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Via Email Only
(rana@hollywoodchamber.net)
Rana Ghaban
President & CEO
Hollywood Chamber of Commerce
6255 Sunset Blvd, Ste 150, Hollywood, Ca 90028

RE: Proposed Article 4-72J-A to Chapter XX of the Los Angeles Municipal Code
Recall of Laid Off Workers due to COVID-19

Dear Rana:

As General Counsel to the Hollywood Chamber of Commerce, you requested that I evaluate the above referenced proposed Article which would require employers in the City of Los Angeles to recall laid off workers. I believe the proposed Article will cause an undue burden on Employers based on the following:

1. Restriction on At-Will laws. The proposed Article will add a restriction on the current "At-Will" employment laws. At-Will employment means that the employee is free to leave their jobs at any time and employers are likewise free to fire the employee at any time for any lawful reason—or even no reason at all. *See, Labor Code, § 2922 ["An employment, having no specified term, may be terminated at the will of either party on notice to the other."]* The At-Will law provides employer the flexibility to make decisions on its work force. This flexibility is especially important during these trying times as COVID-19 has already economically burdened employers. As employees are free to choose whether to work for an employer, employers should also keep their rights to choose who to employ. Employers should have the right to restructure its workforce to meet the challenges caused by COVID-19.

2. Increased Litigation. The proposed Article will lead to increased litigation. The Article may be trap to employers who are not informed of the new law. There are an abundance of Plaintiffs' employee claims attorneys. These attorneys will likely use the Article to send demand letters seeking damages and attorneys' fees from employers; and filing a flood of lawsuits. As described below, the unspecified damage award exceeding \$1,000 plus the attorney fee award will be a huge incentive for the Plaintiffs' attorneys who work on contingency fee basis. Questions of fact will inevitably arise as to who is entitled to a rehire offer; is the same or similar position being filled; is the person qualified for the rehire; who is entitled to preference for each position; and damage awards. With the ambiguities inherent in new law

there will be a lot of uncertainty which will lead to claims against employers who seek to comply with the new law. The cost of defending claims will be huge. Another uncertainty will be whether Employment Practices Liability Insurance (EPLI) will cover claims arising out of the new law. This may lead to uncertainty, increased insurance costs, and additional bad faith lawsuits.

3. May discourage rehiring. The increased burden the Article places on employers may discourage or delay rehiring decisions by employers. Before rehiring employees, the Article will force employers to evaluate the procedures and requirements of the Article.

4. Lost Opportunity to Third Party Unemployed. The rehire requirement will also be unfair to unemployed (or underemployed) employees who would be eligible for open positions; but lose out due to the rehire requirements. Many Los Angeles residents (and others) lost their jobs due to COVID-19. It would be unfair to them if the new law requires employers to rehire employees less qualified than the unemployed worker.

5. No Exception For Cause terminations. Section 200.31(C) states that the “*ordinance creates a rebuttable presumption that any termination occurring on or after March 4, 2020, was due to a non-disciplinary reason.*” The ordinance does not specify that the Article will not apply to employees were terminated for cause. Further specifying a “*rebuttable presumption,*” creates a question of fact which may spur litigation.

6. Retroactive. Section 200.31 provides that the Article will be retroactive to terminations on or after March 4, 2020. This may be unfair to employers who made layoffs prior to the enactment of the Article. Said employers did not have the benefit of considering the effect of the Article at the time the employer made the decision to lay off its employees.

7. Written Offer is burdensome. Section 200.32(A) that the offers to all laid off employees be made in writing. This requirement will be an administrative burden for employers who will be required to determine who is entitled to the offer; then draft the offer letter; mail the offer letter; review responses; and wait ten days if no acceptance is received.

8. Delay during 10 day waiting period. Section 200.32(B) provides for a 10 day waiting period for responses to reinstatement offer letters. Such requirement will cause a delay in hiring; and the administrative burden described above.

9. Forced Rehire. Section 200.32(A) and 200.33(A)(1) forced hiring and reinstatement rights is the most extreme burden on employers as the requirement restricts the employers’ right to manage its business. See the discussion on the restriction of the At-Will employment law above. In addition, if an employer already fills a position, then is required to reinstate a laid off employee (either due to a demand letter or litigation) the employer will have logistical problems of double filling a position.

10. Unspecified Damages exceeding \$1,000. Section 200.33(A)(2) provides for awards of *“all actual damages(including, but not limited to, lots pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.”* Such remedy will be a question of fact and likely lead to protracted litigation.

11. Punitive Damages. Section 200.33(A)(3) provides for punitive damages. Such remedy will be a question of fact and likely lead to protracted litigation.

12. Attorney’s Fees awards. Section 200.33(A)(4) provides for attorney fees. As discussed above, such attorney’s fees award will incentivize Plaintiffs’ attorneys who work on contingency fee basis to pursue claims based on the new law.

13. Collective Bargaining Explicit Waiver. Section 200.34 requires express waivers in collective bargaining agreements. This requirement will, at minimum, cause legal and administrative costs for employers to amend their collective bargaining agreement. In addition, the requirement will be a trap for employers who do not know of the new law; or lay off employees prior to entering into the amendment to their collective bargaining agreement.

14. March 4, 2022 expiration. Section 20037 provides that the Article will be effective to March 4, 2022; and may be extended. The burden caused by these proposed new laws will therefore be in effect for at least almost two years.

I recommend that the Hollywood Chamber of Commerce oppose the Article; as it will cause extreme undue burden and expense to businesses in the City of Los Angeles. Please contact me if you wish to discuss.

Very truly yours,

A handwritten signature in black ink that reads "Derek S. Yee". The signature is fluid and cursive, with the first name being the most prominent.

Derek S. Yee