



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Draft Ordinance Supplementing
Senate Bill 93

DATE: May 6, 2021

COUNCIL DISTRICT: Citywide

COUNCIL DIRECTION

On March 21, 2021 the Rules and Open Government Committee directed the City Attorney's Office to draft a "Travel and Hospitality Worker Return Together" ordinance for the City Council to consider at its April 13, 2021 meeting. The direction was for the ordinance to require certain employers in the travel and hospitality sector of the economy to offer reemployment to a worker laid off due to the COVID-19 pandemic if the employer was hiring for the same or a substantially similar job formerly held by the laid off worker.

In accordance with the Committee's direction, the City Attorney's Office provided a draft "Travel and Hospitality Worker Return Together" ordinance for Council's consideration at its April 13, 2021 meeting. On April 13, 2021 Council deferred consideration of the draft ordinance under Orders of the Day to April 27, 2021.

On April 16, 2021, Governor Gavin Newsom signed into law Senate Bill 93. Like the ordinance that the Committee directed our office to prepare, Senate Bill 93 requires certain employers in the travel and hospitality sector of the economy to offer reemployment to a worker laid off due to the COVID-19 pandemic if the employer is hiring for the same or a substantially similar job formerly held by the laid off worker. Paragraph (f) of Senate Bill 93 expressly provides:

Nothing in this section shall prohibit a local government agency from enacting ordinances that impose greater standards than, or establish additional enforcement provisions to, those prescribed by this section. This section shall not be construed to limit a discharged employee or eligible employee's right to bring a common law cause of action for wrongful termination.

The Rules and Open Government Committee deferred consideration of the City's proposed ordinance to May 4, 2021. Given the passage of Senate Bill 93, the Committee directed the City Attorney's Office to develop an ordinance that includes requirements that were in the draft "Travel and Hospitality Worker Return Together" ordinance and that impose greater standards or additional enforcement provisions than in Senate Bill 93. The administration deferred the matter to May 11, 2021.

ANALYSIS

The requirements of Senate Bill 93 are basically the same, or broader, than those that would have been in the ordinance that the Rules and Open Government Committee directed the City Attorney's Office to prepare. Consequently, Senate Bill 93 eliminates the need for a comprehensive local ordinance addressing employers in the travel and hospitality sector of the economy offering reemployment to a worker laid off due to the COVID-19 pandemic if the employer is hiring for the same or a substantially similar job formerly held by the laid off worker

Senate Bill 93 expressly allows local jurisdictions to enact ordinances that impose greater standards or establish additional enforcement provisions. Consistent with this authorization and the direction of the Rules and Open Government Committee, the draft ordinance would:

1. Impose a greater standard by requiring an employer covered by Senate Bill 93 to not discriminate against, and to reasonably accommodate, a worker experiencing a family care hardship. The draft ordinance defines "family care hardship" as a circumstance in which a worker is unable to work due to any reason for which an employee may use paid sick leave to provide care for another person. The draft ordinance defines "reasonably accommodate" to include modifying a worker's schedule, delaying the start date of reemployment, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible, to accommodate the worker's family care hardship.
2. Establish additional enforcement by providing that a worker could bring a civil action in the Superior Court of the State of California against an employer for violations of the requirements of Senate Bill 93. The draft ordinance provides that before a worker can file such a lawsuit, the worker must provide notice to the employer of the alleged violation and the facts supporting the alleged violation. The employer would have fifteen (15) Business Days from receipt of the written notice to cure any such alleged violation.

The draft ordinance would be effective until Senate Bill 93 is repealed. As enacted, Senate Bill 93 remains in effect until December 31, 2024, and as of that date is repealed.

CEQA

Pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment).

NORA FRIMANN, City Attorney

By: /s/ Glenn Schwarzbach
Glenn Schwarzbach
Sr. Deputy City Attorney

cc: Dave Sykes