



Legislation Details (With Text)

File #: 20-0544 **Version:** 0 **Name:** COVID-19 Laid-Off Employees Right of Recall
Type: Ordinance **Status:** Passed
File created: 6/15/2020 **In control:** Mayor
On agenda: **Final action:** 12/7/2020
Enactment date: **Enactment #:** 20-480

Title: COVID-19 Laid-Off Employees Right of Recall
 For the purpose of requiring certain employers to recall certain employees who have been laid off after the imposition of the COVID-19 state of emergency; specifying the procedures by which the recall would operate; prohibiting retaliation against employees for seeking assistance from, or cooperating with, the Wage Commission; empowering the Wage Commission to issue subpoenas and administer oaths; establishing certain procedures for the administration of complaints by the Wage Commission; requiring certain reports; defining certain terms; establishing certain penalties; and providing for a special effective date.

Sponsors: Kristerfer Burnett, John Bullock, Bill Henry, Ryan Dorsey, Mayor Brandon M. Scott, Sharon Green Middleton, Shannon Sneed

Indexes: COVID-19, Employee, laid-off

Code sections:

Attachments: 1. 20-0544~1st Reader, 2. Law 20-0544, 3. MHLA Testimony 20-0543 and 20-0544, 4. City Council Letter- Right of Recall - 7.15.2020, 5. Labor Meeting Agenda (2), 6. Council Bill 20-0543 and 20-0544 (1), 7. HR 20-0544, 8. Agenda 20-0544, 9. City Council Letter- Right of Recall - 7.15.2020, 10. Public Justice Center Letter 20-0544, 11. 09-17-20 Laid off Employees Right of Recall.F, 12. Testimony for Tracy Lingo Local-7-Baltimore-Recall-Report, 13. Public Justice Center written testimony -City Council Bill 20-0544 Right of Recall, 14. 2020-08-07 Letter from P More to Baltimore LD, 15. Final Stacey Whye Statement, 16. Final William Murray Testimony, 17. Meeting Minutes - 20-0544, 18. Labor - Hearing Notes Bill 20-0544 (2), 19. Agenda 20-0544 (2), 20. Labor - Hearing Notes Bill 20-0544 (3), 21. Minutes - 20-0544, 22. 2nd Reader Floor Amendments 20-0544, 23. 2nd Reader Amendments 20-0544, 24. 20-0544~3rd Reader, 25. cb20-0544 veto letter 11.16.20, 26. 20-0544~3rd, 27. Signed Ordinance 20-0544

Date	Ver.	Action By	Action	Result
12/7/2020	0	City Council	Enacted by an Override of Mayor's Veto	
11/16/2020	0	Mayor	Vetoed by Mayor	
11/16/2020	0	City Council	Vetoed by Mayor	
10/5/2020	0	City Council	Approved and Sent to the Mayor	
9/21/2020	0	City Council	3rd Reader, for final passage	
9/21/2020	0	Labor Committee	Recommended Favorably with Amendment	
9/21/2020	0	Labor Committee	Recommended Favorably with Amendment	Pass
9/17/2020	0	Labor Committee	Scheduled for a Public Hearing	
8/17/2020	0	Labor Committee	Scheduled for a Public Hearing	
6/22/2020	0	Labor Committee	Scheduled for a Public Hearing	
6/18/2020	0	The City Council	Refer to Sheriff's Office	

6/18/2020	0	The City Council	Refer to City Solicitor
6/18/2020	0	The City Council	Refer to Office of Equity and Civil Rights
6/18/2020	0	The City Council	Refer to Office of the Mayor
6/18/2020	0	The City Council	Refer to Dept. of Human Resources
6/15/2020	0	City Council	Introduced
6/15/2020	0	City Council	Assigned

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Burnett

A Bill Entitled

An Ordinance concerning
COVID-19 Laid-Off Employees Right of Recall

For the purpose of requiring certain employers to recall certain employees who have been laid off after the imposition of the COVID-19 state of emergency; specifying the procedures by which the recall would operate; prohibiting retaliation against employees for seeking assistance from, or cooperating with, the Wage Commission; empowering the Wage Commission to issue subpoenas and administer oaths; establishing certain procedures for the administration of complaints by the Wage Commission; requiring certain reports; defining certain terms; establishing certain penalties; and providing for a special effective date.

By adding

Article 11 - Labor and Employment
Section(s) 19A-1 through 19A-13, to be under the new subtitle,
“Subtitle 19A. COVID-19 Laid-Off Employees Right of Recall”
Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Subtitle 19A. COVID-19 Laid-Off Employees Right of Recall

§ 19A-1. Definitions.

(a) *In general.*

In this subtitle, the follow terms have the meanings indicated.

(b) *Commercial property employer.*

“Commercial property employer” means an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the City that employs 25 or more janitorial, maintenance, or security service employees.

(c) *Commission.*

“Commission” means the Wage Commission established by § 2-1 {“Commission established”} of this article, or the Commission’s designee.

(d) *Employer.*

“Employer” means a person that is any of the following, as defined in this section:

- (1) a commercial property employer;
- (2) an event center employer; or
- (3) a hotel employer.

(e) *Event center employer.*

(1) *In general.*

“Event center employer” means an owner, operator, or manager of a publicly or privately owned structure within the City that:

- (i) is used for public performances, sporting events, business meetings, or similar events; and
- (ii) either:
 - (A) is 50,000 square feet or more in total area; or
 - (B) has a seating capacity of 1,000 seats or more.

(2) *Inclusions.*

An “event center employer” includes a concert hall, stadium, arena, racetrack, and convention center.

(3) *Exclusion.*

“Event center employer” does not include the Maryland Stadium Authority.

(f) *Hotel employer.*

(1) *In general.*

“Hotel employer” means the owner, operator, or manager of a publicly or privately owned structure that:

- (i) is used for public lodging or other related service for the public; and

(ii) either:

(A) contains 50 or more guest rooms; or

(B) has earned gross receipts in the 2019 tax year exceeding \$5 million.

(2) *Inclusions.*

A “hotel employer” includes the owner, operator, manager, or lessee of any food service facility, as defined in § 6-101(d) {“Definitions: Food service facility”} of the City Health Code, that is physically located on the hotel employer’s premises.

(g) *Laid-off employee.*

(1) *In general.*

“Laid-off employee” means an individual:

(i) who had a length of service with an employer of 90 days or more;

(ii) who performed, in a particular workweek, at least 2 hours of work within Baltimore City for that employer; and

(iii) whose most recent separation from that employer occurred on or after March 5, 2020, as a result of a lack of business, a reduction in workforce, or any other economic and non-disciplinary reason.

(2) *Presumption regarding terminations after March 5, 2020.*

There is a rebuttable presumption of fact that any termination occurring on or after March 5, 2020 was due to a non-disciplinary reason.

(3) *Exclusions.*

“Laid-off employee” does not include any individual who was, prior to his or her separation, a managerial, supervisory, or confidential employee.

(4) *Limitation.*

With respect to commercial property employer, “laid-off employee” is limited to only the separated janitorial, maintenance, or security service employees of the commercial property employer.

(h) *Length of service.*

“Length of service” means the aggregate total period of time during which a laid-off employee had been in active service to an employer, including periods of time when the laid-off employee was on leave or on vacation.

(i) *Person.*

“Person” means:

(1) an individual;

(2) a partnership, firm, association, corporation, LLC, or other entity of any kind; or

(3) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

§ 19A-2. {Reserved}

§ 19A-3. Right of recall.

(a) *In general.*

An employer shall make an offer to a laid-off employee for any position which is or becomes available for which the laid-off employee is qualified as described in subsection (b) of this section.

(b) *Implementation.*

(1) *In general.*

A laid-off employee is qualified and must be offered a position with the employer under this section if the laid-off employee:

(i) held the same or similar position at the same site of employment at the time of the laid-off employee's most recent separation from active service with the employer; or

(ii) could become qualified if provided with the same training that would be provided to a new worker hired into the position.

(2) *Priority.*

If more than 1 laid-off employee is entitled to preference for a position, the employer shall:

(i) first offer the position, in order of seniority by length of service, to those laid-off employees described in paragraph (1)(i) of this subsection; and

(ii) then offer the position, in order of seniority by length of service, to those laid-off employees described in paragraph (1)(ii) of this subsection

(3) *Acceptance of offer.*

A laid-off employee who is offered a position under this section shall be given at least 5 business days in which to accept or decline the offer.

§ 19A-4. {Reserved}

§ 19A-5. Retaliation prohibited.

(a) *In general.*

An employer may not discharge or reduce the compensation of any employee for:

(1) making a complaint to the Commission alleging a violation of this subtitle; or

(2) participating in any of the Commission's proceedings concerning an alleged violation of this subtitle.

(b) *Remedial action for violation.*

If the Commission finds that an employer has violated subsection (a) of this section it may, pursuant to the procedures provided in § 19A-7 {“Enforcement procedures”} of subtitle, order appropriate restitution or the reinstatement of the employee with backpay to the date of the violation.

§ 19A-6. *{Reserved}*

§ 19A-7. **Enforcement procedures.**

(a) *Filing complaints.*

Any person subjected to a practice in violation of this subtitle, or any group or person seeking to enforce this subtitle, may file a written complaint with the Commission.

(b) *Complaint requirements.*

A complaint filed under this section must:

- (1) be filed within 1 year of the alleged violation;
- (2) be filed under oath; and
- (3) include:
 - (i) the particulars of the alleged violation;
 - (ii) the name and address of the person alleged to have committed the violation; and
 - (iii) any other information required by the Commission.

(c) *Complaints by Commission.*

The Commission, acting on its own initiative and without any complaint from a laid-off employee, may itself file a complaint against an employer whenever the Commission has reasonable cause to believe that the employer is or has been in violation of this subtitle.

(d) *Investigation for probable cause.*

After the filing of a complaint, either by a person claiming to be aggrieved as set forth above or by the Commission, the Commission must:

- (1) investigate the facts alleged in the complaint; and
- (2) make a finding of probable cause or lack of probable cause for the complaint.

(e) *Subpoenas; oaths.*

(1) In enforcing this subtitle, the Commission may:

- (i) issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records, or otherwise necessary for hearings, investigations, or proceedings; and

(ii) administer oaths, subject to the penalties for perjury, to all witnesses.

(2) Any subpoena issued under this subsection shall be served by:

(i) the Sheriff of Baltimore City or any of the Sheriff's deputies; or

(ii) any other person authorized by the Maryland Rules of Procedure to effectuate in personam service.

(f) *Subpoena enforcement.*

(1) In case of disobedience to a subpoena, the Commission may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents.

(2) The court, in case of contumacy or refusal to obey any subpoena issued under this section, after notice to the person subpoenaed, and upon finding that the attendance or testimony of the witnesses or the production of the books, papers, records, and documents, as the case may be, is relevant or necessary for a hearing, investigation, or proceeding of the Commission, may issue an order requiring the attendance and testimony of the sought witnesses and the production of the sought books, papers, records, and documents, or any of them.

(3) Any failure to obey such an order of the court may be punished by the court as contempt.

(g) *Dismissal for lack of probable cause.*

If the Commission finds that the complaint lacks probable cause, then it must dismiss the complaint and mail copies of its finding to the respondent and complainant.

(h) *Probable cause conference; settlement agreement.*

(1) If the Commission finds probable cause for the complaint, the Commission must attempt, by means of conference, to:

(i) persuade the respondent to cease and desist its illegal action;

(ii) reinstate any laid-off employees to their former positions as required by § 19A-3 {"Right of recall"} of this subtitle; and

(iii) order payment to laid-off employees of all wages and other compensation owed for the period of time that the employer was in violation of this subtitle, as provided in § 19A-8 {"Penalties and fines"} of this subtitle.

(2) Any agreement reached between the respondent and the Commission must be reduced to writing and a copy of the agreement must be furnished to the complainant and the respondent.

(i) *Final order.*

(1) The Commission may issue a final order on its own motion if:

(i) the Commission and the respondent fail to reach an agreement within 30 days of the date set for the probable cause conference, or

(ii) the respondent fails to meet its obligations under an agreement with the Commission within

the time specified in the agreement.

(2) A final order issued under this subsection may:

- (i) require the reinstatement of a laid-off employee or employees wrongfully terminated in violation of § 19A-3 {"Right of recall"} of this subtitle;
- (ii) require the respondent to pay each employee aggrieved in violation of § 19A-3 {"Right of recall"} of this subtitle his or her lost wages and other compensation to the date of the violation, as provided in § 19A-8 {"Penalties and fines"} of this subtitle; and
- (iii) direct the cessation of all practices by the respondent that are contrary to the provisions of this subtitle or the rules and regulations of the Commission.

(3) A copy of an order issued under this subtitle must be furnished to the respondent by registered mail within 3 days of its issuance.

(j) *Judicial and appellate review.*

- (1) Any person aggrieved by an order of the Commission may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules.
- (2) A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules.

(k) *Referral to Solicitor.*

If, within 30 days of the issuance of a final order under subsection (i) of this section, the respondent has failed to comply with the order, the Commission may certify the proceedings to the City Solicitor and request that the Solicitor petition the Circuit Court of Baltimore City to enforce the order.

§ 19A-8. Penalties and fines.

(a) *In general.*

The Commission may order any employer who commits a violation of this subtitle to:

- (1) pay to any aggrieved laid-off employee or employees the wages and other compensation lost as a result of the employer's violation of § 19A-3 {"Right of recall"}, with interest computed at 10% per annum on wages and other monetary compensation due; and
- (2) reinstate any laid-off employee or employees under the conditions required by § 19A-3 {"Right of recall"} of this subtitle.

(b) *Fines.*

- (1) Any employer that violates this subtitle shall forfeit and pay to the City of Baltimore a civil penalty as follows:
 - (i) for a 1st offense, \$250 for each violation;
 - (ii) for a 2nd offense, \$500 for each violation; and
 - (iii) for each subsequent offense, \$1,000 for each violation.

(2) Each day that a violation continues constitutes a separate offense.

§ 19A-9. Collective bargaining agreements.

(a) *In general.*

(1) Nothing in this subtitle may be construed to supercede any collective bargaining agreement that:

(i) was effective on _____, 2020 *{When codified, the Department of Legislative Reference shall insert the effective date of this Subtitle 19A}*; and

(ii) contained a right of recall provision.

(2) This subtitle applies if a collective bargaining agreement effective on _____, 2020 *{When codified, the Department of Legislative Reference shall insert the effective date of this Subtitle 19A}* does not have a right of recall provision.

(b) *Future collective bargaining agreements.*

A re-negotiated or new collective bargaining agreement may only waive the provisions of this subtitle in clear and unambiguous terms.

§ 19A-10. Waiver of subtitle prohibited.

(a) *In general.*

Except as provided in § 19A-9 {"Collective bargaining agreements"} of this subtitle, an employee may not waive any provision of this subtitle.

(b) *Violation of this subtitle.*

Any request by an employer to an employee to waive his or her rights under this subtitle is a violation of this subtitle.

§ 19A-11. Rules and regulations.

(a) *Commission may adopt.*

The Commission may adopt rules and regulations to implement this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this subtitle must be filed with the Department of Legislative Reference before they become effective.

§ 19A-12. Report to Mayor and City Council.

On or before June 30, 2022, the Wage Commission shall report to the Mayor and City Council on:

- (1) the effectiveness of the provisions of this subtitle in protecting employees' stability of employment;
- (2) recommendations for additional protections that further the intent of this subtitle; and
- (3) whether the provisions of this subtitle are still necessary based on the City's recovery from the

impacts of the COVID-19 pandemic.

§ 19A-13. Severability.

All provisions of this subtitle are severable. If a court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any person or circumstances is invalid, the remaining provisions and the application of those provisions to other persons or circumstances are not affected by that decision.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the date it is enacted.