

Legislation Text

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Adding a new Chapter 9-5300 to The Philadelphia Code, entitled “Travel and Hospitality Worker Recall and Retention,” to require that certain laid-off employees in certain hospitality and travel-related industries are offered job positions as they become available, 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 to read as follows:

TITLE 9. REGULATIONS OF BUSINESSES, TRADES, AND PROFESSIONS

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CHAPTER 9-5300. TRAVEL AND HOSPITALITY WORKER RECALL AND RETENTION

§ 9-5301. *Definitions.*

The following definitions shall apply to this Chapter:

(1) *“Airport” means the Philadelphia International Airport.*

(2) *“Airport Hospitality Operation” means a business enterprise that prepares, delivers, inspects, or provides any other service in connection with the preparation of, food or beverage for aircraft crew or passengers at the Airport, or that provides food and beverage, retail, or other consumer goods or services to the public at the Airport. The term airport hospitality operation does not include an air carrier certificated by the Federal Aviation Administration.*

(3) *“Covered Enterprise” means an Airport Hospitality Operation, a Hotel, or an Event Center.*

(4) *“Customary Seasonal Work” means work performed by an employee at an event center during approximately the same part of each calendar year, such as summer or winter.*

(5) *“Employee” means any person employed or permitted to work at or for a Covered Enterprise within the geographic boundaries of the City of Philadelphia, who is required under state or federal law to be paid at an overtime rate for hours in excess of a maximum number per workweek or Work Week, including but not limited to full-time employees, part-time employees, and seasonal and temporary workers; or any person employed or permitted to work at or for a Covered Enterprise who provides food and beverage service and makes more than 50% of income from service charges or commission. The person's job duties must involve the provision of retail trade services, food services or hospitality services at a Covered Employer, as further defined*

by regulation. An alleged Employer bears the burden of proof that the individual is, under applicable law, an independent contractor or an “exempt” Employee rather than an Employee of the alleged Employer.

(6) “Employer” means as defined in §9-4601(6) (definition of “Employer”).

(7) “Event Center” means one or more structures containing more than 15,000 seats, including ancillary premises, that is used for the purposes of public performances, sporting events, or similar events, and includes concert halls, stadiums, sports arenas, and convention centers. The term “event center” 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.

(8) “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 tradeshow and conventions, and contains 50 or more guest rooms.

(9) “Laid-off Employee” means any Employee who was employed by the Employer for six months or more in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred between January 31, 2020 and January 31, 2022, and was due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason. A Laid-off Employee also means any Employee who was employed at an Event Center for 12 weeks or more in the 12 months preceding January 31, 2020 and who was not scheduled by the Employer for Customary Seasonal Work between January 31, 2020 and January 31, 2022 due to the reasons set forth in the preceding sentence.

(10) “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 or vacation.

§ 9-5302. Right of Recall.

(1) An Employer shall offer each Laid-Off Employee any job position which becomes available for which the Laid-Off Employee is qualified. The offer shall be made in a manner in which the Employer typically customarily communicates with Employees, including e-mail, text message, other electronic communication, or postal mail, to the extent that such communication system permits Employees to confirm receipt of the offer and permits Employers to demonstrate that receipt has been confirmed.

(2) A Laid-Off Employee is qualified for a position if the Employee:

(a) held the same or similar position at the Covered Enterprise at the time of the Employee’s most recent separation from active service with the Employer; or

(b) is qualified for the position with the same training by the Employer that would be provided to a new Employee hired into that position.

(3) The 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 Employee is entitled to

the offer of a position at the same time, the Employer shall offer the position to the Laid-Off Employee with the greatest length of service for the Employer.

(4) A Laid-Off Employee who is offered a position pursuant to this Chapter shall be given no less than 5 days from confirmed receipt of the offer in which to accept or decline the offer. An Employer may make simultaneous, conditional offers of employment to Laid-Off Employees, with final offer of employment conditioned on application of the priority system set forth in this Section. An Employee may accept an offer at any time before the end of the 5-day period. An employee, upon accepting an offer, will have 7 days from the expiration of the initial 5-day period to return, unless a different period is mutually agreed upon by the Employer and Employee. An Employee may also commence employment after this 12-day period if mutually agreed upon by the Employer and Employee.

(5) In the event that an Employer requires work to be fulfilled sooner than the period required by subsection 9-5032(4), the Employer may, before the period has elapsed, immediately fill a position with a Laid-Off Employee who accepts a conditional offer of employment, but shall comply with the priority system set forth in this Section for permanently filling the position once the period has elapsed, as further defined by regulation.

(6) 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.

(7) A change in ownership of the Employer, a change in form of corporate organization, or a change in operating location since the time of Employee layoff shall not limit application of the requirements of this Chapter if:

(a) The ownership of the Employer changed, including through purchase of substantially all of the assets of the Employer, but the enterprise is conducting the same or similar operations as before January 31, 2020;

(b) The form of organization of the Employer changed after January 31, 2020; or

(c) The Employer relocates the operations at which a Laid-Off Employee was employed before January 31, 2020 to a different location within the City.

§ 9-5303. Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce in compensation, 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 proceedings related to this Chapter, for opposing any practice proscribed by this Chapter. This Section shall also apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

§ 9-5304. Civil Actions and Penalties.

(1) One or more employees, upon submitting to the Department of Labor for review and receiving the

Department's certification of a determination of reasonable cause to go forward, may bring an action in a court of competent jurisdiction against the Employer for violations of this Chapter.

(2) If the court finds that the 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, 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 worker during the last six months of the Employee's employment in the same job classification times the average hours worked per work day by the Employee during the last six months of the Employee's employment in that job classification; or

(.2) the final regular rate of pay received by the Employee at the time of separation times the average hours worked per work day by the Employee during the last six months of the Employee's employment in that job classification.

(b) hiring of the Employee at no less than the last wage rate and benefits, and hours worked per work day, that the worker received;

(c) other compensatory damages as appropriate;

(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.

(4) If it is established that a laid-off Employee exercised rights under this Chapter or alleged in good faith that the employer was not complying with this Chapter, and the employer thereafter refused to employ, terminated, demoted or otherwise took adverse action against the Employee, and that action took place within sixty (60) days after such exercise, then a rebuttable presumption shall arise that the Employer's action was taken violation of 9-5302. The employer must prove that the true and entire reason for the action was a legitimate business reason. The plaintiff may rebut the employer's asserted legitimate business reason by showing that it was, in fact, a pretext.

§ 9-5305. Regulations.

The Department of Labor may promulgate regulations for the purpose of implementation of this Chapter.

§ 9-5306. No Preemption of Higher Standards.

The Chapter is intended to ensure minimum labor standards and does not preempt or prevent the application of any superior employment standards or limit an Employee's right to bring any form of legal action.

§ 9-5307. Sunset Provision.

The provisions of Section 9-5300 shall expire on December 31, 2025.

SECTION 2. If any provision of this Section 9-5300 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.

Explanation:

Italics indicate new matter added.