



March 26, 2020

The Honorable Nury Martinez  
 Los Angeles City Council President  
 200 N Spring Street, Suite 470  
 Los Angeles, CA 90012

**SUBJECT: Right to Recall Workers Ordinance; (Council File: 20-0147-s15) - OPPOSE**

Dear Council President Martinez,

The undersigned city and Los Angeles regional business groups commend the work and dedication by the Los Angeles City Council to slow the spread of COVID-19 and the efforts to provide relief for residents and businesses.

While we appreciate the City Council withdrawing its efforts to impose a policy in which workers would be discharged in order of seniority, the business community still has concerns with the proposed Right to Recall Workers ordinance, especially at a time when many businesses are struggling to survive.

The Right to Recall Workers Ordinance would:

- Require businesses that have discharged employees to recall employees based on seniority rather than skills, competence, specific employer needs or legitimate pay scale considerations.

- Require a 10-day waiting period after a business has recalled an employee in which the employee would need to accept or decline the offer.
- Create a rebuttable presumption that any termination which occurred on or after March 4, 2020, was due to a non-disciplinary action.
- Not provide exemptions for first responders, creating a disastrous effect on Los Angeles' ability to combat COVID-19.
- Provide an exemption for Collective Bargaining Agreement.
- Make businesses responsible for damages suffered by the discharged employee.
- Be in effect until March 4, 2022.

Given the global health crisis we are facing, businesses throughout Los Angeles have been doing their best to continue operating and generate enough revenue to avoid going out of business. These businesses have also adjusted their policies in order to retain as many of their workers during these challenging times. However, the proposed Right to Recall ordinance would present a number of additional challenges for businesses during this economic crisis, eliminating flexibility that businesses need to survive and ultimately preserve jobs and remain in their communities over the long term.

Requiring businesses to recall employees based on seniority would make operating a business impossible during this public health and economic crisis. This requirement would undoubtedly worsen staffing needs, as businesses would be required to wait 10 days after a recall offer has been made to an employee before being able to offer the position to another worker. Requiring a recall based on seniority also hurts newer skilled workers who were hired for moderate to high-level jobs prior to the COVID-19 crisis as they would remain without a job. Several young workers who are just starting their careers would continue to find themselves in a situation where they are unable to pay for rent, food and other essential needs.

Some business owners have already needed to make tough decisions for their business due to the financial crisis, which was caused by the COVID-19 crisis. Creating a rebuttable presumption for any termination which occurred on or after March 4, 2020 would mean any business that has already made an economic decision would be subject to lawsuits. This is clearly a just cause termination ordinance as business owners would need to go to court to prove a worker was terminated for cause, which means an employer would pay high legal expenses.

At a time when many businesses are facing financial hardships, opening the door to lawsuits would contradict efforts to provide relief for businesses. Moreover, this ordinance has a no waiver section, which means that no settlements can be met, no separation agreements for consideration can be entered into and all disciplinary terminations will end in litigation. This will cost local businesses millions of dollars as most Employment Practice Liability Insurance have a \$25,000 deductible per claim.

The two-year effective date of this ordinance is excessive and could go well beyond this crisis. We would recommend the ordinance be effective until December 31, 2020 to be consistent with the other urgency clauses being considered by the City Council. Existing laws prevent discrimination of all types and with a wide myriad of classes, which are protected. So long as companies comply with those important societal laws there should be no reason to dispense with the time-honored doctrine of "at-will employment" and permitting employment decisions to be based on the legitimate business judgment of a business owner.

Furthermore, there are numerous businesses that are deemed essential during this crisis that should be exempted. Hospitals having to wait 10 days to fill a position could mean the difference between life and death for many Angelenos.

For employers subject to collective bargaining agreements, such agreements specify procedures for layoffs and recalls. The current COVID-19 crisis makes it impossible for employers and unions to meet in order to affirmatively waive out of the ordinance. As such, the ordinance would put companies that are governed by collective agreements in direct conflict with those agreements, which have been negotiated and agreed upon. Employers would need to choose whether to follow the collective bargaining agreements and risk violating the provisions of the ordinance, or violate the provisions of their collective bargaining agreements and risk the filing of grievances and requests for arbitration. Both of these options would create a significant cost for employers who are struggling to maintain business continuity and resilience during this emergency.

Consequently, including punitive damages for violation of this ordinance is just overkill and will additionally overburden businesses in their recovery. As businesses throughout Los Angeles are suffering during this crisis, some of which have already shuttered permanently, the City must act to ensure their survival.

We urge you to oppose the proposed Right to Recall Workers ordinance; and oppose any policy that seeks to preempt a company's own business judgment, and simultaneously binds the hands of employers during this most troubling and unprecedented crisis.

Thank you for your consideration on this issue.

Sincerely,

Building Owners and Managers Association of Greater Los Angeles (BOMA)  
Central City Association (CCA)  
Greater San Fernando Valley Chamber of Commerce  
Hollywood Chamber of Commerce  
Industry Business Council  
Long Beach Area Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Los Angeles Business Council  
Los Angeles County Business Federation (BizFed)  
National Association of Industrial and Office Properties (NAIOP)  
Torrance Area Chamber of Commerce  
United Chamber of Commerce  
Valley Industry & Commerce Association (VICA)  
West Los Angeles Chamber of Commerce  
Wilmington Chamber of Commerce

*CC: Los Angeles City Council Members*