

1 employed before the pandemic, as their enterprises resume
2 operation and restore their workforces as they are able. Some
3 enterprises have been transferred to new ownership or relocated
4 after employees were laid off. These changes should not defeat
5 the right of employees to return to their former work.

6 § -2 **Definitions.** As used in this chapter, unless the
7 context otherwise requires:

8 "Compensation" means an employee's average weekly earnings
9 for the twelve-month period immediately preceding the employee's
10 last day of active employment with an employer, including wages
11 or salary, payments to an employee while on vacation or on
12 leave, allocated or declared tip income, bonuses or commissions,
13 contributions or premiums paid by the employer for fringe
14 benefits, overtime or other premium payments, and allowances for
15 expenses, uniforms, travel or education.

16 "Director" means the director of labor and industrial
17 relations.

18 "Employer" means any person, including a corporate officer
19 or executive, who directly or indirectly or through an agent or
20 any other person, including through the services of a temporary
21 service or staffing agency or similar entity, conducts an



1 enterprise and employs or exercises control over the wages,
2 hours, or working conditions of any employee.

3 "Employment site" means the principal physical place where
4 a laid-off employee performed the predominance of the worker's
5 duties prior to being laid off.

6 "Enterprise" means any hotel, apartment hotel, motel,
7 restaurant, institutional food service, or event center where
8 food is provided, in the State that employs five or more
9 employees.

10 "Hotel" means any hotel, apartment hotel, or motel.

11 "Laid-off employee" means any employee who was employed by
12 the employer for six months or more in the twelve months
13 preceding the employee's most recent separation from active
14 service and the separation was due to government shutdown
15 orders, lack of business, a reduction in force or other
16 economic, non-disciplinary reason.

17 "Length of service" means the total of all periods of time
18 during which an employee has been in active service, including
19 periods of time when the employee was on leave or on vacation.



1 "Occupancy" means rooms sold, including rooms that are
2 occupied but for which the guest is not charged, divided by
3 rooms available for sale.

4 "Person" means any natural person, joint venture, joint
5 stock company, partnership, association, club, company,
6 corporation, business trust, or organization of any kind.

7 § -3 **Right of recall.** (a) A hotel employer shall
8 recall to active employment the same number of employees in
9 substantially the same classifications as the hotel employer's
10 active workforce on March 1, 2020, adjusted by the ratio the
11 occupancy of the hotel bears to one hundred per cent. A hotel
12 employer shall have every occupied guest room cleaned and
13 sanitized every day and shall employ enough housekeeping
14 employees to ensure that this standard is met.

15 (b) An employer shall offer its laid-off employees, in
16 writing, to their last known physical address, email address,
17 and phone number all job positions that become available after
18 the effective date of this chapter for which the laid-off
19 employee is qualified. A laid-off employee is qualified for a
20 position if the employee meets at least one of the following in
21 descending order of priority:



1 (1) The employee held the same or similar position at the
2 enterprise at the time of the employee's most recent
3 separation from active service with the employer; or

4 (2) The employee is or can be qualified for the position
5 with the same training that would be provided to a new
6 employee hired into that position.

7 Where more than one laid-off employee is qualified for a
8 position, the employer shall offer the position to the employee
9 with the greatest length of service at the employment site.

10 (c) To qualify as a right of recall under this section, a
11 laid-off employee shall be offered a position in the same
12 classification or job title with substantially the same
13 employment site, duties, compensation, benefits, and working
14 conditions as applied to the laid off employee immediately
15 before March 21, 2020.

16 (d) A laid-off employee who is offered a position pursuant
17 to this section shall be given no less than ten days to accept
18 or decline the offer.

19 (e) An employer that declines to recall a laid-off
20 employee on the grounds of lack of qualifications and hires
21 someone other than the laid-off employee shall provide the



1 laid-off employee a written notice within thirty days
2 identifying those hired in lieu of the recall, along with all
3 reasons for the decision and all demographic data the employer
4 has about the new hires and laid-off employees rejected.

5 (f) Notwithstanding any other law to the contrary, laid-
6 off employees recalled under this section shall be permitted to
7 work for at least thirty workdays unless there is just cause for
8 their termination.

9 (g) The requirements of this chapter shall apply to any
10 employer, including in the following circumstances:

11 (1) The ownership of the employer changed after a laid-off
12 employee was laid off, but the enterprise is
13 conducting the same or similar operations as before
14 March 21, 2020;

15 (2) The form of organization of the employer changed after
16 March 21, 2020;

17 (3) Substantially all of the assets of the employer were
18 acquired by another entity that conducts the same or
19 similar operations using substantially the same
20 assets; or



1 (4) The employer relocates the operations at which a laid-
2 off employee was employed before March 21, 2020, to a
3 different employment site within twenty-five miles of
4 the original employment site.

5 § -4 **Retaliatory action prohibited.** (a) No employer
6 shall refuse to employ, terminate, reduce in compensation, or
7 otherwise take any adverse action against any person for seeking
8 to enforce their rights under this chapter by any lawful means,
9 participating in proceedings related to this chapter, opposing
10 any practice proscribed by this chapter, or otherwise asserting
11 rights under this chapter. This section shall apply to any
12 employee who mistakenly, but in good faith, alleges
13 noncompliance with this chapter.

14 (b) An employer refusing to employ, terminating, or taking
15 any other adverse action against any employee who has exercised
16 their rights under this chapter within sixty days preceding the
17 refusal, termination, or other adverse action shall provide to
18 the employee at or before the time of the refusal, termination,
19 or other adverse action a detailed written statement of the
20 reason for the refusal, termination, or other adverse action,



1 including all the facts substantiating the reason and all facts
2 known to the employer that contradict the substantiating facts.

3 § -5 **Enforcement.** (a) This chapter may be enforced in
4 a civil action in any court of competent jurisdiction brought by
5 one or more employees for and in behalf of oneself or themselves
6 and other employees similarly situated, or the employee or
7 employees may designate an agent or representative to maintain
8 action for and in behalf of all employees similarly situated, or
9 brought in the name of the people of the State by the attorney
10 general, director of labor and industrial relations, or a county
11 prosecutor.

12 (b) If the court finds that the employer has violated this
13 chapter, the court may enjoin the employer from engaging in such
14 violation, and order such affirmative action as may be
15 appropriate, which may include but is not limited to
16 reinstatement or hiring of employees, with or without back pay
17 including fringe benefits, or any other equitable relief as the
18 court deems appropriate. Interim earnings or amounts earnable
19 with reasonable diligence by the person or persons discriminated
20 against shall operate to reduce the back pay otherwise
21 allowable. Before interim earnings are deducted from lost



1 wages, there shall be deducted from the interim earnings any
2 reasonable amounts expended by the employee in searching for,
3 obtaining, or relocating to new employment. The court may order
4 compensatory and punitive damages if the court finds that the
5 employer engaged in the violation with malice or with reckless
6 indifference to the requirements of this chapter, and treble
7 damages on behalf of an employee terminated in violation of
8 section -4.

9 (c) If it is established that a laid-off employee
10 exercised rights under this chapter or alleged in good faith
11 that the employer was not complying with this chapter, and the
12 employer thereafter refused to employ, terminated, demoted, or
13 otherwise took adverse action against the employee, and that
14 action took place within sixty days after such exercise, then a
15 rebuttable presumption shall arise that the employer's action
16 was taken in violation of section -4. The employer shall
17 prove that the true and entire reason for the action was a
18 legitimate business reason. The plaintiff may rebut the
19 employer's asserted legitimate business reason by showing that
20 it was, in fact, a pretext.



1 (d) If the plaintiff prevails in any legal action taken
2 pursuant to this chapter, the court shall award reasonable
3 attorney's fees, expert witness fees, and costs as part of the
4 costs recoverable.

5 (e) The director shall create a system for receiving
6 information about claimed violations of this chapter. The
7 system shall enable the submission of information either in
8 writing or electronically by any person purporting to have
9 knowledge of the violation. The director shall retain all
10 information for a minimum of two years after submission and
11 shall distribute promptly to the other public officers
12 authorized to enforce this chapter information that shows
13 probable cause to believe that one or more violations may have
14 occurred within their respective jurisdictions.

15 § -6 **Collective bargaining agreements.** All provisions
16 of this chapter, or any part of this chapter, may be waived in a
17 bona fide collective bargaining agreement; provided that the
18 waiver is explicitly set forth in the agreement in clear and
19 unmistakable terms. Unilateral implementation of terms and
20 conditions of employment by either party to a collective
21 bargaining relationship shall not constitute, or be permitted,



1 as a waiver of all or any part of the provisions of this
2 chapter.

3 § -7 **No waiver of rights.** Except for bona fide
4 collective bargaining agreements, any waiver by a worker of any
5 or all the provisions of this chapter shall be deemed contrary
6 to public policy and shall be void and unenforceable. Any
7 attempt by an employer to have a worker waive rights given by
8 this chapter shall constitute a violation of this chapter. This
9 chapter may be enforced regardless of any waiver or release
10 executed by a worker prior to enactment of this chapter unless
11 barred from doing so by another provision of law. Any private
12 agreement by which an intended layoff or termination for
13 economic reasons is relabeled a resignation or quit shall be
14 disregarded under this chapter to the fullest extent permitted
15 by law.

16 § -8 **Coexistence with other available relief for**
17 **deprivations of protected rights.** The provisions of this
18 chapter shall not be construed as limiting any person's right to
19 obtain any other relief to which they may be entitled at law or
20 in equity. Any standards relating to recall to work established
21 by any applicable federal, state, county law, regulation, or



1 ordinance that are more favorable to employees than the minimum
2 standards applicable under this chapter shall not be affected by
3 this chapter, and those other laws, regulations, and ordinances
4 shall be in full force and effect and may be enforced as
5 provided by law.

6 § -9 **Severability.** If any provision of this chapter, or
7 the application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of this chapter that can be given effect without
10 the invalid provision or application, and to this end the
11 provisions of this chapter are severable."

12 SECTION 2. This Act shall take effect upon its approval.

13

INTRODUCED BY: 
JAN 22 2021



H.B. NO. 042

Report Title:

Hotels; Right of Recall; Employment

Description:

Requires a hotel employer to recall the same number of employees in substantially the same classification as the employer's active workforce as of 3/1/2020. Requires certain laid-off employees to be offered job positions as they become available, under certain terms and conditions. Prohibits an employer from retaliatory actions against employees who exercise their right to recall. Establishes the rights of employers and employees under the right of recall law.

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