of Public Works  
Bureau of Contract Administration  
Office of Wage Standards  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015  
Phone: (844) 924-3752  
Fax: (213) 847-2777  
Email: [wagesla@lacity.org](mailto:wagesla@lacity.org)  
<http://wagesla.lacity.org/>

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Note: These Rules and Regulations are guidelines to help employers and employees understand their responsibilities and rights. We anticipate that these Rules and Regulations will be updated and encourage those implementing the COVID-19 Right of Recall Ordinance to check <https://wagesla.lacity.org> regularly for the latest guidance available from the Office of Wage Standards.

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**SCOPE OF OWS AUTHORITY**

The Department of Public Works, Bureau of Contract Administration, Office of Wage Standards (“OWS”) promulgates these Rules and Regulations as authorized by the Ordinance adding Section 200.30 to Article 4-72J-A of Chapter XX of the Los Angeles Municipal Code (“LAMC”) effective June 14, 2020. The OWS may also amend or revise these Rules and Regulations from time to time, consistent with applicable law.

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## DEFINITIONS

The following definitions shall apply to these Rules and Regulations:

**“Airport”** means the City of Los Angeles Department of Airports and each airport it operates in the City of Los Angeles.

**“Airport Employer”** means any employer that provides any service at the Airport or provides any service to any employer servicing the Airport and is also required to comply with the Los Angeles Living Wage Ordinance, Los Angeles Administrative Code Sections 10.37 et seq. An Airport Employer does not include an airline and does not include an employer who is part of an agreement with the Airport that contains a worker rehire requirement.

**“City”** means the City of Los Angeles.

**“Commercial Property Employer”** means an owner, operator, manager, or lessee, and also includes a contractor, subcontractor, or sublessee, of a non-residential property in the City that employs 25 or more janitorial, maintenance, or security service workers. Only the janitorial, maintenance, and security service workers who perform work for a Commercial Property Employer are covered employees.

**“Employer”** includes an Airport Employer, a Commercial Property Employer, an Event Center Employer, and a Hotel Employer. For purposes of these Rules and Regulations, an “Employer” does not include non-profit institutions of higher learning that operate medical centers in the City.

**“Event Center Employer”** means an owner, operator, or manager of a publicly or privately owned structure in the City of more than 50,000 square feet or with a seating capacity of 1,000 seats or more that is used for public performances, sporting events, business meetings, or similar events. Specific examples include concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

**“Hotel Employer”** means an owner, operator, or manager of a residential building in the City designated or used for public lodging or other related services for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. A Hotel Employer also includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.

**“Laid Off Worker”** means an individual who, in a particular week, performs at least two (2) hours of work within the geographic boundaries of the City of Los Angeles for an Employer, has a Length of Service with the Employer of six (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 reduction in workforce or other economic, non-disciplinary reason.

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A Laid Off Worker does not include a manager, supervisor, confidential employee, or a person who performs as their primary job responsibility sponsorship sales for an Event Center Employer.

**“Length of Service”** means the total time of all periods during which a Worker has been in active service to an Employer. This includes periods of time when the Worker was on leave or vacation.

**“Ordinance”** means the COVID-19 Right of Recall Ordinance adopted by the Los Angeles City Council on April 29, 2020.

**"OWS"** means the Department of Public Works, Bureau of Contract Administration, Office of Wage Standards.

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### **REGULATION #1: DETERMINING WHO IS A WORKER**

These Rules and Regulations shall apply to Laid Off Workers of Airport Employers, Commercial Property Employers, Event Center Employers, or Hotel Employers in the City of Los Angeles.

A Laid Off Worker covered by the Ordinance and these Rules and Regulations is an individual laid off by the Employer and who meets all the following requirements:

1. in a particular week performs at least two (2) hours of work within the geographical boundaries of the City for an Employer;
2. has a Length of Service with the Employer of six (6) months or more; and
3. 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 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 Ordinance. Managerial and supervisory employees include only those employees who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. Confidential employee includes any employee whose duties involve access to confidential information usually in regard to the employer's labor relations.

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### **REGULATION #2: DETERMINING WHO IS AN EMPLOYER**

These Rules and Regulations shall apply to Airport Employers, Commercial Property Employers, Event Center Employers, or Hotel Employers in the City of Los Angeles.

- A. Airport Employer includes any employer that provides any service at the Airport or provides any service to any employer servicing the Airport and is also required to comply with the Los Angeles Living Wage Ordinance, Los Angeles Administrative Code Sections 10.37 et seq. An airline or a business that is a party to an agreement with the Airport that contains a worker rehire requirement is not covered by the Ordinance.
- B. Commercial Property Employer includes any 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 workers. Only the janitorial, maintenance, and security service workers who perform work for a Commercial Property Employer are covered by the Ordinance.

It is the Employer's responsibility to maintain a record of the number of janitorial, maintenance, or security service workers employed as of January 1, 2020.

Example 1: Workers employed by a medical facility with a combined number of 20 janitorial staff and 10 security service workers are covered by the Ordinance.

- C. Event Center Employer includes any owner, operator, or manager of a publicly or privately owned structure in the City that is larger than 50,000 square feet or has a seating capacity of 1,000 seats or more and is used for public performances, sporting events, business meetings, or similar events. Specific examples include concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

Example 2: A venue that is 40,000 square feet, but has the capacity to seat 1,200 people, rents out space for public events and outsources janitorial and security service workers. All workers, including those that are outsourced, employed at this venue would be covered by the Ordinance.

- D. Hotel Employer includes any owner, operator, or manager of a residential building in the City designated or used for public lodging or other related service for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. This also includes the owner, operator, manager, or lessee of any restaurant physically located inside of or on hotel premises.

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Example 3: Workers employed by a restaurant inside of a hotel containing 35 guestrooms, but the hotel has exceeded \$5 million in gross revenue during 2019, would be covered by the Ordinance.



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### **REGULATION #3: RIGHT OF RECALL**

An Employer is subject to the Right of Recall and must provide priority for Laid Off Workers when re-hiring employees.

If a position becomes available after the effective date of the Ordinance for which the Laid Off Worker is qualified, an Employer shall make the offer to the Laid Off Worker in writing to the last known mailing address, electronic mail, and text message phone number.

A Laid Off Worker is qualified for a position if:

1. 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

2. 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.

If more than one (1) Laid Off Worker is entitled to preference for a position, the Employer shall first offer the position to the Laid Off Worker with the greatest Length of Service who held the same position. If the Laid Off Worker with the greatest Length of Service who previously held the position decides to not return, the offer would then go to the next senior worker in the specific job classification, even if that worker does not have the most seniority of all the Laid Off Workers. Once all of the workers in that specific job classification have been given a job offer, if there are still positions open, then a job offer can be made to the most senior Laid Off Worker of a different classification who can be qualified for the position if the Laid Off Worker receives the same training as a new hire would. Generally, the latter would apply to entry level positions.

Example 4: The owner of a restaurant located on hotel premises has a position open for the Head Chef and the owner has called the Laid Off Worker to return. The previously laid off head chef decides to not return. The owner may offer the position to someone outside of the recall list because none of the remaining Laid Off Workers (non-head chefs) on the recall list that have previously worked in the kitchen can perform the work of Head Chef, even with additional entry level training. The remaining Laid Off Workers also would not have the same type of a skill set as the position of the Head Chef.

Example 5: If Hotel A has a concierge position open and wants to hire an outside concierge from competing Hotel B, Hotel A would only be able to do so if Hotel A has already offered the position to its laid off concierges, the laid off concierges did not accept the offer in the time limit discussed below, and if the outside hire does not require any additional training to obtain the required skill set. However, if the outside hire does require additional skill set training, Hotel A would be required

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to offer the position first to the Laid Off Workers on the recall list that can perform the work with the same amount of additional skill set training as an outside hire.

Example 6: An Event Center Employer, such as a stadium, has 100 entry level positions open as a ticket taker. The hiring manager offers the job to the 100 laid off ticket takers and only 90 of them accept the job offer. The hiring manager should now offer the remaining 10 positions to other Laid Off Workers of a different classification on the recall list if they receive the same training that would be provided to a new worker hired into the ticket taker position. If no other Laid Off Workers decide to accept the job offer, the hiring manager may now offer the position to someone outside of the recall list.

A Laid Off Worker who is offered a position pursuant to the Ordinance shall be given no less than five (5) business days after the date of receipt in which to accept or decline the offer.

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**REGULATION #4: EXEMPTIONS**

A. Collective Bargaining Agreement (CBA).

A collective bargaining agreement that exists on the date the Ordinance went into effect containing a right of recall provision shall supersede the provisions of the Ordinance. The provisions of the Ordinance may only be waived when the collective bargaining agreement expires or is otherwise open for renegotiation, if the waiver is clearly established in the agreement in explicit and unambiguous language. A collective bargaining agreement in place on the date the Ordinance went into effect without a right of recall provision is not exempt from the Ordinance. Amendments to an existing collective bargaining agreement may be made at any time to explicitly waive the provisions of the Ordinance with clear and unambiguous language.

B. Non-profit Institutions.

Under the Ordinance, "Employer" does not include non-profit institutions of higher learning that operate medical centers in the City of Los Angeles.

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**REGULATION #5: ENFORCEMENT**

- A. A Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of the Ordinance and may be awarded:
1. Hiring and reinstatement rights pursuant to the Ordinance.
  2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.
  3. Punitive damages, pursuant to California Civil Code Section 3294.
  4. The court shall award reasonable attorneys' fees and costs to a Laid Off Worker who prevails in any such enforcement action and to an Employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.
- B. A civil action by a Worker alleging a violation of any provision of the Ordinance shall commence only after the following requirements have been met:
1. The Laid Off Worker provides written notice to the Employer of the provisions of the Ordinance alleged to have been violated and the facts supporting the alleged violation; and
  2. The Employer is provided 15 days from receipt of the written notice to cure any alleged violation.
- C. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for any violation of the Ordinance.

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**REGULATION #6: RETALIATION**

No Employer shall discharge, reduce in compensation, or otherwise discriminate against any worker for opposing any practice proscribed by the Ordinance, for participating in proceedings related to the Ordinance, for seeking to exercise his or her rights under the Ordinance by any lawful means, or for otherwise asserting rights under this article.

Retaliation may also include, but is not limited to, a reduction in hours, demotion, reassignment to a less desirable assignment or location or schedule, or the denial or reduction of other benefits.