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County Counsel

May 12, 2020

Agenda No. 14
04/28/20

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Ordinance Adding Chapter 8.202 of Title 8 – Consumer Protection,
Business and Wage Regulations of the Los Angeles County Code**

Dear Supervisors:

Pursuant to your Board's motion of April 28, 2020, enclosed please find for your consideration, the analysis and ordinance adding Chapter 8.202 to Title 8 – Consumer Protection, Business and Wage Regulations - of the Los Angeles County Code, which establishes legal protections for the retention of hospitality, janitorial, maintenance, and security service workers when certain businesses change ownership or control.

Very truly yours,

MARY C. WICKHAM
County Counsel

By


SAYUJ PANICKER
Deputy County Counsel
Government Services Division

APPROVED AND RELEASED:


LAWRENCE L. HAFETZ
Chief Deputy

SP:eb
Enclosures

ANALYSIS

This ordinance adds to the Los Angeles County COVID-19 Worker Protection Ordinance by adding Chapter 8.202 to Title 8 – Consumer Protection, Business and Wage Regulations – of the Los Angeles County Code, establishing legal protections for workers to be retained when certain specified businesses change ownership or control.

MARY C. WICKHAM
County Counsel

By 

SAYUJ PANICKER
Deputy County Counsel
Government Services Division

JAG:eb

Requested: 5/5/20
Revised: 5/8/20

ORDINANCE NO. _____

An ordinance adding Chapter 8.202 (COVID-19 Right of Retention) to Division 5 – COVID-19 Worker Protections of Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, establishing legal protections for workers to be retained when certain specified businesses change ownership or control.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 8.202 is hereby added to read as follows:

Chapter 8.202 COVID – 19 Right of Retention.

8.202.010 Purpose.

8.202.020 Definitions.

8.202.030 Business Worker Retention.

8.202.040 Retaliatory Action Prohibited.

8.202.050 Enforcement.

8.202.060 Exemption for Collective Bargaining Agreement,

Express Waiver.

8.202.070 No Waiver of Rights.

8.202.080 Severability.

8.202.090 Report.

8.202.100 Purpose.

As a result of the COVID-19 pandemic and "Safer at Home" declarations by California Governor Gavin Newsom and the County Board of Supervisors, issued to

protect the public health and welfare, many workers in the County of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the County hereby enacts legal protections for workers to be retained when a business changes ownership or control.

8.202.020 Definitions.

The following definitions shall apply to this Chapter:

A. "Business" means a Commercial Property Employer or Hotel Employer, as defined in Chapter 8.201. For purposes of this Chapter, a "Business" does not include non-profit entities. Federal, state, and local government agencies shall be exempt from this Chapter. The private contractors of a Business are not exempt.

B. "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.

C. "County" means the unincorporated areas of the County of Los Angeles.

D. "Employment Commencement Date" means the date on which a Worker retained by the Successor Business Employer pursuant to this Chapter 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.

E. "Incumbent Business Employer" means the Person who owns, controls, and/or operates a Business prior to the Change in Control.

F. "Length of Service" means the total of all periods of time during which a Worker has been in active service, including periods of time when the worker was on leave or vacation.

G. "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. Person does not include non-profit organizations or federal, state, or local government agencies who shall be exempt from this Chapter.

H. "Successor Business Employer" means the Person who owns, controls, and/or operates a Business after the Change in Control.

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

J. "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 March 1, 2020, prior to the execution of the Transfer Document. "Worker" does not

include a managerial, supervisory, or confidential employee or who are hired through a temporary staffing agency.

8.202.030 Business Worker Retention.

A. Business Employer's Responsibilities.

1. The Incumbent Business Employer shall, within fifteen (15) calendar days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A.1 of this Section, and shall be required to hire from that list for a period beginning upon the execution of the Transfer Document and continuing for six (6) months after the Business is open to the public under the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer shall retain written verification of that offer for no fewer than three (3) years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. Transition Employment Period.

1. A Successor Business Employer shall retain each Worker hired pursuant to this Chapter for no fewer than ninety (90) calendar days following the

Worker's Employment Commencement Date. During the 90-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a Worker with a written offer of employment. This offer shall remain open for at least five (5) business days from the date of the offer. A "business day" is any day except Saturday, Sunday, or official state holidays.

2. If, within the period established by Section 8.202.030.A.2, the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall offer the position to the Worker in the same occupational classification with the greatest length of service with the Incumbent Business Employer.

3. During the 90-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this Chapter.

4. At the end of the 90-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this Chapter. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer shall 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 shall retain a record of the written performance evaluation period of no fewer than three (3) years.

C. Notice of Change in Control.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five (5) business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six (6) months after the Business is open to the public under the Successor Business Employer. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of the Successor Business Employer and its contact information, and the effective date of the Change in Control.

2. Notice shall be posted in a conspicuous place at the Business so as to be readily viewed by Workers, other employees, and applicants for employment.

8.202.040 Retaliatory Action Prohibited.

No Incumbent or Successor Business Employer employing a Worker shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to exercise their rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

8.202.050 Enforcement.

A. A Worker may bring an action in the Superior Court of the State of California against an Incumbent Business Employer or the Successor Business Employer for violations of this Chapter and may be awarded:

1. Hiring and reinstatement rights pursuant to this Chapter. 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, which shall be 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 received by the Worker while employed by either the Business, Incumbent Business Employer, or the Successor Business Employer.

3. 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 this Chapter shall commence only after the following requirements have been met:

1. The Worker provided written notice to the Incumbent Business Employer and/or the Successor Business Employer of the provision of the Chapter alleged to have been violated and the facts supporting the alleged violation; and

2. The Incumbent Business Employer and/or the Successor Business Employer is provided 15 days from the receipt of the written notice to cure any alleged violation.

C. The court shall award reasonable attorney's fees and costs to a Worker who prevails in any such enforcement action and to an Incumbent Business Employer and/or the Successor 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 shall attach for violation of this Chapter.

8.202.060 Exemption for Collective Bargaining Agreement, Express Waiver.

All of the provisions of this Chapter, or any part of, may be expressly waived in a 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 to constitute, a waiver of all or any of the provisions of this Chapter.

8.202.070 No Waiver of Rights.

Except for a collective bargaining agreement provision made pursuant to Section 8.202.060, any waiver by a Worker of any or all provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this Chapter shall be a violation of this Chapter.

8.202.080 Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

8.202.090 Report.

Before March 1, 2022, the Chief Executive Office shall report to the Board on the effectiveness of the provisions of this Chapter in protecting workers' stability of employment, recommendations for additional protections that further the intent of this Chapter, and whether the provisions of the Chapter are still necessary based on the County's recovery from the impacts of the COVID-19 pandemic.

[CH8202SPCC]