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REGULATION: BUSINESSES OPPOSE EMERGENCY JOB LEGISLATION.

City Backs Off Hiring Rewrite

By Amy Stulick (/staff/amy-stulick/)

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During an 11-hour emergency e-meeting of the Los Angeles City Council, members proposed two rules that would mandate how businesses would rehire workers in the aftermath of the coronavirus crisis.

Both the Right to Recall and Right of Retention ordinances were fought tooth and nail by business organizations such as the Valley Industry and Commerce Association and BizFed, along with individual business owners.

The frantic lobbying efforts were successful – at least for now – with the ordinances tabled for further discussion after the March 27 meeting. The Council held another meeting on April 7, but the employment ordinances were not discussed.

“If you run a business in the City of L.A., you should be furious with the fact that the City Council wants to tell you how to run your business during this crisis,” Stuart Waldman, VICA president, told members in a newsletter. “It’s even more upsetting that they are selling this as a response to the COVID-19 crisis.”

As written, Right to Recall would require employers to offer positions to workers who were laid off on or after March 4 for non-disciplinary reasons, based on seniority. Employers in Los Angeles with revenues that exceeded \$5 million last year would be subject to the law.

Although it was cast as a coronavirus emergency measure, the ordinance would be in effect through March 4, 2022; the city could extend it, too.

Business response

Valley business owners expressed concern with the Council ordinances, once notified of the proposals only 48 hours prior to the emergency meeting.

“I was livid,” said Joann Oseary, owner of Tarzana-based catering company Someone’s in the Kitchen. “How could you think to dump this on us when we’re trying to survive? When we can reopen now you want to tell us who to bring back when we’re going to need the power hitters?”

Oseary hasn’t laid anyone off yet. Someone’s in the Kitchen employs 35 full-time workers, although more are often hired depending on upcoming events.

Town and Country Event Rentals owner Richard LoGuercio, however, has had to cut his 500-plus staff to a skeleton crew of 10. The tent rental business is based in Van Nuys.

“We’re in the gathering business and right now there are no gatherings. For (the week of March 16 to 20) we saw our future business go down to virtually zero,” LoGuercio explained. “It’s gotten to the point where we really had to lay everybody off.”

If businesses get to a point where they can start adding to their payroll, workers would have 10 days to respond to a request for rehire with the ordinance.

Individuals would also be able to press charges against a former employer if they feel they were passed up; employers would need to prove in court that an employee was fired for disciplinary reasons and thus they were not obligated to bring them back under the Right to Recall ordinance.

“One of the biggest objections of business owners is a widespread fear that they will be put out of business by lawsuits ... by laid off employees who weren't hired back quickly when they did it exactly right and hired them back based on seniority,” said Councilman Paul Koretz, District 5, during the March 27 meeting. “They fear that it will cost them \$10,000 to \$20,000 every time they get a lawsuit from an employee that wanted to be hired back sooner but wasn't in the seniority queue appropriately.”

“That's (the worker's) prerogative; they can sue an employer and the employer will have to defend themselves,” responded David Michaelson, Los Angeles city attorney. “There's unfortunately no way to sidestep that.”

Retention rule

Right of Retention specifies that the new owner of a business that had been sold needs to retain current employees for at least 90 days. Once that period has ended, business owners can conduct an evaluation of each employee and consider them for further employment.

A main amendment proposed by Council members for the ordinances, among others that deal with industry exemptions and a change to the 10-day rule, would roll back the sunset date for the ordinance from two years to six months with possible extensions.

“What this ordinance does is arranges how the recovery of the COVID-19 recovery will take place,” explained Councilman Paul Krekorian, District 2, during the marathon meeting. “It's not the kind of thing we should be doing on a crisis basis because it's not related to the crisis. It's related to the recovery from the crisis.”

Businesses with collective bargaining agreements would be exempt from both ordinances.

“All three bills exempt workers that have collective bargaining agreements except it only exempts them if the collective bargaining agreement references the ordinance” Waldman said. “It requires companies to go to the unions and renegotiate the collective bargaining agreements.”

Sick leave extension

While these proposals did not pass, the Council did put through a measure requiring two weeks of paid sick leave, as it related to the pandemic, for employers with 500-plus employees.

Mayor Eric Garcetti did not sign the sick leave bill however, instead issuing on April 7 an emergency order similar to but less stringent than the Council's version of a citywide supplemental sick leave policy.

The order, which is expected to last two calendar weeks after the city's local emergency period ends on April 19, requires employers with 500 or more employees within the city or 2,000 nationally to pay supplemental sick leave

for those employed from Feb. 3 through March 4.

It does still close a loophole made by the federal Family First Coronavirus Response Act that makes a similar requirement for paid sick leave, but for businesses with 499 or fewer workers.

At least one positive piece of legislation for businesses comes from the federal government's CARES Act, which will allow businesses with less than 500 employees to take out a loan from the Small Business Administration and have a portion of it forgiven for a certain period of time, according to **Keith Zimmet**, partner at Lewitt Hackman.

Businesses can borrow up to 2.5 times their average monthly payroll in 2019, but there is a cap at \$100,000 per individual worker.

"If you have an employee that earned \$250,000 a year, when you do the math you only put down \$100,000 for them. For everyone else, you do their actual payroll," explained Zimmet.

Borrowed money used for certain expenses from Feb. 15 to June 30 will be forgiven under the CARES Act.

"Effectively, the government is going to pay eight weeks of business expenses," said Zimmet. "The purpose is to try to keep as many people employed as possible, in the hopes that by June 30 everyone is back to work."