

**MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS
HOSPITALITY WORKER RIGHT TO RECALL ORDINANCE
FREQUENTLY ASKED QUESTIONS**

This document is intended to provide the public with information about how the City of Minneapolis Department of Civil Rights may guide its personnel in processing and investigating reported violations and interpreting the Minneapolis Hospitality Worker Right to Recall Ordinance.

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SCOPE: This document provides general information and guidance on implementation and enforcement Minneapolis Code of Ordinances, Title 2, Chapter 40, Article VII. Workers and employers may have additional rights or obligations under other local, state or federal laws. This guidance does not address rights or obligations with respect to these other laws. Terminology used in this guidance is defined in Minneapolis Code of Ordinances Title 2, Chapter 40, Article VII.

CONTENTS:

[#1 Coverage](#)

[#8 Right to Recall](#)

[#13 Enforcement](#)

Coverage:

1.) Q: What is the purpose of the recall ordinance?

A: The COVID-19 pandemic has severely restricted large gatherings and travel, leading to massive layoffs concentrated in certain industries and communities. The Hospitality Worker Right to Recall Ordinance was created to reverse the effect of the COVID-19 pandemic on those who have lost their jobs in hotels and event centers. It ensures that, when rehiring begins, covered employers prioritize former employees who were separated from their jobs for economic reasons due to the COVID-19 pandemic.

2.) Q: Which parts of the hospitality industry are covered?

A: Only hotels and event centers are affected. More specifically, any larger hotel (offering more than 50 guest rooms) or event center (offering 50,000 rentable square feet or 2,000 fixed seats and used primarily for public performances, sporting events, conventions, or similar public events) located within the City of Minneapolis is affected.

Hotels and event centers often include food preparation facilities, concessions, retail stores, restaurants, bars, or parking facilities that are operated in conjunction with the hotel or event center. Government employers (except the City) are not covered by the ordinance.

3.) Q: Are Employers who provide services at hotels and event centers covered?

A: An employer is only covered if it has a contract (or lease) to control all or a portion of the hotel or event center’s business operation and physical premises. When property or facilities are controlled by an employer (through a contractual arrangement, lease, or sublet agreement with the owner or operator of the hotel or event center), its employees working in these spaces are covered by the ordinance.

An example of this is a hotel’s dining facilities that are operated by a separate business entity or an event center’s concession stands that are operated by a separate business entity. The separate business entity who runs these dining facilities or concession stands is covered by the ordinance.

However, not all employers who provide services at a hotel or event center are covered. For example, a caterer serving food at an event is not covered by the ordinance if it does not control any facilities (e.g. kitchen or food preparation) at the hotel or event center.

4.) Q: Who is protected under the ordinance?

A: Any employee who meets all three of the following conditions for the same covered employer is protected:

- Employed at least 6 months from March 13, 2019 to March 13, 2020 (including at least 80 hours of work performed in the City);
- “Lay-off” occurred *after* March 13, 2020; and
- “Laid off” due to lack of business or other economic, non-disciplinary reason.

5.) Q: How are the 6 months of employment (between March 13, 2019 and 2020) counted for occasional or project-based employees?

A: Calendar days are counted continuously from the first day of work until employment separation was documented by the employer. However, entire weeks during which no work was performed (and no vacation or leave benefits were used) may be discounted.

6.) Q: Which employees are covered due to being laid off *after* March 13, 2020?

A: An employee is only covered if the employee was separated from active employment after March 13, 2020.

One way for an employee to establish this is to show that she performed any amount of work (or used any vacation or leave benefits) during the weeks before or after March 13, 2020, and no longer works for the employer. To rebut such an inference, an employer may provide clear documentation showing that the employee was actually separated from employment on or before March 13, 2020.

7.) Q: Which employees were laid off due to economic, non-disciplinary reasons?

A: Employees, who are otherwise covered by the ordinance, will be presumed to have been laid off for an economic, non-disciplinary reason unless the employer contemporaneously documented a disciplinary reason or other purpose unrelated to the pandemic for the layoff.

Right to Recall:

8.) Q: What are covered Employers required to do?

A: Employers must give priority to their “qualified”, “laid-off” employees. Employers may not hire outside the pool of qualified, laid-off employees unless and until no qualified, laid-off employee accepts an offer for that position.

To be “qualified” for a position, a laid-off employee must either:

1. have held a same or similar position at the time of the layoff, *or*
2. be able to become qualified with training equivalent to what a new employee would receive.

If there is no employee who held the same or similar position at the time of lay off, or none of these employees accept an offer, then the Employer must offer the position to laid off employees who can become qualified with the same training that would be provided to a new employee.

9.) Q: In what order of priority must offers be given?

A: Employers must give first priority for an offer to qualified employees in “Group 1,” which are those employees who held the same position, or a similar position, when they were laid off. A position is “similar” to another position if it is in the same department/area and requires comparable skills and duties.

If there is more than one Group 1 employee who is entitled to the position, the first offer goes to the employee with greatest seniority (longest length of service at the time of lay off). If that employee does not accept the position, the offer is then extended to the Group 1 employee with the next longest seniority, and so forth. The employer may make simultaneous, conditional offers.

If there is no Group 1 employee entitled to the position, or all of them decline the offer, the employer must next offer the position to employees in “Group 2,” which is all laid off employees who could be qualified for the position with the same training that would be provided to a new employee.

In Group 2, the employer should compare the laid-off employee’s professional experience and educational qualifications to those required by the position. If a laid off employee formerly held a position that required comparable (or greater) professional and educational qualifications, that employee likely can be trained for the new position and should receive an offer. Especially for entry-level positions, many former employees will be able to perform a variety of positions at a hotel or event center even if they did not previously perform that specific job.

Within “Group 2,” the employer must give first preference to the employee with greatest seniority (longest length of service at the time of lay off). The employer then extends the offer to other Group 2 employees in the order of their length of service. The employer may make simultaneous, conditional offers.

Finally, only if none of these employees accepts the position, the employer may make the position available to anyone.

10.) Q: How must an employer communicate its offers to employees?

A: Employers must extend offers by mail to the last known address, and by text and email (if the Employer has that contact information). An Employer may make simultaneous, conditional offers.

11.) Q: How much time does a laid-off employee have to consider an offer?

A: A laid-off employee that has received an offer has seven (7) days to accept or decline an offer made by text or email. However, where the former employee may be reached only by physical mail the offer stands for ten (10) days. Upon the acceptance of an offer, the employee must be available to work within seven (7) days from the end of the acceptance period otherwise the position may be forfeited.

12.) Q: What are the employer's obligations if a former employee is not given a job offer because of a lack of qualifications, despite the employee's seniority?

A: Where an arguably qualified, laid-off employee is not offered a position due to their actual lack of professional or educational qualifications, despite their seniority, and the employer instead hires someone else for the position, the employer must inform the former employee in writing of the reasons that the employee is not qualified within thirty (30) days of the hiring decision. Examples of this scenario could include a position that requires technical expertise, supervisory experience, or specialized knowledge that the otherwise senior employee does not possess and could not reasonably be expected to learn even with training normally provided to a new hire. The Employer must retain a copy of the notice for three (3) years.

Enforcement:

13.) Q: What if there is a change in ownership of the business?

A: If the business has a new owner but it continues to operate in a same or similar way, or reopens conducting the same or similar business, the ordinance still applies to the new owner in the same ways it did to the previous owner.

14.) Q: Can an Employer retaliate against an employee for reporting a violation of the recall ordinance?

A: An employer may not retaliate against an active or former employee for attempting to enforce any right created by the ordinance. This includes reporting possible violations, providing information about a violation, and making inquiries about an individual's rights under the ordinance. Employers may not interfere with, restrain, or deny access to recall rights. The Department prioritizes investigation regarding allegations of retaliation.

15.) Q: What happens in case of a violation?

A: If an Employer is found to have violated the ordinance, the Minneapolis Department of Civil Rights may issue a cease and desist order. In addition, a host of other remedies are available including reinstatement, compensatory damages, and fines and penalties.

16.) Q: What if an Employer makes an offer based upon a good faith belief that the employee receiving the offer is entitled to the position?

A: If an employer has made a good faith effort to comply with the ordinance, and a dispute later arises about which qualified, laid off employee was actually entitled to preference for the position, the Department will work with the parties to resolve the issue. The Department will typically prioritize education and resolution of the dispute over fines and penalties in this situation.

Technical violations that are resolved by an employer without measurable harm to an employee are not normally prioritized by the Department. Education and information are often more appropriate than fines or penalties in such situations.