

Employment & Labor Law Alert

April 2021

Navigating COVID-19-Related Right-to-Recall Rules Under SB-93

With COVID-19 cases subsiding and the number of fully vaccinated individuals increasing, many California businesses are seeing a light at the end of the COVID-19 tunnel. While establishments are now grappling with the mechanics of returning their employees to work, California's hospitality and business services industries have even more to think about with the enactment of SB-93. Specifically, this new legislation requires employers in the hospitality and business services industries to offer new or open positions to qualified former employees who were laid off due to the COVID-19 pandemic. The offer must be made within five days of the position becoming available. Essentially, SB-93 creates a mandatory right to be recalled for certain California workers.

Gov. Gavin Newsom signed SB-93 into law on April 16, 2021. It applies to certain "establishments," including hotels and private clubs, airport restaurants and retail stores, and large event centers. The new law takes immediate effect, sunsets on Dec. 31, 2024, and applies statewide. The law also prohibits employers from taking adverse employment actions against employees seeking to enforce their rights under the legislation.

Are you a covered employer?

The establishments covered under SB-93 include:

- Event centers, which are defined as publicly or privately owned venues measuring more than 50,000 square feet or with at least 1,000 seats "used for the purposes of public performances, sporting events, business meetings, or similar events[.]" The law specifically mentions "concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers" and "also includes any contracted, leased, or sublet



premises connected to or operated in conjunction with the event center's purpose, including food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities."

- Hotels and private clubs with at least 50 guest rooms for overnight accommodation.
- Businesses that provide building services to office, retail or other commercial buildings.
- Airport hospitality operations, which include restaurants and shops that are open to the public as well as businesses related to food preparation for passengers and aircraft crew.
- Airport service providers, which include businesses related to facility management, security, ticketing and check-in, "ground-handling of aircraft, aircraft cleaning and sanitization functions, and waste removal."

The legislation applies regardless of whether the ownership of the business has changed since the employee was laid off, as long as the organization is conducting the same or similar operations as it did before the COVID-19 state of emergency.

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Who are the covered employees?

The legislation defines the term "laid-off employee" as "any employee who was employed by the employer for 6 months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary reason related to the COVID-19 pandemic."

What are covered employers required to do?

The new law requires covered establishments to:

- Offer laid-off qualified employees specified information about job positions within five days of the position becoming available.
- Offer positions to those laid-off employees based on a preference system in accordance with specified timelines and procedures. If more than one employee is entitled to preference for a position, the employer must first offer the position to the laid-off employee with the greatest length of service.
- Retain related records for three years, including records of communications with laid-off employees regarding the employment offers.
- Provide a laid-off employee with written notice within 30 days if the employer declines to recall the employee due to lack of qualifications and instead hires someone other than a laid-off employee.

Enforcement and Penalties

The state's Division of Labor Standards Enforcement is charged with enforcing the new provisions and handling complaints from employees seeking reinstatement. It is unclear whether similar enforcement actions will be available to private litigants under California's Private Attorney General Act (PAGA).

Remedies include requiring the employer to hire or reinstate employees, an award of front or back pay for each day the employer's violations continue, and an award of the value of benefits the employees would have received had they been recalled. Civil penalties of \$100 may also be imposed on employers for each employee whose rights under the new provisions are violated, with liquidated damages of \$500 per employee for each day the employee's rights are violated.

How Loeb can help

Loeb & Loeb's Employment & Labor Law team can help employers determine their obligations under SB-93. We can also assist with navigating the rigorous compliance requirements under the new law, including advising on policies and procedures for communicating with any covered employees, the hiring process and record keeping..

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