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Amending Chapter 9-2300 of The Philadelphia code to provide greater protections for displaced contract workers.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-2300 of The Philadelphia Code is amended to read as follows:

TITLE 9. Regulation of Businesses, Trades and Professions

* * *

CHAPTER 9-2300. PROTECTION OF DISPLACED CONTRACT WORKERS

* * *

§ 9-2301. Definitions.

The following definitions shall apply throughout this Chapter.

(1) *Covered Employer* [Awarding authority] means any person *that directly employs four (4) or more employees* [awards]or otherwise enters into contracts, including subcontracts, for any of the following services performed within the City of Philadelphia: (a) security; (b) janitorial services; (c) building maintenance; (d) *concierge services; (e) door attendant services; (f)* food and beverage; ([e]*g*) hotel service; ([f]*h*) health care services; ([g]*i*) services by parking employees, as defined at subsection 9-4701(6); or ([h]*j*) services by covered

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airport service employees as defined at subsection 17-107(1)(t)(.1).

(2) Contractor means any person that enters into a service contract with the *covered employer*, [awarding authority,] and any subcontractors to such service contract at any tier, who employs [ten (10)] *four (4)* or more persons.

(3) Customary seasonal work means work performed by an employee during only the same approximate part of each calendar year, such as summer or winter.

(4) Employee means any person employed *by a covered employer or service contractor* to provide services [pursuant to a service contract,] and includes registered nurses. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would so be defined under the Fair Labor Standards Act; or (b) is employed less than 15 hours a week. However, "Employee" does include persons who work 15 hours or more per week during customary seasonal work but do not work an annualized average of 15 hours or more per week.

(5) Person means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into other contracts.

(6) Service contract means a contract, lease, or concession agreement, including any subcontracts, *entered into between* [let to] a *service* contractor *and* [by] the *covered employer* [awarding authority for the furnishing of subcontracts,] for any of the following services performed within the City of Philadelphia: (a) security; (b) janitorial services; (c) building maintenance; (d) *concierge services; (e) door attendant services; (f)* food and beverage; ([e]*g*) hotel service; ([f]*h*) health care services; ([g]*i*) services by parking employees, as defined at subsection 9-4701(6); or ([h]*j*) services by covered airport service employees as defined at subsection 17-107 (1)(t)(.1).

(7) Successorship service contract means a service contract with the [awarding authority] *covered employer* [where] substantially the same services to be performed *that* have previously been rendered to the *covered employer* [awarding authority] as part of the same program or at the same facility under another service contract that recently has been terminated or has ended within the previous 90 days, or have previously been rendered by the *covered employer* [awarding authority's own employees.

(8) Successor employer means (a) any service contractor that has entered into a successorship service contract to provide, in whole or in part, services at a property that are substantially similar to those provided at any time during the previous 90 days; (b) any person that has purchased or acquired a controlling interest of a property where employees were employed at the property by a covered employer or service contractor at any time during the previous 90 days; or (c) any covered employer that terminates a service contract and directly hires employees to perform services that are substantially similar within 90 days after the service contract is terminated or cancelled.

[(8)] (9) Terminated or ending contractor means a contractor whose service contract expires without renewal or whose contract is terminated and includes the *covered employer* [awarding authority] itself where *services* [work] previously rendered by the *covered employer* [awarding authority's] own employees is the subject of a successorship service contract [.] *or is otherwise transferred to a successor employer.*

(10) Property means the building, facility, structure or other real property, including a complex comprised of more than one building, located in the City of Philadelphia, where employees perform services for a covered employer or pursuant to a service contract.

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(11) Laid-Off Employee means any Employee who was employed by a covered employer for any of the following services performed within the City of Philadelphia: (a) security; (b) janitorial services; (c) building maintenance; (d) concierge services; or (e) door attendant services, and was employed for six months or more in the 12 months preceding January 1, 2024, and whose most recent separation from employment occurred after January 1, 2024, and was due to a closure of the property where the employee was employed and unrelated to any reasons involving employee discipline.

(12) List of Laid-Off Employees means a written notice identifying all laid-off employees from a property due to closure, including those employed directly by a covered employee and a service contractor. The list of laid-off employees shall include each laid-off employee's first and last name, occupation title, date of hire, telephone number, mailing address and email address, if known. The List of Laid-Off Employees shall also include the name and contact information for the collective bargaining representative of the Laid-Off Employees.

(13) Closure means the partial or complete closing to public access and/or tenant occupancy of any property that results in more than 25 percent of the total number of employees employed at the property during the previous 12-month period qualifying as Laid-Off Employees. The total number of employees employed at the property for purposes of determining when closure occurred shall include both direct employees of the covered employer and those employees employed by a service contractor or contractors at the property. Closure does not include complete demolition of the entire property where the laid-off employees previously worked.

(14) Agency means such office as the Mayor shall designate to administer and enforce this Chapter.

§ 9-2302. *Notice And* Transition Employment Period.

All service contractors, [and] *covered employers and successor employers* [awarding authorities who enter into service contracts to be performed within the City of Philadelphia] shall be subject to the following obligations *concerning any property*:

(1) The *covered employer* [awarding authority] shall give *not less than 15 calendar days* advance notice to service contractor, and any collective bargaining representative of any of the service contract employees, that a service contract will be terminated or ended and the name, telephone number and address of the successor *employer* [contractor] or *employers* [contractors] if known. The terminated or ending contractor shall, within three (3) days after receipt of such notice, provide to the successor *employer* [contractor], the name, date of hire, and employment occupation classification of each employee employed at the site or sites [covered] by the *outgoing* [predecessor] *service* contractor at the time of receiving said notice.

(2) On the date said *service* contract ends, the terminating or ending contractor shall update the information previously provided to make it current to the actual termination date.

(3) If the *terminating* contractor is not notified of the identity of the successor [contractor] *employer, pursuant* to the notice required by subsection (1), the terminating contractor shall provide such information to the *covered employer* [awarding authority] within three (3) days of receipt of such notice. The *covered employer* [awarding authority] shall be responsible for providing such information to the successor *employer* contractor as soon as that **s***uccessor employer* [contractor] has been selected.

(4) A successor [contractor or subcontractor] *employer* shall retain, for a 90-day transition employment period commencing with the onset of the successorship service contract, *or the effective date of its purchase or acquisition of a controlling interest of the property* [site], all employees who have been employed *at the property* by the terminated contractor or its subcontractor*, or by the covered employer who sold or transferred*

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its controlling interest of the property,[at the site or sites covered by the contract] for at least [the eight months] *90 days* immediately preceding the date the predecessor contract is terminated *or effective date of purchase or acquisition of the property*.

In the event that the successorship service contract is terminated or ended prior to the expiration of the 90-day transition employment period, then any [contractor or subcontractor awarded a subsequent successorship service contract] *successor employer* shall be bound by the requirements set forth in this subsection to retain, for a new 90-day transition employment period commencing with the *termination of the initial* [onset of the subsequent] successorship service contract, all employees who have been employed by any one or combination of the terminated or ending contractor *or covered employer at the property* [at the site or sites covered by the contract] for at least the *90-day period* [eight months] immediately preceding the date of the most recently terminated or ended contract.

The successor [contractor or subcontractor] *employer* shall hand deliver a written offer of employment to each employee as required by this Section in the employee's native language or another language in which the employee is fluent. Such offer shall state the time within which the employee must accept such offer but in no case may that time be less than ten days from the date of the offer and in no case may the tenth day occur any later than five days prior to the expiration of the predecessor contract or the covered employer's termination of its direct employees' employment.

The written offer required by this Section shall be substantially in the form set forth in Section 9-2304 in a language in which each employee is fluent.

(5) If at any time a successor [contractor] *employer* determines that fewer employees are required to perform the new service contract than were required by the terminated contractor, the successor *employer* [contractor] shall be required to retain employees by seniority within each job classification.

(6) During such 90-day period, the successor [contractor] *employer* shall maintain a preferential hiring list of employees eligible for retention under Section 4, not retained by the successor contractor from which the successor *employer* [contractor] shall hire additional employees.

(7) Except as provided under subsection (6) of this Section, during such 90-day period, the successor [contractor**]** *employer* shall not discharge without cause an employee retained pursuant to this Chapter. Cause shall be based only on the performance or conduct of the particular employee.

(8) At the end of the 90-day transition employment period, the successor employer shall perform a written performance evaluation for each employee retained pursuant to this section. If such employee's performance during such 90-day transition period is satisfactory, the successor employer shall offer such employee continued employment under the terms and conditions established by the successor employer.

§ 9-2303 Right of Recall For Laid-Off Employees at Closed Properties.

(1) A covered employer shall provide employees, and the collective bargaining representative of any employees, a sixty (60) day advance written notice of the effective date of a closure of the property where the employees are employed and the list of laid-off employees. If the covered employer receives less than 60 days notice of the closure, it must provide the required notice and list of laid-off employees to employees and their collective bargaining representative as soon as practicably possible after it learns of the closure. A copy of the notice of closure and list of laid-off employees shall be promptly provided to the Agency, in the manner and form prescribed by the Agency.

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(2) In the event of sale or transfer of the property where closure occurred and after the date of separation of the laid-off employees from the property, the covered employer selling the property shall provide a copy of the written notice and the list of laid-off employees provided under section (1) to the purchaser(s) of the property. Any purchaser of a property where closure occurred that does not receive a list of laid-off employees shall contact the Agency to request a copy of the list. Any purchaser of the property shall maintain the written notice of closure and list of laid-off employees and shall be subject to the same duty to furnish the notice of closure and list of laid-off employees to any successor owner in the event of a subsequent sale or transfer of the property until such time that the laid-off employees' right of recall under this section is satisfied.

(3) A covered employer or successor employer that intends to hire employees due to the re-opening of any part of a property previously closed and where any laid-off employee had previously been employed shall offer each laid-off employee any job position that becomes available at the property for which the laid-off employee is qualified. The offer shall be made in a manner in which the employer entity typically customarily communicates with employees, including e-mail, text message, other electronic communication, and/or postal mail, to the extent that such communications system permits laid-off employees to confirm receipt of the offer and permits covered employers to demonstrate the receipt has been confirmed.

(4) A laid-off employee is qualified for a position if the laid-off employee:

a. held the same or similar position at the property at the time of the laid-off employee's most recent separation from service with the covered employer with whom the laid-off employee was employed at the time of separation; or

b. is qualified for the position with the same training by the covered employer that would be provided to a new employee hired into that position.

(5) The covered employer shall offer positions to laid-off employees who qualify under category (2)(a) of this Section and then to Employees who qualify under category (2)(b). Where more than one laid-off employee is entitled to the offer of a position at the same time, the covered employer shall offer the position to the laid-off employee with the earliest date of hire at the property according to the list of laid-off employees.

(6) A laid-off employee who is offered a position pursuant to this section shall be given no less than 5 days from confirmed receipt of the offer in which to accept or decline the offer. A laid-off employee may accept an offer at any time before the end of the 5-day period. A laid-off employee, upon accepting an offer, will have fourteen 14 days from the expiration of the initial 5-day period to return, unless a different period is mutually agreed upon by the covered employer and laid-off employee.

(7) An Employer that hires someone other than a laid-off employee on the grounds of lack of qualifications shall provide the laid-off employee a written notice within 30 days identifying those hired in lieu of such recall and providing the reasons for such decisions.

(8) The right of recall for any laid-off employee provided under this section shall expire on the date five years after the laid-off employee's most recent date of employment at the property.

§ 9-2304. Enforcement.

(1) Agency Enforcement.

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(a) An employee or other person may file a complaint with the Agency for any violation of this Chapter. The Agency may also conduct an investigation on its own initiative.

(b) The Agency shall maintain as confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of any investigation by the Agency, or otherwise required by law. The Agency shall, to the extent practicable, notify such complainant that the Agency will be disclosing his or her identity prior to such disclosure.

(c) Upon receiving a complaint alleging a violation of this Chapter, or upon its own initiative, the Agency shall investigate alleged violations of this Chapter. The Agency shall have the power to subpoena records and testimony from any party to a complaint. Such records shall be provided to the Agency within thirty (30) days after receipt of the subpoena.

(d) The Agency shall keep complainants reasonably notified regarding the status of their complaint and any resulting investigation and shall notify complainants of any final decision of the Agency, including any mediation result, with respect to the complaint.

(e) Whenever the Agency finds that a violation of this Chapter has occurred, it shall issue to the offending employer a notice of violation and may seek to resolve violations by mediation.

(f) The Agency shall have the power to provide or obtain appropriate relief. Remedies shall include instatement, reinstatement, restoration of hours, other injunctive relief, back pay and benefits, any other damages suffered as a result of the employer's violation of this Chapter, and reasonable attorney's fees and costs.

(2) Civil Enforcement

(a) *The Agency or an* employee displaced or terminated *or denied recall* in violation of this Chapter may bring an action in a Court of competent jurisdiction against the *covered employer,* [awarding authority] the terminated contractor and/or the successor *employer* contractor, jointly or severally, for violations of any obligations imposed under this Chapter and *shall* [may] be awarded:

(1) back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(.1) the average regular rate of pay received by the employee, during the last year of the employee's employment in the same job classification times average hours worked per work day over the past four months; or

(.2) the final regular rate of pay received by the employee at the time of termination times the average hours worked per work day over the past four months; and

(b) *instatement or* reinstatement to *the employee's* [his or her] former position at no less than the last wage rate, with benefits and hours worked per work day, that the employee received.

(2) If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs to the employee as part of the costs recoverable.

(3) This Section shall not be construed to limit an employee's right to bring common law cause of action for

wrongful termination.

(4) Each day a violation continues shall constitute a separate violation.

(5) Any *covered employer* [awarding authority] or *successor employer* [contractor] who knowingly violates this Chapter shall pay penalties per employee per day of violation of fifty dollars ($50) to one hundred dollars ($100).

§ 9-2405 Regulations

The Agency is authorized to coordinate the implementation, administration, and enforcement of this Chapter, and shall promulgate such regulations or guidelines as it may deem necessary for such purposes.

[§ 9-2304] *§ 9-2306*. Notice to Displaced Worker.

(1) English Language Notice.

DATE:

TO: (name of employee)

IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

We have received information that you are employed by (name of *outgoing* [predecessor] contractor) and are currently performing work at (address of property worksite). (Name of *outgoing* [predecessor] contractor) has lost its contract with the owners of (address of *property* [worksite]) and will no longer be providing (security or janitorial or building maintenance or food and beverage or hotel or covered airport services or covered parking services or health care) services as of (last day of predecessor contract).

We are (name of successor [contractor] *employer*) and have been hired by the owners of (address of worksite) to provide the same (security or janitorial or building maintenance *or concierge services or door attendant services* or food and beverage or hotel or covered airport services or covered parking services, or health care) service. We are offering you a job with us for a 90-day probationary period starting (first day of successor contract) to perform the same type of work that you have already been doing for (name of predecessor contractor) under the following terms:

Payrate (per hour): $ _____
Hours per shift: _____
Total Hours Per Week: _____
Benefits: _____

You must respond to this offer within the next ten days. If you want to continue working at (address of worksite) you must let us know by (mm/dd/yyyy - no later than 5 days prior to the expiration of the predecessor contract or 10 days after the date of this letter if the predecessor contract has already expired). If we do not receive your response by the end of business that day, we will not hire you and you will lose your job. We can be reached at (successor contractor phone number).

The Protection of Displaced Contract Workers Ordinance, Chapter 9-2300 of The Philadelphia Code gives you the following rights:

1. You have the right, with certain exceptions, to be hired by our company for the first 90 days that we begin to provide services at (address of worksite).

2. During this 90-day period, you cannot be fired without just cause.

3. If you believe that you have been fired or laid off in violation of this Ordinance, you have the right to sue us and be awarded back pay, attorneys fees and court costs.

FROM: (Name of successor contractor)
(Address of successor contractor)
(Telephone # of successor contractor)
(2) Spanish Language Notice.

FECHA:

PARA: (nombre del trabajador)

INFORMACION IMPORTANTE SOMBRE SU EMPLEO
Hemos recibido información que usted está empleado por (nombre [de la Compañía] *del empleador* anterior) y que actualmente está trabajando en (dirección del lugar de empleo). (Nombre [de la compañía] *del empleador* anterior) ha terminado el termino de su contrato con los dueños de (dirección del lugar de empleo) y no proveerá más (servicios de seguridad o de limpieza o mantenimiento de edificio *o servicios de conserjeria o servicios de portero* o de comida y bebida o servicios de estacionamiento o de servicios de aeropuerto, servicios a hoteles o servicios de salud) servicios desde el (el último dia de contrato de la compañia anterior).
Somos (nombre [de la] del nuevo *empleador*) y hemos sido contratados por los dueños de (dirección del lugar de trabajo) para proveer el mismo (seguridad o de limpieza o mantenimiento de edificio *o servicios de conserjeria o servicios de portero* o de comida y bebida o servicios de estacionamiento o de servicios de aeropuerto, servicio de hoteles o servicios de salud) servicio. Le estamos ofreciendo un empleo con nosotros con 90 dias de periodo probatorio comenzando el (primer dia de contrato de la compañia nueva) desempeñando el mismo tipo de trabajo que ha estado haciendo para (nombre de la compañia anterior) bajo los siguiente tèrminos:

Salario (por hora): $ _____
Horas por dias: _____
Total de horas por semana: _____
Beneficios: _____

Usted deberá de contestar nuestra oferta entre los próximos diez dias. Si usted quiere continuar trabajando en (dirección del lugar de trabajo) deberá de dejárnoslo saber no más tardar del (mes/dia/año) - a no más tardar de 5 dias antes de la expiración del contrato de la compañia anterior o 10 dias después de haber recibido esta carta si el contrato de la compañia anterior ya está expirado). Si no recibimos su contestación ese dia al terminar el dia laboral no le contrataremos y usted perderá su empleo. Puede comunicarse con nosotros (numero telefónico de la compañia nueva).

La Ordenanza de Protección para Trabajadores Desempleados bajo Contrato, Capitulo 9-2300 del Código de Filadelfia le da los siguientes derechos:

1. Usted tiene el derecho, con ciertas excepciones, de ser contratado por nuestra compañia por los primeros 90

dias en que comencemos a dar servicios en (dirección del lugar de empleo).

2. Durante este periodo de 90 dias usted no puede ser despedido sin causa [justificada].

3. Si usted cree que ha sido despedido o le han dado de baja en violación a esta Ordenanza usted tiene el derecho de demandarnos y recibir su salario, honorarios de abogado y costo de corte.

DE: (Nombre de la Compañia nueva bajo contrato)
(Dirección de la Compañia nueva bajo contrato)
(Teléfono # de la Compañia nueva bajo contrato)