

Ordinance #1904

Enacted on 12/21/2020

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ORDINANCE AUTHORIZING THE MAYOR TO PROTECT JOB SECURITY FOR HOSPITALITY EMPLOYEES DURING THE COVID-19 PANDEMIC BY ESTABLISHING A WORKER'S RIGHT TO RECALL HOTEL EMPLOYEES AND ENSURING THAT NEW HAVEN HOTEL EMPLOYERS HONOR THEIR FORMERLY LAID OFF EMPLOYEES BY RETURNING THEM TO WORK IN THEIR PREVIOUSLY HELD POSITIONS OR IN NEW POSITIONS AVAILABLE WITH QUALIFIED TRAINING.

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WHEREAS, COVID-19 (also known as the "Coronavirus Disease") is a highly contagious respiratory disease which has now spread across the globe, with multiple confirmed cases in Connecticut, including the City of New Haven; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, on March 12, 2020 the Honorable Ned Lamont, Governor of the State of Connecticut declared a civil preparedness and public health emergency based on the threat to public health caused by COVID-19; and

WHEREAS, on March 13, 2020, the Honorable Justin Elicker, Mayor of New Haven, pursuant to Connecticut General Statutes Sections 28-8a(a), 28-1(8), and 28-22, and Chapter 11, Section 11-23 et seq. of the Code of General Ordinances of the City of New Haven, declared a civil preparedness and public health emergency based on the threat to the public health caused by COVID-1.; and

WHEREAS, the World Health Organization announced on March 11, 2020, that it had characterized COVID-19 as a pandemic; and

WHEREAS, the City of New Haven is vested with police powers to make and enforce regulations to promote the peace, safety, good government and welfare of the municipality and its inhabitants pursuant to Connecticut General Statutes Sec. 7-148(7)(H)(xiii); and

WHEREAS, since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused hotel employers to discharge, layoff and furlough workers at a massive scale; and

WHEREAS, many thousands of hotel workers have been separated from their jobs already during the pandemic; and

WHEREAS, while federal, state, and local programs, and efforts by some of the New Haven's non-profits, have provided a modicum of support to New Haven's hotel workers in the short-term, what these workers need most to preserve and promote their general welfare is the promise of a return to their previous jobs as the pandemic recedes and business returns; and

WHEREAS, ensuring that New Haven's hotel employers honor their former employees' right to return will benefit the general welfare of the City of New Haven, will benefit the City by speeding the transition back to a functioning labor market, and will mitigate the damage to the New Haven's economy;

NOW, THEREFORE, THE New Haven Board of Alders DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 38 is added to the New Haven Code of General Ordinances as follows:

Sec. 38-1. - Title.

This Chapter shall be known as the "Worker Right to Recall" Ordinance.

Sec. 38-2. - Definitions.

The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

A. "Covered Enterprise" means a Hotel as defined below.

B. "Employee" means any individual who in a particular week performs at least two hours of work for an employer.

C. "Employer" means any Person, including a corporate officer or executive, who 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, owns or operates a Covered Enterprise within the this city and employs or exercises control over the wages, hours or working conditions of any Employee.

D. "Hotel" means a residential building that is designated or used for lodging and other related services for the public, and containing 50 or more guest rooms, or suites of rooms (adjoining rooms do not constitute a suite of rooms). "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building. The number of guest rooms, or suites of rooms, shall be calculated based on the room count on the opening of the hotel or on December 31, 2019, whichever is greater.

E. "Laid-off Employee" means any Employee who was employed by the employer for six months or longer in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred after January 31, 2020, and was due to a government order, lack of business, a reduction in force or other, economic, non-disciplinary reasons.

F. "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 Employee was on leave or on vacation.

G. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

Sec. 38-3. - Right to Recall.

(a) An Employer shall offer its Laid-Off Employees in writing, by registered mail to their last known physical address, and by email and text message to the extent the Employer possesses such information, all job positions which become available after this Chapter's effective date for which the Laid-Off Employees are qualified. A Laid-Off Employee is qualified for a position if the Laid-Off Employee:

- (1) held the same or similar position at the Covered Enterprise at the time of the Laid-Off Employee's most recent separation from active service with the Employer; or
- (2) is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.

The Employer shall offer positions to Laid-Off employees in an order of preference corresponding to categories (1) and then (2) in the preceding sentence. Where more than one Employee is entitled to preference for a position, the Employer shall offer the position to the Laid-Off Employee with the longest length of service for the Covered Enterprise.

- (b) A Laid-Off Employee who is offered a position pursuant to this Chapter shall be given no less than ten (10) days from the date of receipt of the mailed 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 subsection (a) above.
- (c) An Employer that declines to recall a Laid-Off Employee on the grounds of lack of qualifications and instead hires someone other than a Laid-Off Employee shall provide the Laid-Off Employee a written notice thereof within thirty (30) days identifying all reasons for its decision to hire someone other than a Laid-Off Employee.
- (d) The requirements of this Chapter also apply in the following circumstances:
  - (1) The ownership of the Employer changed after the separation from employment of a Laid-Off Employee, but the Covered Enterprise is conducting the same or similar operations as before January 31, 2020;
  - (2) The form of organization of the Employer changed after January 31, 2020;
  - (3) Substantially all of the assets of the Employer were acquired by another entity which conducts the same or similar operations using substantially the same assets;
  - (4) The Employer relocates the operations at which a Laid-Off Employee was employed before January 31, 2020 to a different location within the city; or
  - (5) Any combination of the circumstances described in paragraphs (1) through (4).

#### Sec. 38-4. - Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse 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, or for otherwise asserting rights under this chapter. This Section shall also apply to any employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

#### Sec. 38-5. - Enforcement.

- (a) This chapter may be enforced in a civil action in the *Superior Court* in the Judicial District of New Haven, or another court of competent jurisdiction, brought by one or more employees for and in behalf of himself/herself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain a civil action for and on behalf of all employees similarly situated.
- (b) If the court finds by a fair preponderance of the evidence that the employer has violated this chapter, the court may enjoin the employer from engaging in such violation, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement

or hiring of employees, with or without back pay including fringe benefits, or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the complaining laid-off employee(s) against shall operate to reduce the back pay otherwise allowable. Before interim earnings are deducted from lost wages, the employee shall deduct from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment. The court may also order compensatory and punitive damages if the court finds that the employer engaged in the violation with malice or with reckless indifference to the requirements of this chapter, and treble damages on behalf of an employee terminated in violation of Section 38-4.

(c) If it is established that a laid-off employee exercised rights under this chapter or alleged erroneously but 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 in violation of Section 38-4. 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.

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

#### Sec. 38-6. - Regulations.

The Board of Alders of the City of New Haven may promulgate and amend rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this Chapter.

#### Sec. 38-7. - Relationship to employment contracts and agreements.

This Chapter applies to all employees as defined herein regardless whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Nothing in this Ordinance shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for employees than are afforded by this Ordinance.

#### Sec. 38-8. - Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter, which shall remain in full force and effect. The Board of Alders hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

Sec. 38-9. - Report. On or before January 31, 2022, at the request of the Board of Alders, the administration shall report on the effectiveness of this Chapter in promoting employment stability and shall advise the Board of Alders on the need for further action.