



INSURANCE BROKERAGE

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On April 16, 2021, Governor Newsom signed into law SB-93 ^[1]. Basically, if an employee working in any of the listed industries was laid off due to “the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason due to the COVID-19 pandemic,” the employer must offer an open position to such an employee before hiring someone new.

Within 5 business days of establishing a position, the employer must mail or hand deliver as well as e-mail and text (if possible) notice of the available positions to the laid-off employee. The employee then has five business days to accept or decline the position.

The law imposes record-keeping requirements on employers for 3 years and requires an employer to provide written notice to any “laid off” employee that was “passed over” for a position. All of these requirements still apply even if there is a change of ownership, which means that a new business entity would be inheriting the obligation to “laid off” employees.

There are enforcement penalties too, to be adjudicated by the Division of Labor Standards Enforcement, with remedies including hiring/reinstatement, lost pay, and benefits. There are also statutory penalties imposed.

Some employers seeking to terminate employment for disciplinary reasons will often offer to couch the termination as a “lay off” for the benefit of the employee. Well, that’s not feasible now – the employee will have to be terminated for cause to avoid exposure for reinstatement.

How will this legislation impact the approach to a Compromise and Release? Will a voluntary resignation letter negate the impact of SB-93? Presumably, the C&R would need to include language to the effect that the applicant is not a “laid-off employee as contemplated by Labor Code section 2810.8” although how the Division of Labor Standards Enforcement will treat such a stipulation will have to be seen.

Employers should be particularly careful about documenting the reasons for separation and coordinate with their adjusters to ensure all proper documentation is available when drafting settlement paperwork.

The silver lining might well be that as applicants push to apply the effects of SB-93, they may very well be negating any potential claims to rebutting the PDRS based on vocational rehabilitation evidence, as general economic conditions should be an argument against rebutting the PDRS.

SOURCE: Gregory Grinberg, WCDefenseCA

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[1] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB93

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