

ATTACHMENT B

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ORDINANCE G-_____

AN ORDINANCE AMENDING THE PHOENIX CITY CODE,
BY ADDING A NEW CHAPTER 17, BUSINESS AND WAGE
REGULATIONS, ARTICLE I. GENERAL PROVISIONS AND
ARTICLE II, RIGHT OF RECALL FOR TOURISM AND
HOSPITALITY WORKERS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX AS

FOLLOWS:

SECTION 1. PHOENIX CITY CODE, CHAPTER 17, ARTICLE I, GENERAL
PROVISIONS, SECTIONS 17-1 through 17-8 ARE ADDED AS FOLLOWS:

Article I. General Provisions.

Sec. 17-1. Declaration of Policy.

The SARS-CoV-2 pandemic caused widespread economic dislocation in Phoenix due to interruptions of normal enterprise activity through voluntary and government-ordered cutbacks and closures. Thousands of workers in Phoenix were unable to continue in their occupations during this time, particularly in the hospitality industry. Although many received income from public and private sources to carry them through this crisis and prevent widespread destitution, these measures have necessarily been only temporary. What matters most for the recovery of workers and their families and for the city's economy as a whole is that they get back to work as they were before the crisis hit and are afforded additional assistance.

Sec. 17-2. Definitions.

Airport means Sky Harbor International Airport.

An *airline food caterer* prepares food or beverage to or for aircraft crew or passengers, delivers prepared food or beverage to or for aircraft crew or passengers, conducts security or inspection of aircraft food or beverage, or provides any other service related to or in connection with the preparation of food or beverage to or for aircraft crew or passengers, at the Airport. The term airline food caterer does not include an air carrier certificated by the Federal Aviation Administration.

An *airport service provider* prepares or sells food or other retail products or services to customers or provides custodial or janitorial services at the Airport. Airport service provider does not include the City of Phoenix or any subdivision thereof, or an air carrier certificated by the Federal Aviation Administration and any entity owned or controlled by such an air carrier.

A *Campus service provider* prepares or sells food or other retail products to customers or provides custodial or janitorial services at any public or private college or university with more than 1,000 enrolled students.

Compensation means an employee's average weekly earnings for the 12-month period immediately preceding the employee's last day of active employment with an employer, including wages or salary, payments to an employee while on vacation or on leave, allocated or declared tip income, bonuses or commissions, contributions or premiums paid by the employer for fringe benefits, overtime or other premium payments, and allowances for expenses, uniforms, travel or education.

City means the City of Phoenix.

Employer means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, conducts an enterprise and employs or exercises control over the wages, hours or working conditions of any employee.

Employment site means the principal physical place where a furloughed employee performed the predominance of the worker's duties prior to being furloughed.

Enterprise means any airline food caterer, airport service provider, campus service provider, event center or hotel in the City.

Event center means a convention center, stadium, arena, or like venue with a total capacity of at least 1,000 people that hosts conventions, sporting events, concerts, or shows. Does not include any facilities on the campus of any public elementary, middle, or high school, or in a place of worship.

Hotel has the same meaning as in Section 14-100 and includes any restaurant as defined in Section 14-100 and any contracted, leased or sublet premises operated in conjunction with a hotel or that is used for the primary purpose of providing services at a hotel, but does not include a hotel with fewer than 150 guestrooms.

Furloughed employee means any employee who was employed by the employer for six months or more in the 12 months preceding March 1, 2020, and whose most recent involuntary separation from active service occurred after March 1, 2020, and was due to government shutdown orders, lack of business, a reduction in force or other, economic, non-disciplinary reasons.

Length of service means the total of all periods of time during which an employee has been in active service, including periods of time when the hospitality worker was on leave or vacation.

Person means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization of any kind.

Sec. 17-3. Retaliatory action prohibited.

A. No employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this chapter by any lawful means, for participating in proceedings related to this chapter, for opposing any practice proscribed by this chapter, or for otherwise asserting rights under this chapter. This Section shall also apply to any employee who mistakenly, but in good faith, alleges noncompliance with this chapter.

B. An employer refusing to employ, terminating or taking any other adverse action against any employee who has engaged in any of the foregoing activities must, within sixty (60) days preceding the refusal, termination or other adverse action, provide to the employee at or before the time of the refusal, termination or other adverse action, a detailed written statement of the reason or reasons for the refusal, termination or other adverse action. Statement must include all the facts substantiating the reason or reasons, and all facts known to the person that contradict the substantiating facts.

Sec. 17-4. Enforcement.

A. This chapter may be enforced in a civil action in Superior Court brought by the City Attorney or by one or more employees for and in 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.

B. If the court finds that the employer has violated this chapter, the court may enjoin the employer from engaging in such violation, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay including fringe benefits, or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Before interim earnings are deducted from lost wages, there shall be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment. The court may also order compensatory and 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 17-3.

C. If it is established that a furloughed employee exercised rights under this chapter or alleged in good faith that the employer was not complying with this chapter, and the employer thereafter refused to employ, terminated, demoted or otherwise took adverse action against the employee, and that action took place within sixty (60) days after such exercise, then a rebuttable presumption shall arise that the employer's action was taken in violation of 17-3. The employer must prove that the true and entire reason for the action was a legitimate business reason. The plaintiff may rebut the employer's asserted legitimate business reason by showing that it was, in fact, a pretext.

D. If the plaintiff prevails in any legal action taken pursuant to this chapter, the court shall award reasonable attorney's fees, expert witness fees and costs as part of the costs recoverable.

Sec. 17-5. Collective bargaining agreements.

All the provisions of this chapter, or any part of this chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unmistakable terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this chapter.

Sec. 17-6. No waiver of rights.

Except for bona fide collective bargaining agreements, any waiver by a worker of any or all of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by an employer to have

a worker waive rights given by this chapter shall constitute a violation of this chapter. In order to protect the public welfare from the adverse effects of long-term mass unemployment and underemployment, this chapter may be enforced regardless of any waiver or release executed by a worker prior to enactment of this chapter unless barred from doing so by another provision of law. Any private agreement by which an intended layoff or termination for economic reasons is relabeled a resignation or quit shall be disregarded under this chapter to the fullest extent permitted by law.

Sec. 17-7. Coexistence with other available relief for deprivations of protected rights.

The provisions of this chapter shall not be construed as limiting any person's right to obtain any other relief to which he or she may be entitled at law or in equity. Any standards relating to recall to work established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

Sec. 17-8. Severability.

If any provision or application of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions and applications shall remain in full force and effect.

Sec. 17-9 & 17-10. Reserved.

SECTION 2. PHOENIX CITY CODE, CHAPTER 17, ARTICLE II, RIGHT OF RECALL FOR TOURISM AND HOSPITALITY WORKERS, SECTIONS 17-11 & 17-12, ARE ADDED AS FOLLOWS:

Article II. Right of Recall for Tourism and Hospitality Workers

Sec. 17-11. Recall.

A. An employer shall offer its furloughed employees a written offer, to their last known physical address, email address and text number, all job positions which become available after this article's effective date for which the furloughed employees are qualified.

B. A furloughed employee is qualified for a position if the employee:

1. Held the same or similar position at the enterprise at the time of the employee's most recent inactive separation from service; or

2. Can be qualified for the position with the same training that would be provided to a new employee hired into that position.

3. The employer shall offer positions to furloughed employees in an order of preference of paragraphs B(1) and then B(2).

C. Where more than one employee is entitled to preference for a position, the employer shall offer the position to the employee with the greatest length of service at the employment site.

D. To qualify as a recall under this section, a furloughed employee must be offered a position in the same classification or job title with substantially the same employment site (subject to relocation as provided in Sec. 17-12), duties, compensation, benefits and working conditions as applied to the furloughed employee immediately before March 1, 2020.

E. A furloughed employee who is offered a position pursuant to this article shall be given no less than ten business days in which to accept or decline the offer.

F. An employer that declines to recall a furloughed employee on the grounds of lack of qualifications and instead hires someone other than a furloughed employee shall provide the furloughed employee a written notice within 20 business days. Notice shall identify those hired in lieu of such recall, along with all reasons for such decision and all demographic data the employer has about new hires and the rejected furloughed employees.

Sec. 17-12. Retention.

A. The requirements of this article also apply in the following circumstances:

1. The ownership of the employer changed after a furloughed employee was furloughed, but the enterprise is conducting the same or similar operations as before March 1, 2020;

2. The form of organization of the employer changed after March 1, 2020;

3. Substantially all the assets of the employer were acquired by another entity which conducts the same or similar operations using substantially the same assets;

4. The employer relocates the operations at which a furloughed employee was employed before March 1, 2020 to a different employment site within 25 miles of the original employment site; and

5. Any combination of the circumstances described in paragraphs

(1) through (4).

PASSED by the City Council of the City of Phoenix this ____ day of July,
2020.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

MAYOR