



City of Chicago



O2020-5778

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 11/23/2020

Sponsor(s): Burke (14)
Lopez (15)

Type: Ordinance

Title: Amendment of Municipal Code Title 1 by adding new Chapter 1-26 entitled "Hotel Worker Right to Return to Work" ordinance

Committee(s) Assignment: Committee on Workforce Development

WD

ORDINANCE

SECTION 1. Statement of Purpose:

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in Illinois, including the City of Chicago; 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 9, 2020, Governor Pritzker issued a Gubernatorial Disaster Proclamation regarding COVID-19 declaring all counties in Illinois to be a disaster area; and

WHEREAS, on March 18, 2020, Mayor Lightfoot issued an Emergency Executive Order declaring a state of emergency caused by the outbreak of COVID-19; and

WHEREAS, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; 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 many thousands more are expected to face separation in the coming months; and

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

WHEREAS, on August 31, 2020, it was reported by the American Hotel & Lodging Association that four out of 10 hotel employees had not returned to work; at the peak of the pandemic, nearly nine in 10 hotels had to lay off or furlough workers; the accommodations sector is left with an unemployment rate of 38% compared to the national average of 10.2%; only 37% of hotels have been able to bring back at least half of their full-time employees, while 36% have been unable to bring back any furloughed or laid off staff; and, that almost two-thirds (65%) of hotels remain at or below 50% occupancy with little expectation that occupancies will increase until at least 2021; and

WHEREAS, McKinsey & Company has analyzed different scenarios for recovery of the hotel industry one of which suggests that recovery of the hotel industry may not occur until 2023 or beyond; and

WHEREAS, ensuring that Chicago’s hotel employers honor their former employees’ right to return will speed the transition back to a functioning labor market and will lessen the damage to Chicago’s economy; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO,

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. Title 1 of the Municipal Code of Chicago is amended by creating Chapter 1-26 entitled the Hotel Worker Right to Return to Work Ordinance as follows:

1-26-010. *Title.*

This Section shall be known as the “Hotel Worker Right to Return to Work” Ordinance.

1-26-020. *Definitions.*

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

“*Employee*” has the same meaning as under Section 4-6-180(a).

“*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 Hotel within the City and employs or exercises control over the wages, hours or working conditions of any Employee.

“*Hotel*” has the same meaning as under Section 4-6-180(a).

“*Laid-off employee*” means an individual: (1) who had a length of service with an employer of 6 months or more in the 12 months preceding their most recent separation from active service or failure to be scheduled for customary seasonal work from that employer; (2) who performed, in a particular workweek, at least 2 hours of work within the City for that employer; and (3) whose most recent separation from active service from that employer occurred on or after January 31, 2020, as a result of a lack of business, a reduction in workforce, or any other economic and non-disciplinary reason.

“*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.

“*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.

1-26-030. *Right to Return to Work*

(1) 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 Section'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: (i) held the same or similar position at the Hotel at the time of the Laid-Off Employee's most recent separation from active service with the Employer; or (ii) 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 (i) and then (ii) 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 greatest length of service for the Hotel.

(2) A Laid-Off Employee who is offered a position pursuant to this Section 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 (1).

(3) 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 such decision.

(4) The requirements of this Section also apply in the following circumstances: (i) the ownership of the Employer changed after the separation from employment of a Laid-Off Employee, but the Hotel is conducting the same or similar operations as before January 31, 2020; (ii) the form of organization of the Employer changed after January 31, 2020; (iii) 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; (iv) 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 (v) any combination of the circumstances described in parts (i) through (iv).

1-26-040. *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 Section by any lawful means, for participating in proceedings related to this Section, for opposing any practice proscribed by this Section, or for otherwise asserting rights under this Section. This Section shall also apply to any employee who mistakenly, but in good faith, alleges noncompliance with this Section.

1-26-050. *Enforcement.*

(1) This Section may be enforced in a civil action in the Circuit Court of Cook County brought by the Chicago Commission on Human Relations or by one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated.

(2) If the court finds that the employer has violated this Section, 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 person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Before interim earnings are deducted from lost wages, there shall be deducted 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 Section, and treble damages on behalf of an employee terminated in violation of subsection (d).

(3) If it is established that a laid-off employee exercised rights under this Section or alleged in good faith that the employer was not complying with this Section, 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 subsection (d). 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.

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

1-26-060. *Regulations.*

The Chicago Commission on Human Relations may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Section. 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 Section.

1-26-070. *Relationship to employment contracts and agreements.*

This Section 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 Section 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 Section.

1-26-080. *No Preemption of Higher Standards.*

The purpose of this Section is to ensure minimum labor standards. This Section does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Section shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

1-26-090. *Severability.*

If any subsection, sentence, clause or phrase of this Section 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 Section, which shall remain in full force and effect. The City Council hereby declares that it would have adopted this Section and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein.

1-26-100. *Report.* On or before January 31, 2022, the Chicago Commission on Human Relations shall report to the City Council on the effectiveness of this Section in promoting employment stability and shall advise the City Council on the need for further action.

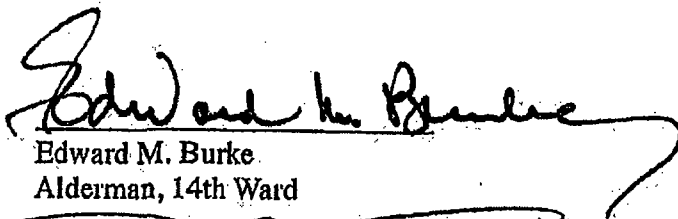
Section 3. Section 2-160-090 of the Municipal Code of Chicago is hereby amended by adding the underscored text, as follows:

2-160-090 Violation – Investigation by commission on human relations – Prosecution.

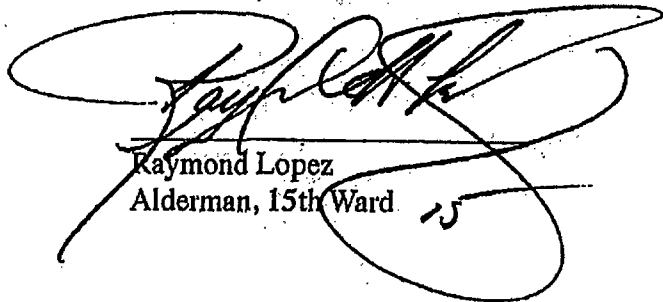
The Chicago Commission on Human Relations shall receive and investigate complaints of violations of this chapter, except where such duty is modified by intergovernmental agreement, and complaints of violations of subsection (f)(3) of Section 4-6-180 and of Chapter 1-26, and shall prepare and provide necessary forms for such complaints. No person shall refuse or fail to

comply with any subpoena, order or decision issued in the course of or as a result of an investigation.

Section 4. This ordinance shall take effect upon passage and publication.



Edward M. Burke
Alderman, 14th Ward



Raymond Lopez
Alderman, 15th Ward