



# House of Representatives

General Assembly

**File No. 78**

February Session, 2022

House Bill No. 5246

*House of Representatives, March 22, 2022*

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT EXTENDING RECALL RIGHTS OF CERTAIN LAID-OFF EMPLOYEES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-40aa of the 2022 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective from passage*):

4 (a) As used in this section:

5 (1) "Building services enterprise" means a person providing janitorial,  
6 building maintenance or security services under contract to office, retail  
7 or other commercial or state buildings;

8 (2) "Compensation" means an employee's average weekly earnings  
9 for the twelve-month period immediately preceding the date of the  
10 employee's last day of active employment with an employer, including  
11 wages or salary, payments to an employee while on vacation or on  
12 leave, allocated or declared tip income, bonuses or commissions,

13 contributions or premiums paid by the employer for fringe benefits,  
14 overtime or other premium payments and allowances for expenses,  
15 uniforms, travel or education;

16 (3) "Customary seasonal work" means work performed by an  
17 employee for approximately the same portion of each calendar year;

18 (4) "Employer" means any person, including a corporate officer or  
19 executive, who directly or indirectly or through an agent or any other  
20 person, including through the services of a temporary service or staffing  
21 agency or similar entity, conducts an enterprise and employs or  
22 exercises control over the wages, hours or working conditions of any  
23 employee;

24 (5) "Employment site" means the principal physical place where a  
25 laid-off employee performed the predominance of the employee's duties  
26 prior to being laid off, or, in the case of a laid-off employee in building  
27 services or other industries where work is performed at locations other  
28 than the employer's administrative headquarters from which such  
29 assignments were made, any location served by such headquarters;

30 (6) "Enterprise" means a hotel, lodging house, food service contractor  
31 or building services enterprise, including such a business located at a  
32 publicly or privately operated highway service plaza, that employs  
33 fifteen or more employees. "Enterprise" does not include cruise line  
34 companies;

35 (7) "Food service" means the on-site preparation, service and cleanup  
36 of food or beverages;

37 (8) "Food service contract" means a contract for a term of not less than  
38 six months for the provision of food service that requires the food  
39 service contractor to provide all food service workers;

40 (9) "Food service contractor" means any person who enters into a food  
41 service contract to provide food service at any commercial, industrial,  
42 institutional or mixed-use business facility in the state in a single  
43 building or in contiguous buildings under common ownership or

44 management or at any state building;

45 (10) "Hotel" has the same meaning as provided in section 12-407;

46 (11) "Laid-off employee" means any employee who was employed by  
47 the employer for six months or more in the twelve months preceding  
48 March 10, 2020, and whose most recent separation from active service  
49 or whose failure to be scheduled for customary seasonal work by that  
50 employer occurred after March 10, 2020, and before May 1, [2022] 2023,  
51 and was due to lack of business or a reduction or furlough of the  
52 employer's workforce due to the COVID-19 pandemic, and including  
53 executive orders issued pursuant to the COVID-19 public health  
54 emergency and the civil preparedness emergency declared by the  
55 Governor on March 10, 2020;

56 (12) "Length of service" means the total of all periods of time during  
57 which an employee has been in active service, including periods of time  
58 when the employee was on leave or on vacation;

59 (13) "Lodging house" has the same meaning as provided in section  
60 12-407;

61 (14) "Person" means an individual, corporation, partnership, limited  
62 partnership, limited liability partnership, limited liability company,  
63 business trust, estate, trust, association, joint venture, agency,  
64 instrumentality or any other legal or commercial entity, either domestic  
65 or foreign; and

66 (15) "COVID-19" means the respiratory disease designated by the  
67 World Health Organization on February 11, 2020, as coronavirus 2019,  
68 and any related mutation thereof recognized by said organization as a  
69 communicable respiratory disease.

70 (b) (1) Not later than thirty days after the layoff of an employee before  
71 May 1, [2022] 2023, an employer shall submit to the Labor Department  
72 an affidavit stating the reasons for the decision.

73 (2) Not later than five days after a job position becomes available at

74 an employer, the employer shall notify each of its laid-off employees  
75 who are qualified for the position that the position is available. Such  
76 notification shall be sent in writing to the laid-off employee's last known  
77 physical address or electronic mail address, whichever is the usual and  
78 customary means of providing notices between the employer and  
79 employee, and in a text message to the employee's mobile phone if such  
80 phone number is maintained by the employer. Where more than one  
81 employee is qualified for an available position, the employer shall offer  
82 the position to the employee with the greatest length of service at the  
83 employment site. A laid-off employee is qualified for a position if the  
84 employee: (A) Held the same or similar position at the enterprise at the  
85 time of the employee's most recent separation from active service with  
86 the employer; or (B) is or can be qualified for the position with the same  
87 training that would be provided to a new employee hired for such  
88 position.

89 (c) An offer of employment to a laid-off employee pursuant to this  
90 section shall be at substantially the same employment site, subject to  
91 relocation as provided in subdivision (3) of subsection (g) of this section.  
92 If the laid-off employee held the same or similar position at the  
93 enterprise at the time of the employee's most recent separation from  
94 active service with the employer, such offer shall be in the same  
95 classification or job title and with substantially the same duties,  
96 compensation, benefits and working conditions as applied to the laid-  
97 off employee immediately prior to March 10, 2020.

98 (d) Any laid-off employee who is offered a position pursuant to this  
99 section shall be given not less than five days in which to accept or  
100 decline the offer. If the laid-off employee does not accept or reject the  
101 offer in the time provided by the employer, the offer shall be considered  
102 declined. If a laid-off employee declines an offer of a position, within the  
103 time period provided by the employer, due to underlying conditions  
104 related to contracting COVID-19 diagnosed on or before May 1, [2021]  
105 2022, as evidenced by a medical note to the employer, such laid-off  
106 employee shall retain the right to accept an available position for which  
107 the employee is qualified pursuant to subdivision (2) of subsection (b)

108 of this section, and shall retain all other rights under this section until  
109 both (1) the expiration of the public health and civil preparedness  
110 emergencies declared by the Governor on March 10, 2020, and any  
111 extension of such emergency declarations, and (2) the laid-off employee  
112 is reoffered a position.

113 (e) Each employer that declines to rehire a laid-off employee on the  
114 grounds of lack of qualifications and instead hires an individual other  
115 than a laid-off employee shall provide to the laid-off employee a written  
116 notice not later than thirty days after the date such other individual is  
117 hired. Such notice shall include the reasons for such decision.

118 (f) A laid-off employee rehired pursuant to this section shall be  
119 permitted to work for not less than thirty work days, unless there is just  
120 cause for the employee's termination.

121 (g) The requirements of this section shall apply under any of the  
122 following circumstances:

123 (1) The form of organization of the employer changed after March 10,  
124 2020;

125 (2) Substantially all of the assets of the employer were acquired by  
126 another entity that conducts the same or similar operations using  
127 substantially the same assets; or

128 (3) The employer relocates the operations at which a laid-off  
129 employee was employed prior to March 10, 2020, to a different  
130 employment site not greater than twenty-five miles away from the  
131 original employment site.

132 (h) No employer shall terminate, refuse to reemploy, reduce  
133 compensation or otherwise take any adverse action against any  
134 individual seeking to enforce his or her rights under this section or for  
135 participating in proceedings related to this section, opposing the  
136 violation of any provision of this section or otherwise asserting rights  
137 under this section.

138 (i) An employer that terminates, refuses to reemploy or takes any  
139 other adverse action against any laid-off employee shall provide to the  
140 employee, at or before the time of the termination, refusal to reemploy  
141 or other adverse action, a detailed written statement of the reason or  
142 reasons for the termination, refusal to reemploy or other adverse action,  
143 including all the facts substantiating the reason or reasons and all facts  
144 known to the employer that contradict the substantiating facts.

145 (j) (1) A laid-off employee aggrieved by a violation of any provision  
146 of this section may bring a civil action in the Superior Court.

147 (2) If the court finds that the employer has violated any provision of  
148 this section, the court may enjoin the employer from engaging in such  
149 violation and may order such affirmative action as the court deems  
150 appropriate, including the reinstatement or rehiring of the laid-off  
151 employee, with or without back pay and fringe benefits, or other  
152 equitable relief as the court deems appropriate. Interim earnings or  
153 amounts earnable with reasonable diligence by the laid-off employee  
154 who was subjected to the violation shall be deducted from the back pay  
155 permitted under this subdivision and any reasonable amounts  
156 expended by the laid-off employee in searching for, obtaining or  
157 relocating to new employment shall be deducted from the interim  
158 earnings before such earnings are deducted from such back pay. The  
159 court may order compensatory and punitive damages if the court finds  
160 that the employer committed the violation with malice or with reckless  
161 indifference to the provisions of this section. Any laid-off employee who  
162 prevails in a civil action shall be awarded reasonable attorney's fees and  
163 costs to be taxed by the court.

164 (k) The provisions of this section shall apply to each laid-off  
165 employee, whether or not such laid-off employee is represented for  
166 purposes of collective bargaining or is covered by a collective  
167 bargaining agreement, and may be waived in a bona fide collective  
168 bargaining agreement but only if the waiver is explicitly set forth in the  
169 agreement in clear and unambiguous terms. Unilateral implementation  
170 of terms and conditions of employment by either party to a collective

171 bargaining relationship shall not constitute or be permitted as a waiver  
172 of all or any part of the provisions of this section. Nothing in this section  
173 shall be construed to invalidate or limit the rights, remedies and  
174 procedures of any contract or agreement that provides equal or greater  
175 protection for laid-off employees than provided by this section and it  
176 shall not be a violation of this section for an employer to follow an order  
177 of preference for rehiring laid-off employees required by a collective  
178 bargaining agreement that is different from the order of preference  
179 required by this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	31-40aa

**LAB**      *Joint Favorable*

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*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

### **Explanation**

The bill, which extends (from May 1, 2022 to May 1, 2023) the law that requires that certain employers meet various requirements related to recalling certain laid-off employees, does not result in any fiscal impact to the state or municipalities.

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any fiscal impact to the Judicial Department. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

### **The Out Years**

**State Impact:** None

**Municipal Impact:** None



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**OLR Bill Analysis****HB 5246*****AN ACT EXTENDING RECALL RIGHTS OF CERTAIN LAID-OFF EMPLOYEES.*****SUMMARY**

This bill extends the applicability of a law that generally requires hotels, lodging houses, food service contractors, and building service enterprises with at least 15 employees to meet various requirements related to rehiring certain employees who they laid off due to the COVID-19 pandemic. Current law covers those employees laid off between March 10, 2020, and May 1, 2022. The bill extends the coverage to include those employees laid off before May 1, 2023. Among other things, the employers covered by the law must notify these laid-off employees about available positions for which they are qualified and offer the positions to those with the most seniority at the employment site.

Under the law, if the employee declines the position due to underlying conditions related to contracting COVID-19, then the employee retains the right to accept an available position for which he or she is qualified until (1) the COVID-19 public health and civil preparedness emergencies, and any extensions of them, expire and (2) the employee is reoffered a position. To retain the right to the position under current law, the underlying condition must be diagnosed by May 1, 2021. The bill instead requires that it be diagnosed by May 1, 2022.

EFFECTIVE DATE: Upon passage

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/10/2022)