

Legislation Text

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Adding a new Chapter 9-5400 of The Philadelphia Code, entitled "Retention of Hotel Workers," to require that hotel employees receive notice of changes in hotel ownership or control, and providing related employment protections, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-5400. RETENTION OF HOTEL WORKERS

§ 9-5401. *Definitions.*

The following definitions shall apply in this Chapter:

(1) "Change in Control" means any sale, assignment, transfer, contribution, or other disposition of a hotel, or of all or substantially all of the assets used in the operation of a hotel, or a discrete portion of a hotel, that continues to be operated as a hotel following disposition.

(2) "Eligible Employee" means any individual who performs work at a hotel: (a) whose primary place of employment is a Hotel that undergoes a Change in Control subject, whether employed or contracted to perform work functions directly by the Incumbent Hotel Employer, or by a person or entity that has contracted with the Incumbent Hotel Employer to provide services at the Hotel; and (b) whose Length of Service with the Incumbent Hotel Employer is six months or more in the time period prior to the execution of the Transfer Document. "Eligible Employee" does not include a managerial, supervisory, or confidential employee.

(3) "Employment Commencement Date" means the date on which an Eligible Employee who is retained by a Successor Hotel Employer pursuant to this Chapter commences work for the Successor Hotel Employer.

(4) "Hotel" means a residential building, and ancillary premises, that is designated or used for lodging and other related services for the public, including but not limited to food and beverage preparation and service and meetings, as well as tradeshows and conventions, and contains 50 or more guest rooms.

(5) "Incumbent Hotel Employer" means a person or entity that owns, controls, or operates a Hotel prior to a Change in Control.

(6) “Length of Service” means the total of all periods of time during which an Employee has been in active service, including periods of time when the worker was on leave.

(7) “Successor Hotel Employer” means a person or entity that owns, controls, and/or operates a Hotel after a Change in Control.

(8) “Transfer Document” means the purchase agreement or other document(s) that create a binding commitment to effect a Change in Control.

§ 9-5402. *Incumbent Hotel Operators and Employee Notice Upon Change in Ownership.*

(1) An Incumbent Hotel Employer shall post written notice of a Change in Control at a hotel within five business days following the execution of a Transfer Document. Notice shall be posted in a conspicuous place at the hotel so as to be readily viewed by eligible employees and prospective applicants for employment. Notice shall remain posted during any closure of the Hotel and for six months after the hotel begins operation and is open to the public under the Successor Hotel Employer.

(2) Notice shall include the name of the Incumbent Hotel Employer and its contact information, the name of the Successor Hotel Employer and its contact information, and the effective date of the Change in Control.

(3) If the Hotel is closed or substantially reduced in operations at the time of the execution of the Transfer Document, the Incumbent Hotel Employer shall send Notice to all Eligible Employees to their last known physical address, and by email and text message to the extent the Incumbent Hotel Employer possesses such information.

(4) An Incumbent Hotel Employer shall, within fifteen calendar days after execution of a Transfer Document, provide to the Successor Hotel Employer the name, address, date of hire, and occupation classification of each Eligible Employee.

§ 9-5403. *Successor Hotel Employer’s Responsibilities Upon Change in Ownership.*

(1) A Successor Hotel Employer shall maintain a preferential hiring list of Eligible Employees, as identified by the Incumbent Hotel Employer as set forth in Subsection 9-5202(4) or as the Successor otherwise obtains information regarding such employees, and shall be required to extend employment opportunities for all positions established to the individuals on such list for a period beginning upon the execution of the Transfer Document and continuing for six months after the hotel is operating and open to the public under the Successor Hotel Employer. Such offer shall be in writing and shall remain open for at least ten business days from the date of the offer.

(2) Such offer shall be made regardless whether the Successor Hotel Employer hires directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity.

(3) If the Successor Hotel Employer extends an offer of employment to an Eligible Employee, the

Successor Hotel Employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of offer and occupation classification of each Eligible Employee.

(4) If the Successor Hotel Employer determines, within the six-month period established under subsection (1) above, that it requires fewer employees than were required by the Incumbent Hotel Employer, the Successor Hotel Employer shall first offer available positions to Eligible Employees in the same occupational classification with the greatest Length of Service with the Incumbent Hotel Employer.

(5) Successor Hotel Employer shall retain each Eligible Employee hired pursuant to this Chapter for no fewer than 90 calendar days following the Eligible Employee's Employment Commencement Date and shall not discharge such employee without cause.

(6) At the end of such 90-day period, the Successor Hotel Employer shall perform a written performance evaluation for each retained Eligible Employee. The Successor Hotel Employer shall retain a record of the written performance evaluation period of no fewer than three years.

§ 9-5404. Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce the compensation of, or otherwise take any adverse employment action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in any proceedings pursuant to this Chapter, or for opposing any practice proscribed by this Chapter. This Section shall also apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter.

§ 9-5405. Civil Actions and Penalties.

(1) This Chapter may be enforced in a civil action in a court of competent jurisdiction in an action brought by one or more Eligible Employees.

(2) If a court finds that an Employer has violated this chapter, the court may enjoin the employer from engaging in such violation, and order such affirmative relief as may be appropriate, which may include, but is not limited to:

- (a) back pay, including the value of benefits lost, for each day during which the violation continues;*
- (b) hiring of the employee at no less than the last wage rate and benefits;*
- (c) other compensatory damages as appropriate; and*
- (d) reasonable attorney's fees and costs.*

(3) Violations of this Chapter shall be subject to penalties per Employee per day of violation of up to \$1,000.

§ 9-5406. *Implementing Regulations.*

(1) The Department of Labor may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter.

§ 9-5407. *Exemption for Collective Bargaining Agreement.*

(1) All of the provisions of this Chapter, or any part of the Chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms.

SECTION 2. If any provision of this Section 9-5400 or application thereof to any persons or circumstances is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalidated provision or application and to this end the provisions of the ordinance are declared severable.

SECTION 3. This Ordinance shall take effect January 1, 2021.

Explanation:

Italics indicate new matter added.