

RIGHT TO RECALL

City Council Study Session
April 20, 2021

“Right to Recall” Defined

- After layoff, workers “recalled” back to work on a length of service (seniority) basis
 - All workers who previously held (or can be trained to hold) a position are notified of opening
 - Time period for employee response
 - Position offered to longest-tenured responding employee

Policy Objective

Mitigate the effects of the COVID-19 pandemic on hotel and card room workers by providing a right to recall that reflects the following unique circumstances:

- Hotels and Card Room businesses were severely impacted by COVID-19 activity restrictions
- Hotels and Card Room businesses laid off a significant number of their employees
- The Collective Bargaining Agreements (where applicable) do not provide a recall right that accommodates the length of temporary layoffs experienced during the pandemic

Policy Topics

- Consistency with Measure C
- Applicability
- Recall benefit length
- Length of notice period
- Sunset date

Consistency with Measure C

- Definition of Hotel - Section 5-32.1.3 (a)
 - A “large hotel” means any hospitality facility with more than fifty (50) guest rooms. A “hotel” includes not only the facility’s guest rooms and common areas but also any subcontracted or sublet restaurants connected thereto or operated in conjunction therewith.

- Waiver – Section 5-32.1.4 (d)
 - Employees are not barred from entering into a written valid collective bargaining agreement waiving provisions of this chapter if such waiver is set forth in clear and unambiguous terms.

- Change in Ownership - Section 5-32.1.1 (b)(2)
 - New employer must retain or reinstate employees within 90 days of change in ownership and retain employee for 90 days
 - Employee entitled to any position (that they can perform) that opens within following 24 months
 - Upon reinstatement employee must be given 90 days trial period within which they can be discharged for cause

Applicability

- Covered Employers
 - Hotels
 - Card Rooms
 - Ancillary businesses
 - Measure C includes contracted or sublet restaurants operated in conjunction with a hotel

Length of Recall Benefit

- Existing CBAs typically provide 12 month recall period
- Conversations underway to extend recall benefit beyond initial 12 months

Notice Period- Existing Business Policies- Hotels

- CBA covered employers – existing requirement to offer employment based on seniority
- 24-72 hours to confirm interest in employment from phone contact /text notification
- One hotel provides 7 days' advance notice to employee prior to start date
- Most follow seniority protocol with documentation
- One hotel recall based on performance evaluations
- Preferred method of contact – phone due to higher response rate

Notice Period- Existing policies – Cardroom

- Cardroom Has hired back 80% of pre-pandemic employees
 - Many departments 100% of employees wishing to return have been rehired
 - Some employees retired, find another job, or decline position to allow colleagues opportunity to return
 - For departments with reduced staffing, offers based on performance
 - Performance often correlates with seniority, especially for specialized gaming positions
- Associated restaurant covered by a CBA
 - Restaurant not expected to open until later due to capacity constraints
 - CBA includes recall provisions

Sunset

- Ordinance addresses recalls resulting from COVID layoffs
- Several of City's COVID-related regulatory responses terminate 180 days after the end of the locally-declared emergency
- Additional time may be warranted to allow enough time for businesses return to full operations

Industry Feedback

- Increased demand requires quick onboarding with last minute bookings
- Required documentation could cause administrative and financial burden as well as privacy concerns
- No provision for exceptions for performance or conduct problems
- Overrides the contractual agreement between employer and union
- Several employees have either moved or refuse employment due to personal reasons
- Other available leaves (Family leave, Disability, etc.)

Policy Questions

- Applicability – What businesses are covered?
- Length of Recall Benefit – How long after layoff should employers be required to offer recall to laid off employees?
- Length of notice period – How long should employees have to respond to an offer of rehire?
- Intersection with Measure C – Consider consistency with Measure C provisions.
- Enforcement mechanism – Right to private action or City enforcement?
- Sunset date – How long should the ordinance be effective?