

CHAPTER 2020-49

No. 371 AN ORDINANCE AMENDING CHAPTER 2 "ADMINISTRATION",
ARTICLE I "IN GENERAL" OF THE PROVIDENCE CODE OF
ORDINANCES, TO ADD SECTION 2-18.6, "HOSPITALITY WORKER
COMEBACK"

Approved November 13, 2020

Be it ordained by the City of Providence:

WHEREAS, The City of Providence finds that tourism, particularly the return of visitors to our City, is a vital element of the City's economy; and

WHEREAS, The City of Providence has invested significant resources in fostering the development of tourism and the hotel industry; and

WHEREAS, The City of Providence has acted swiftly and responsibly in the face of the pandemic by ensuring state guidelines, such as the 14-day travel quarantine, are adhered to; and

WHEREAS, As the hospitality industry comes back to life, the City of Providence can continue to act responsibly by ensuring laid off hospitality workers are offered their jobs back as business returns; and

WHEREAS, The City's interest in preserving tourism calls for the retention and recall of hospitality Employees upon the reopening of the City's economy, including those who have suffered layoffs or furloughs during the COVID-19 pandemic through no fault of their own; and

WHEREAS, the wholesale displacement of hundreds of Employees as a result of the COVID-19 pandemic threatens immeasurable damage to the reputation of the tourist industry,

Now Therefore, Be it ordained by the City of Providence:

Section 1. Chapter 2, "Administration", Article I "In General" is hereby amended to add Section 2-18.6, "Hospitality Worker Comeback" as follows:

Sec. 2-18.6 - Hospitality Worker Comeback

(a) Purpose. The purpose of this section is to bolster Providence as a tourist destination, and to promote the stability of Providence's hospitality and tourism businesses.

(b) Definitions.

Employee means any person who was employed to perform any services by a hospitality business, including part-time and on-call employees who worked for a hospitality business for 6 months or more and whose most recent separation from active employment with a hospitality business occurred on or after March 9, 2020 as a result of a lack of business, a reduction in work force or other economic, non-disciplinary reason. For the purposes of this section, the definition of employee excludes any supervisors or managerial employees as defined in 29 U.S.C. § 152(11) and any independent contractors.

Hospitality business includes any hotel, motel, resort, boarding house, or bed and breakfast which is kept, used or advertised as, or held out to the public as, a place where sleeping or housekeeping accommodations are supplied for pay to guests for leisure, business or group occupancy, which operates within the City of Providence with at least twenty-five (25) rentable rooms, and any in-house component thereof, including housekeeping services, front desk, laundry, room service, valet, bell desk, restaurant, food and/or beverage service or other operation facilitating guest service located within a hotel, motel, resort, boarding house, or bed and breakfast containing at least twenty-five (25) rooms.

Hospitality business owner means any person, combination of persons, or company that purchases or enters into a lease of the real property or the fixtures, or both, of a hospitality business and within two (2) years thereafter operates any part of the hospitality business directly, through affiliates of such person or persons, or through a contract with an unaffiliated entity. This includes but is not limited to any purchaser or new management company, contractor, subcontractor, lessee, sublessee, or other person, that will take over as an employer in any part of the facility where a hospitality business has been located.

Hospitality employer means a person, whether owner or a manager, who acts as the immediate employer of the Employees in a hospitality business.

Manager means any person who operates a hospitality business on behalf of another person pursuant to a lease, sublease, management agreement, operating agreement, franchise agreement or other arrangement.

Ownership means the possessory interest or interests acquired by a hospitality business buyer in property that enables the hospitality business buyer to control any part of the operation of hospitality business.

Person means any individual, firm, partnership, corporation, limited liability company, trust, association, joint venture or other legal entity.

(c) Retention of hospitality business Employees.

(1) A Hospitality business, (whether the Hospitality business owner or its Manager) shall offer any position that is or becomes available to an Employee for which said Employee is qualified. The offer shall be sent in writing to the last known: (1) mailing address of the Employee, (2) electronic mail address of the Employee and (3) phone number of the Employee by text message. An Employee shall be qualified for an available position if the Employee: (1) held the same or a substantially similar position at the same employment site at the time of the Employee's most recent separation from active service with the employer; or (2) is or can become qualified for the position through the same training that would be provided to a new worker hired for that position. If more than 1 Employee is entitled to preference for a position, first priority shall be for an Employee with the greatest length of service in the same or a similar position and then for an Employee with the greatest length of service at the employment site.

(2) An Employee offered a position pursuant to this section shall be given no less than 5 business days in which to accept or decline the offer.

(d) Preservation of rights.

(1) No provision of this section shall be construed to impair, prohibit, or provide for any right of recovery for, that lawful exercise of Employees' or employers' right to engage in strike or lockout.

(2) Nothing in this section shall impose any obligation, direct or indirect, on any instrumentality of the State of Rhode Island, including the Rhode Island Convention Center.

(e) Enforcement.

(1) An Employee who has not received an offer from a Hospitality business, Hospitality business owner, or Manager in violation of this section may bring an action in any court of competent jurisdiction of the State of Rhode Island no later than within three (3) years of the violation against the hospitality business employer, and shall be awarded:

- a. Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
 - The average regular rate of pay received by the Employee during the last three (3) years of the Employee's employment in the same occupation; or
 - The final regular rate received by the Employee.

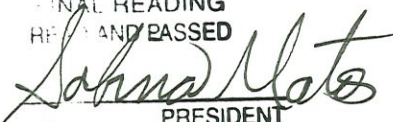

- b. Treble the damages in subsection if the hospitality business employer's violation is shown to be willful.

(2) If the Employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.


(f) Severability. The provisions of this section shall be severable. If any provision of this section is held to be unenforceable by a court of competent jurisdiction, all remaining provisions shall remain in force.

(g) Term. Prior to September 30, 2022, the City Council shall hold a hearing regarding: (i) the effectiveness of said section in protecting workers' stability of employment; (ii) recommendations for additional employment stability protections; and (iii) whether the protections of said section are still necessary based on the municipality's recovery from the impacts of the COVID-19 pandemic.

Section 2. This Ordinance shall remain in effect until November 1, 2022 and as of that date this Ordinance is repealed unless an extension or re-authorization is approved by vote of the City Council.

IN CITY
COUNCIL
NOV 05 2020
FINAL READING
READ AND PASSED

PRESIDENT

CLERK

I HEREBY APPROVE.



Mayor
Date: 11/13/20

October 21, 2020

The Honorable Jo-Ann Ryan
Providence City Council
Ordinance Committee
25 Dorrance Street
Providence, RI 02903

Dear Chairwoman Ryan:

On behalf of the RI Hospitality Association, we write in opposition to the "Hospitality Worker Comeback" ordinance, which would place restrictive burdens on an industry already on the brink of collapse.


Current Status of the Hotel Industry


Rhode Island's hospitality industry has been devastated by the COVID-19 pandemic. Virtually overnight, the shining star of Rhode Island's economy was shuttered, forcing restaurants and hotels to close their doors. Many hotels in Providence shut down, with two of our most iconic hotels, the Providence Graduate and the Omni Providence, still unable to open.


Now seven months into the crisis, the hotel industry continues to struggle.

- Before COVID, the hotel industry employed 5,129 workers directly and 19,548 people indirectly. In September, the industry had lost 1,954 jobs directly employed at hotels and 4,516 in indirect jobs.
- Based on STR, hotel's occupancy rate in September 2020 is at 49.6%, compared to 74.5% in 2019, although it should be noted that this number does not include hotels that are currently closed, leaving our overall occupancy rate much lower.
- The 1% Hotel Tax in Providence in July 2020 was only \$23,942, compared to \$119,232 in July 2019, a 79.9% decline.

The future for Providence hotels is equally bleak. Meetings and conventions make up the bulk of hotel stays in Providence. With the current restrictions on social gatherings, catered events and travel expected to continue well into 2021, our meetings and conventions business is essentially non-existent. This has been compounded by the closure of the RI Convention Center. January and February are usually supported by sporting events, such as wrestling and cheerleading. With those events not happening, we are expecting a weak first quarter.

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The American Hotel & Lodging Association conducted a survey of more than 1,000 hotels in September 2020. The results were bleak.

- 67% of hotels will not make it another six months given current and projected travel demand without further federal assistance.
- Without further government assistance (i.e. second PPP loan, expansion of Main Street Lending Program), more than one-third of hotels will be forced to close within the next three months.
- Nearly one-third of hotels would be facing bankruptcy or be forced to sell by the end of 2020.
- 42% would close due to lack of revenue.

The stated purpose of this ordinance is to “bolster Providence as a tourist destination and to promote the stability of Providence’s hospitality and tourism businesses.” Unfortunately, this ordinance will have the exact opposite effect and will cause harm to our already struggling industry.


Vagueness of the language


Aside from the substantive impact that this proposal will have on the hotel industry, the language of the ordinance itself will lead to confusion for the hotel and the employees themselves.


- One clause of the ordinance would require the hotel to notify employees of their ability to return to work via written letter sent to their last known address, email and text message. This not only is overly burdensome, but would also require hotel staff, such as the Human Resource department, to use their personal cell phones to communicate with employees.
- The language used for determining how to recall employees and what qualifies an employee for a specific position is incredibly vague and will lead to qualified employees being bumped from their positions for employees in other departments that can receive training to do the same job.

The current language would do the opposite of this proposal’s intent – protecting people’s pre-COVID jobs. Employees with more seniority will have to be offered jobs in other departments if they can be trained to do these jobs. This not only hurts the employee who has less seniority, it also hurts the employee who must now take the job or potentially lose their unemployment insurance benefits.

- The language is also silent as to how this would impact an employee’s seniority if their old job later became available.
- The language does not specify what happens if, after training, the position standards are not met. Does the right to recall end?
- There is no definition of a “substantially similar” position.

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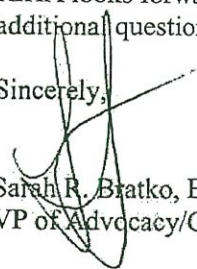
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- The language also does not specify what happens when an employee does not respond to a recalled position or declines the offer. Does that employee give up their right to recall? Does that employee give up their seniority for their former position?
- Rhode Island, like most other states, is an at-will employment state. This proposal would essentially usurp this long-standing state doctrine, by requiring employers to disclose to employees why their position was terminated.
- The definition of "in-house component," is left undefined.
- The penalties are unfairly punitive and essentially creates a state-mandated severance package.

While we can appreciate the reasoning behind this proposal, the fact remains that the industry simply cannot withstand additional regulatory burdens at this time, particularly when the language of the ordinance is overly broad and does not address basic operational concerns.

RIHA looks forward to having additional conversations with the City Council on this topic. If you have additional questions, please do not hesitate to contact me at Sarah@rihospitality.org or 401-223-1120.

Sincerely,


Sarah R. Bratko, Esq.
VP of Advocacy/General Counsel

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