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Title: Creating Chapter 233A of the Legislative Code to establish certain rights for hospitality workers who have suffered loss of employment due to the Covid-19 pandemic to return to work with their previous employer.

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Code sections:

Attachments: 1. Local 17 Recall Report _ MN Leg _ Jan 2021, 2. Ord 21-20 - Tom Basgen, 3. Ord 21-20 - Roseann Kasper-Morrell, 4. Ord 21-20 - Wade Luneburg, 5. Ord 21-20 - Kera Peterson, 6. Ord 21-20 - Diane Scovill, 7. Ord 21-20 - Mary Sledz, 8. Ord 21-20 - St. Paul Area Chamber, 9. Ord 21-20 - Richard Dobransky, 10. Ord 21-20 - Liz Rammer-Hospitality Minnesota, 11. HREEO report to Council Hospitality Right to Recall final submitted 10.30.22

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| 6/17/2021 | 1 | Mayor's Office | Signed | |
| 6/16/2021 | 1 | City Council | Adopted | Pass |
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Creating Chapter 233A of the Legislative Code to establish certain rights for hospitality workers who have suffered loss of employment due to the Covid-19 pandemic to return to work with their previous employer.

Section 1

WHEREAS, as a result of the COVID-19 pandemic, the resulting economic disruption, and the Executive Orders issued by the State of Minnesota and Emergency Regulations issued by the City of Saint Paul to protect the public health and welfare, many workers in the City of Saint Paul are facing significant job losses and economic insecurity, and

WHEREAS, on March 13, 2020, Minnesota Governor Walz issued Executive Order 20-01 declaring a peacetime emergency in response to COVID-19. In the following months, Governor Walz issued numerous Executive Orders, many of which limited economic activity in Minnesota in the interest of protecting public health.

WHEREAS, on March 17, 2020, Mayor Carter declared a Local Public Health Emergency pursuant to Saint Paul Administrative Code Section 13.02 in response to the COVID-19 pandemic. In the following months, Mayor Carter issued additional Emergency Regulations, many of which limited economic activity within the City in the interest of protecting public health.

WHEREAS, the COVID-19 pandemic has had a particularly devastating effect upon the hospitality industry, as travel, tourism, and events have halted and there are few ways to mitigate the economic loss to these

businesses.

WHEREAS, Saint Paul, as a major tourist and event destination, is home to many hotels and event centers, which have suffered from a lack of business due to the COVID-19 pandemic and resulting economic conditions and government orders. These businesses have been forced to lay off many of their employees. As a result, Saint Paul's hospitality employees have experienced a great degree of economic dislocation and insecurity; and

WHEREAS, as the COVID-19 pandemic subsides, and tourism, travel and events resume, hospitality employers will resume their operations. When this occurs, it is in the interests of the City that hospitality employers welcome their former employees back to work as they are able.

WHEREAS, ensuring that hospitality employers welcome back their former employees will reduce the devastating effects of the pandemic on these employees and their families and reduce the need for government-funded benefits and social services, and will speed the City's transition back to a fully functioning economy and lessen the long-term damage to the Saint Paul economy

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

Section 2

Chapter 233A of the Saint Paul Legislative Code is hereby created to read as follows:

233A.01 - Definitions.

For the purposes of this Chapter the following terms have the meanings ascribed to them in this section:

(1) City means the City of Saint Paul.

(2) Covered Enterprise means a Hotel or an Event Center located within the City.

(3) Department means the Saint Paul Department of Human Rights and Equal Employment Opportunity.

(4) Director means the director of the Department, or their designee.

(5) Employee means any individual employed by an Employer, including temporary employees and part-time employees, who performed work within the geographic boundaries of the City for at least eighty (80) hours in the 12 months that preceded March 13, 2020, for that Employer at a Covered Enterprise. For purposes of this Chapter, "Employee" does not include the following:

(a) Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.6000, subpart 13 and participating in the Minnesota Statutes, Section 268A.15 extended employment program.

(b) Independent contractors.

(6) Employer means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an Employer in relation to an Employee and which owns or operates a Covered Enterprise. For purposes of this Chapter, "Employer" does not include any of the following:

(a) The United States government.

(b) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.

(c) Any county or local government, except the City.

(7) *Event Center* means a publicly or privately owned structure of more than 50,000 rentable square feet or 2,000 fixed seats that is used primarily for the purposes of public performances, sporting events, conventions, or similar public events, and includes concert halls, stadiums, sports arenas, coliseums, and convention centers. The term "Event Center" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the Event Center's purpose, including food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities. The term "Event Center" does not include any religious institution place of assembly.

(8) *Hotel* means an establishment containing more than fifty (50) guest rooms, which is used or advertised as a place where lodging accommodations are supplied for pay to guests for transient occupancy. The term "Hotel" also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

(9) *Laid-off Employee* means an Employee who was employed by an Employer at a Covered Enterprise for six months or more in the 12 months preceding March 13, 2020, and whose most recent separation from active service occurred after March 13, 2020, and was due to a government order, lack of business, a reduction in workforce, or other economic and non-disciplinary reasons.

(10) *Length of Service* means the total of all periods of time during which the Laid-off Employee was in the active service of the Employer, including periods of time when the Laid-off Employee was on vacation or leave.

233A.02- Right to Recall.

(a) Priority for Laid-off Employees. An Employer shall offer its Laid-off Employees all job positions which become available at a Covered Enterprise after this Chapter's effective date and for which the Laid-off Employee is qualified. Such offers must be in writing, mailed to their last known physical address, and by email and text message to the extent the Employer possesses such information.

(b) A Laid-off Employee is qualified for a position if the Laid-off Employee:

(1) held the same or similar position at the time of the Laid-off Employee's most recent separation from active service with the Employer; or

(2) is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.

(c) The Employer shall offer such positions first to Laid-off Employees who qualify under category (b) (1) of this section and then to Laid-off Employees who qualify under category (b)(2) of this section. Where more than one Employee is entitled to preference for a position, the Employer shall offer the position to the Laid-off Employee with the greatest Length of Service.

(d) An Employer may make simultaneous, conditional offers of employment to Laid-off Employees, with final offers of employment conditioned on application of the priority system set forth in subsections (b) and (c).

(e) A Laid-off Employee who is offered a position pursuant to this section must be given at least five (5) business days from the date of an offer made by email or text message to accept or decline the offer and at least ten (10) business days from the date of a mailed offer in which to accept or decline. A Laid-off Employee who does not respond to an offer within the time provided is deemed to have declined it. A Laid-off Employee who accepts a position has seven (7) calendar days following the expiration of the time for acceptance of the offer to be available for return to work, unless the Employer and the Laid-off Employee mutually agree upon a different time.

(f) An Employer who declines to offer a position to a Laid-off Employee on the grounds of lack of qualification and instead hires someone other than the Laid-off Employee must provide the Laid-off Employee a written notice of the non-selection within thirty (30) days of the date of hire, documenting the reasons for such decision. This written record must be retained for at least three (3) years.

233A.03. - Successor Employers.

(a) The provisions of this Chapter also apply if, after the Laid-off Employee's separation from active service, the ownership of a Covered Enterprise changes due to a sale, assignment, transfer, or other disposition of substantially all of its assets, or there is a change in the Covered Enterprise's form of organization, but the enterprise continues to conduct or reopens conducting the same or similar business operations as before March 13, 2020 at the same or substantially the same location.

(b) If subsection (a) applies, the Employer shall transfer the records required by §§ 233A.02 and 233A.06 to the Successor Employer to facilitate compliance with this Chapter.

233A.04. - Retaliation.

It is unlawful for an Employer or any other person acting on its behalf to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter, including, but not limited to, inquiring, disclosing, reporting, or testifying about any violation of this Chapter. An Employer shall not take adverse employment action against or discriminate against an Employee because the Employee has exercised rights under this Chapter.

233A.05. - Implementation

(a) The Director has broad authority to implement, administer and enforce this Chapter.

(b) The Director shall develop and implement an outreach program to educate Covered Enterprises and Employees about their rights and responsibilities under this Chapter.

233A.06.- Enforcement.

(a) *Report of violations.* Any person may report to the Department suspected violations of this Chapter if they occurred after the effective date of this Chapter and within three hundred and sixty-five (365) days prior to the date of the report.

(b) *Educational outreach.* The Director may, upon any credible information that a violation may have occurred but before an investigation is initiated promptly provide education to the Covered Enterprise with the purpose of promptly remediating any violation or potential violation. If educational efforts are successful and the Director is provided with satisfactory information that there has been no monetary harm to Laid-off Employees, the matter may in the Director's discretion be closed without investigation or a determination of violation.

(c) Investigation.

(1) If the Director does not attempt educational outreach, or such outreach fails to resolve the matter, the Department shall investigate the reported violation.

(2) To pursue a violation of this chapter, the Director must serve upon an employer via U.S. mail a notice of investigation setting forth the allegations and pertinent facts. The notice of investigation must be accompanied by a request for a written position statement and may include a request for records or other information. The notice must also inform the employer that retaliation for claiming rights under this chapter is a separate violation of this chapter.

(3) An employer's position and response to any request for records must be provided to the department within seven (7) working days. An employer's failure to provide a position statement or to provide a full response to a request for records, or any other reasonable request issued by the department pursuant to an investigation, within thirty (30) days of such request creates a rebuttable presumption of a violation of this chapter. An employer that fails to respond to a request for records may not use such records or any records not provided to the department at any hearing held under this chapter.

(d) Remedies. If an Employer is found to have violated this Chapter, the Director may order any appropriate relief, including but not limited to:

(1) Reinstatement:

(2) Compensatory damages to the Laid-off Employee in the amount of the lost wages and benefits suffered by the Laid-off Employee, or one thousand dollars (\$1,000.00), whichever is greater. The compensatory damages available must be reduced by the wages and benefits actually earned by the Laid-off Employee in alternative employment during the same time period;

(3) Administrative fines, as permitted by law.

(e) Private Right of Action. This Chapter may be enforced in a civil action in any court of competent jurisdiction brought by the Department or by one or more Employees for and on behalf of oneself or themselves and other Employees similarly situated, or the Employee or Employees may designate an agent or representative to maintain action for and in behalf of all Employees similarly situated. If the court finds that the Employer has violated this Chapter, the court may enjoin the Employer from engaging in such violation, and order appropriate remedies. The court may also order punitive damages if the court finds that the employer engaged in the violation with malice or with reckless indifference to the requirements of this Chapter, and treble damages on behalf of an Employee terminated in violation of section 240.06. If the plaintiff prevails in any legal action taken pursuant to this subsection, the court shall award reasonable attorney's fees, expert witness fees and costs as part of the costs recoverable.

233A.07- Records Retention.

(a) An Employer shall retain the following records documenting compliance with this Chapter:

(1) Each Laid-off Employee's full legal name, job position at the time of separation from employment, date of hire, last known physical address, last known email address, and last known telephone number.

(2) Records sufficient to demonstrate offers of employment made to Laid-off Employees pursuant to Section 240.04.

(3) Any notices to Laid-off Employees of non-selection, pursuant to Section 240.04(f).

(b) Such records must be retained for a period of no fewer than three (3) years from the date that the offer of employment or notice of non-selection was provided to the Laid-off Employee.

(c) An Employer must allow an Employee to inspect records required by this Chapter and relating to the Employee at a reasonable time and place.

(d) An Employer must provide access to the records required by this Chapter to the Department, with appropriate notice and at a mutually agreeable time, to investigate alleged violations of and monitor compliance with the requirements of this Chapter.

(e) If an Employer fails to create and retain adequate records or does not allow the Department reasonable access to the records and an issue arises as to an alleged violation of this Chapter, it shall be presumed that the Employer has violated this Chapter, absent clear and convincing evidence otherwise.

233A.08 - No assumption of liability. In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, nor is it imposing on its officers and employees an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right against the City.

233A.09. - Rulemaking. The Director may make appropriate rules to implement, administer and enforce this Chapter. Such rules must be consistent with this Chapter and may be relied upon by employers and employees in determining their rights and responsibilities under this Chapter.

233A.10- Reporting.

At least 60 days before the expiration of this Chapter, the Director shall provide a written report to the City Council regarding the effectiveness of this Chapter in promoting the goals and purposes set forth herein, and a recommendation regarding whether there is a continuing need for the provisions of this Chapter based upon the City's economic recovery from the COVID-19 pandemic. The report should include, but need not be limited to, a discussion of the implementation and enforcement of this Chapter, including the number and nature of violations, the number of employees reinstated, the penalties assessed, and any other relevant information to assist the Council in determining whether to renew the ordinance.

Section 3

This ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication and will continue in effect until December 31, 2022.