

CITY OF LOS ANGELES



RULES AND REGULATIONS IMPLEMENTING THE COVID-19 WORKER RETENTION ORDINANCE

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**RULES AND REGULATIONS IMPLEMENTING THE COVID-19
WORKER RETENTION ORDINANCE**

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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 Worker Retention 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 200.40 to Article 4-72J-B 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 which it operates in the City.

“Airport Business” means any business that provides any service at the Airport or provides any service to any business 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 Business does not include an airline and does not include a business that is a party to an agreement with the Airport that contains a worker rehire requirement.

“Business” means an Airport Business, Commercial Property Business, an Event Center Business, or a Hotel Business.

“Change in Control” means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a Business, or a discrete portion of a Business that continues to operate as the same type of Business of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.

“City” means the City of Los Angeles.

“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 workers. Only the janitorial, maintenance, and security service workers who perform work for a Commercial Property Business are covered by the Ordinance.

“Employment Commencement Date” means the date on which a Worker retained by the Successor Business Employer pursuant to the Ordinance 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.

“Event Center Business” 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. An “Event Center Business” includes, but is not limited to, concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

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“Hotel Business” means an 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. A “Hotel Business” includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.

“Incumbent Business Employer” means the Person who owns, controls, or operates a Business prior to the Change in Control.

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

“Ordinance” means the COVID-19 Worker Retention 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.

“Person” means an individual, corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

“Successor Business Employer” means the Person who owns, controls, or operates a Business after the Change in Control.

“Transfer Document” means the purchase agreement or other documents creating a binding arrangement to effect the Change in Control.

“Worker” means an individual employed by the Incumbent Business Employer: (1) who has a Length of Service with the Incumbent Business Employer for six (6) 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. “Worker” does not include a managerial, supervisory, or confidential employee.

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REGULATION #1: DETERMINING WHO IS AN EMPLOYER

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

- A. Airport Business includes a business that provides any service at the Airport or provides any service to any business servicing the Airport, and is 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 retention requirement is not covered by the Ordinance.
- B. Commercial Property Business 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 Business 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 Business 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, but are not limited to, 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 Business 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.

Also see REGULATION #4: EXEMPTIONS.

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REGULATION #2: DETERMINING WHO IS A WORKER

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

Workers covered by the Ordinance are the individuals employed by the Incumbent Business Employer and meet all the following requirements:

1. who has been employed by the Incumbent Business Employer for at least six (6) months;
2. whose primary place of employment is a Business that has gone through a Change in Control;
3. who is employed or contracted to complete work activities directly by the Incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business that has gone through a Change in Control; and
4. who continued to be employed by the Incumbent Business Employer on or after March 4, 2020, and before the Transfer Document finalizing the Change in Control was executed.

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 employees includes any employee whose duties involve access to confidential information usually in regard to the employer's labor relations.

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REGULATION #3: EMPLOYMENT TRANSITION PROCES

During the employment transition process following a Change in Control, a Successor Business Employer is required to do the following:

1. Retain each Worker hired pursuant to the Ordinance for at least 90 calendar days after the Worker begins employment with the Successor Business Employer following a Change in Control. During this 90-day transition employment period, a Worker must remain employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer is required to provide a Worker with an offer of employment in writing for the transition period. This offer must remain open for at least ten business days from the date of the offer.
2. If the Successor Business Employer makes a determination that it does not require the same amount of Workers as the Incumbent Business Employer during the first six-month period the Business is open to the public following a Change in Control, the Successor Business Employer must offer the available positions to the Worker in the same occupational classification that has been employed the longest by the Incumbent Business Employer.

Example 4: Hotel Employer B (Successor Business Employer) opens business to the public and Employer B determines that two (2) front desk operator positions are sufficient to continue to run the business compared to the five (5) positions that were previously maintained by Hotel Employer A. Employer B must offer the two (2) continuing front desk operator positions to the two (2) Workers that had been employed by Hotel Employer A (Incumbent Business Employer) for 8 and 6 years before making an offer to the remaining Workers that had been working for Employer A for a shorter period of 1 to 3 years.

3. During the initial 90-day transition employment period, the Successor Business Employer may not discharge a Worker retained pursuant to the Ordinance without cause.
4. After the 90-day transition employment period, the Successor Business Employer is required to complete a written performance evaluation for each Worker retained under the Ordinance. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer must consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer must maintain a record of the 90-day evaluation period in writing, including the written evaluations, for at least three (3) years.

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Example 5: Employer B (Successor Business Employer) retains a total of 10 Workers under the Ordinance after Employer A (Incumbent Business Employer) transferred ownership to Employer B and all 10 Workers remain employed by Employer B between July 1, 2020 and September 29, 2020. After September 29, 2020, Employer B completes an evaluation of all 10 Workers in writing and finds that two (2) of these evaluations are unsatisfactory. Employer B is not required to offer continued employment to the two (2) unsatisfactory Workers. Employer B is required to retain all written evaluations for the 10 Workers until September 2023.

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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 worker retention provision supersedes 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 worker retention 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. Airlines are exempt from the Ordinance. Furthermore, any business that is a party to an agreement with the Airport that contains a worker retention requirement is also exempt. Also see REGULATION #1: DETERMINING WHO IS AN EMPLOYER.

C. Managerial employees, supervisory employees, and confidential employees are exempt from the Ordinance. Also see REGULATION #2: DETERMINING WHO IS A WORKER.

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REGULATION #5: NOTICE REQUIREMENT AND RECORDKEEPING

A. Notice of Change in Control posting requirement.

1. The Incumbent Business Employer must post a written notice of the Change in Control at the location of the affected Business within five (5) business days after the Transfer Document finalizing the Change in Control is executed.
2. The written notice must remain posted in a conspicuous place during any closure of the Business and for six (6) months after the Business is open to the public under the Successor Business Employer.
3. The written notice must include, but not be limited to:
 - a. the name of the Incumbent Business Employer and its contact information;
 - b. the name of the Successor Business Employer and its contact information; and
 - c. the effective date of the Change in Control.
4. The written notice must be posted in a conspicuous place at the Business, visible to all Workers, other employees, and applicants for employment.

B. Recordkeeping.

1. Within 15 business days after the Transfer Document finalizing the Change in Control is executed, the Incumbent Business Employer is required to provide the following information to the Successor Business Employer:
 - a. the name of each Worker
 - b. the address of each Worker
 - c. the date of hire of each Worker
 - d. the occupation classification of each Worker
2. The Successor Business Employer must maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection B.1 of this section, and is required to hire from this list starting from the day the Transfer Document finalizing the Change in Control is executed and continuing for at least six (6) months after the Business is open to the public under the Successor Business Employer.

Example 6: If the Transfer Document was executed in August 2020 and the business remained closed temporarily due to renovations before opening to the public on September 1, 2020, the hiring list is valid until March 1, 2021, during which time the

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Successor Business Employer must use the list provided by the Incumbent Business Employer to hire Workers.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer must maintain verification of that offer in writing for at least three (3) years from the date of the offer. The verification must include each Worker's name, address, date of hire, and occupation classification.

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REGULATION #6: ENFORCEMENT

- A. A Worker claiming a violation of the Ordinance may bring an action in Superior Court of the State of California against an Incumbent Business Employer or a Successor Business Employer and may be awarded:
1. Hiring and reinstatement rights pursuant to the Ordinance. For a Worker, the 90-day transition employment period begins on the Worker's Employment Commencement Date with the Successor Business Employer.
 2. Front or back pay for each day the violation continues – calculated at a rate of compensation not less than the higher of:
 - a. The average regular rate of pay received by the Worker during the last three (3) years of their employment in the same occupation classification; or
 - b. The most recent regular rate of pay received by the Worker while employed by the Business, Incumbent Business Employer, or the Successor Business Employer.
 3. Payment in the value of the benefits the Worker would have received under the Successor Business Employer's benefits plan.
- B. A civil action by a Worker alleging a violation of any provision of the Ordinance may commence only after the following requirements have been met:
1. The Worker provides a notice in writing to the Incumbent Business Employer and/or the Successor Business Employer of the provisions of the Ordinance alleged to have been violated in addition to any facts or documentation to support the alleged violation; and
 2. The Incumbent Business Employer and/or the Successor Business Employer is provided 15 business days from receipt of the written notice to remedy any alleged violation.
- C. The court may award reasonable attorneys' fees and costs to a Worker who prevails in any such enforcement action and to a Business employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.
- D. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties may attach for any violation of the Ordinance.

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REGULATION #7: RETALIATION

No Incumbent Business Employer or Successor Business Employer employing a Worker may discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice prohibited in 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 the Ordinance.

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.