



**Substitute Senate Bill No. 658**

**Public Act No. 21-189**

**AN ACT REQUIRING EMPLOYERS TO RECALL CERTAIN LAID-OFF WORKERS IN ORDER OF SENIORITY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

(1) "Building services enterprise" means a person providing janitorial, building maintenance or security services under contract to office, retail or other commercial or state buildings;

(2) "Compensation" means an employee's average weekly earnings for the twelve-month period immediately preceding the date of the employee's last day of active employment with an employer, including wages or salary, payments to an employee while on vacation or on leave, allocated or declared tip income, bonuses or commissions, contributions or premiums paid by the employer for fringe benefits, overtime or other premium payments and allowances for expenses, uniforms, travel or education;

(3) "Customary seasonal work" means work performed by an employee for approximately the same portion of each calendar year;

(4) "Employer" means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other

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person, including through the services of a temporary service or staffing agency or similar entity, conducts an enterprise and employs or exercises control over the wages, hours or working conditions of any employee;

(5) "Employment site" means the principal physical place where a laid-off employee performed the predominance of the employee's duties prior to being laid off, or, in the case of a laid-off employee in building services or other industries where work is performed at locations other than the employer's administrative headquarters from which such assignments were made, any location served by such headquarters;

(6) "Enterprise" means a hotel, lodging house, food service contractor or building services enterprise, including such a business located at a publicly or privately operated highway service plaza, that employs fifteen or more employees. "Enterprise" does not include cruise line companies;

(7) "Food service" means the on-site preparation, service and cleanup of food or beverages;

(8) "Food service contract" means a contract for a term of not less than six months for the provision of food service that requires the food service contractor to provide all food service workers;

(9) "Food service contractor" means any person who enters into a food service contract to provide food service at any commercial, industrial, institutional or mixed-use business facility in the state in a single building or in contiguous buildings under common ownership or management or at any state building;

(10) "Hotel" has the same meaning as provided in section 12-407 of the general statutes;

(11) "Laid-off employee" means any employee who was employed by

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the employer for six months or more in the twelve months preceding March 10, 2020, and whose most recent separation from active service or whose failure to be scheduled for customary seasonal work by that employer occurred after March 10, 2020, and before May 1, 2022, and was due to lack of business or a reduction or furlough of the employer's workforce due to the COVID-19 pandemic, and including executive orders issued pursuant to the COVID-19 public health emergency and the civil preparedness emergency declared by the Governor on March 10, 2020;

(12) "Length of service" means the total of all periods of time during which an employee has been in active service, including periods of time when the employee was on leave or on vacation;

(13) "Lodging house" has the same meaning as provided in section 12-407 of the general statutes;

(14) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, either domestic or foreign; and

(15) "COVID-19" means the respiratory disease designated by the World Health Organization on February 11, 2020, as coronavirus 2019, and any related mutation thereof recognized by said organization as a communicable respiratory disease.

(b) (1) Not later than thirty days after the layoff of an employee before May 1, 2022, an employer shall submit to the Labor Department an affidavit stating the reasons for the decision.

(2) Not later than five days after a job position becomes available at an employer, the employer shall notify each of its laid-off employees who are qualified for the position that the position is available. Such

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notification shall be sent in writing to the laid-off employee's last known physical address or electronic mail address, whichever is the usual and customary means of providing notices between the employer and employee, and in a text message to the employee's mobile phone if such phone number is maintained by the employer. Where more than one employee is qualified for an available position, the employer shall offer the position to the employee with the greatest length of service at the employment site. A laid-off employee is qualified for a position if the employee: (A) Held the same or similar position at the enterprise at the time of the employee's most recent separation from active service with the employer; or (B) is or can be qualified for the position with the same training that would be provided to a new employee hired for such position.

(c) An offer of employment to a laid-off employee pursuant to this section shall be at substantially the same employment site, subject to relocation as provided in subdivision (4) of subsection (g) of this section. If the laid-off employee held the same or similar position at the enterprise at the time of the employee's most recent separation from active service with the employer, such offer shall be in the same classification or job title and with substantially the same duties, compensation, benefits and working conditions as applied to the laid-off employee immediately prior to March 10, 2020.

(d) Any laid-off employee who is offered a position pursuant to this section shall be given not less than five days in which to accept or decline the offer. If the laid-off employee does not accept or reject the offer in the time provided by the employer, the offer shall be considered declined. If a laid-off employee declines an offer of a position, within the time period provided by the employer, due to underlying conditions related to contracting COVID-19 diagnosed on or before May 1, 2021, as evidenced by a medical note to the employer, such laid-off employee shall retain the right to accept an available position for which the

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employee is qualified pursuant to subdivision (2) of subsection (b) of this section, and shall retain all other rights under this section until both (1) the expiration of the public health and civil preparedness emergencies declared by the Governor on March 10, 2020, and any extension of such emergency declarations, and (2) the laid-off employee is reoffered a position.

(e) Each employer that declines to rehire a laid-off employee on the grounds of lack of qualifications and instead hires an individual other than a laid-off employee shall provide to the laid-off employee a written notice not later than thirty days after the date such other individual is hired. Such notice shall include the reasons for such decision.

(f) A laid-off employee rehired pursuant to this section shall be permitted to work for not less than thirty work days, unless there is just cause for the employee's termination.

(g) The requirements of this section shall apply under any of the following circumstances:

(1) The form of organization of the employer changed after March 10, 2020;

(2) Substantially all of the assets of the employer were acquired by another entity that conducts the same or similar operations using substantially the same assets; or

(3) The employer relocates the operations at which a laid-off employee was employed prior to March 10, 2020, to a different employment site not greater than twenty-five miles away from the original employment site.

(h) No employer shall terminate, refuse to reemploy, reduce compensation or otherwise take any adverse action against any individual seeking to enforce his or her rights under this section or for

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participating in proceedings related to this section, opposing the violation of any provision of this section or otherwise asserting rights under this section.

(i) An employer that terminates, refuses to reemploy or takes any other adverse action against any laid-off employee shall provide to the employee, at or before the time of the termination, refusal to reemploy or other adverse action, a detailed written statement of the reason or reasons for the termination, refusal to reemploy or other adverse action, including all the facts substantiating the reason or reasons and all facts known to the employer that contradict the substantiating facts.

(j) (1) A laid-off employee aggrieved by a violation of any provision of this section may bring a civil action in the Superior Court.

(2) If the court finds that the employer has violated any provision of this section, the court may enjoin the employer from engaging in such violation and may order such affirmative action as the court deems appropriate, including the reinstatement or rehiring of the laid-off employee, with or without back pay and fringe benefits, or other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the laid-off employee who was subjected to the violation shall be deducted from the back pay permitted under this subdivision and any reasonable amounts expended by the laid-off employee in searching for, obtaining or relocating to new employment shall be deducted from the interim earnings before such earnings are deducted from such back pay. The court may order compensatory and punitive damages if the court finds that the employer committed the violation with malice or with reckless indifference to the provisions of this section. Any laid-off employee who prevails in a civil action shall be awarded reasonable attorney's fees and costs to be taxed by the court.

(k) The provisions of this section shall apply to each laid-off

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employee, whether or not such laid-off employee is represented for purposes of collective bargaining or is covered by a collective bargaining agreement, and may be waived in a bona fide collective bargaining agreement but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this section. Nothing in this section shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides equal or greater protection for laid-off employees than provided by this section and it shall not be a violation of this section for an employer to follow an order of preference for rehiring laid-off employees required by a collective bargaining agreement that is different from the order of preference required by this section.