



**JOB KILLER**

April 18, 2023

TO: Members, Senate Labor, Public Employment and Retirement Committee

**SUBJECT: SB 723 (Durazo) EMPLOYMENT: REHIRING AND RETENTION: DISPLACED WORKERS  
OPPOSE/JOB KILLER – AS AMENDED MARCH 20, 2023**

The California Chamber of Commerce and the undersigned are **OPPOSED** to **SB 723 (Durazo)**, which has been labeled a **JOB KILLER**. **SB 723** permanently removes business’s flexibility and autonomy over hiring without justification. It also likely violates the Contracts Clauses of both the federal and California constitution. **SB 723** will do nothing but slow down hiring and add administrative costs to a hospitality industry still grappling with the impacts of the pandemic.

**SB 723 Undoes Legislative Compromise that Became SB 93 (2021)**

In the beginning of the COVID-19 pandemic, AB 3216 (Kalra) (2020) proposed a right to recall for hospitality workers during any state of emergency. It was vetoed due to the burden it would have placed on struggling industries and its failure to narrowly tailor its provisions to COVID-19:

. . . . I recognize the real problem this bill is trying to fix—to ensure that workers who have been laid off due to the COVID19 pandemic have certainty about their rehiring and job security. But, as drafted, its prescriptive provisions would take effect during any state of emergency for all layoffs, including those that may be unrelated to such emergency. Tying the bill’s provisions to a state of emergency will create a confusing patchwork of requirements in different counties at different times. The bill also risks the sharing of too much personal information of hired employees. There must be more reasonable tools to

effectively enforce the recall provisions. Finally, the hospitality industry and its employees have been hit hard by the economic impacts of the pandemic. I believe the requirements of this bill place too onerous a burden on employers navigating these tough challenges, and I would encourage the legislature to consider other approaches to ensure workers are not left behind.

As part of the budget process the following year, negotiations took place between the Legislature, administration, and business community regarding a narrower version of a right to recall. Although it still faced opposition as being unnecessary and overly burdensome, the result, SB 93, was more limited in time and scope and specifically tied to the unique circumstances presented by the COVID-19 pandemic. It had a sunset date of December 31, 2024.

Now, even before that sunset date, **SB 723** dismantles those negotiations by instituting a permanent right to recall for the hospitality workers covered under SB 93. The right to recall applies to all workers who are laid off for any “economic, nondisciplinary” reason. The right to recall would apply in perpetuity any time one of the affected employers needs to conduct layoffs or a reduction in force. Further, like AB 3216, it would also apply if there is a layoff as a result of a public health directive or government shutdown order, meaning it too could create “a confusing patchwork of requirements in different counties at different times”.

The hospitality industry is still vulnerable to the impacts of COVID-19 and the vagaries of the economy. In addition to the significant loss of revenues over the last few years, that industry is also contending with the rising cost of goods, rising costs of rent and new construction, decrease in business travel upon which the industry depends, and worker shortages. **SB 723** would put an unnecessary, undue burden on the industry at a time when it is fighting to return to where it was pre-pandemic.

### **As Demonstrated by the Impact of SB 93, SB 723 Will Bog Down Hiring and Undermines Basic Management of a Business**

**SB 723** seeks to forever micromanage the rehire process for affected businesses. As demonstrated by the impacts of SB 93 and several similar local ordinances, **SB 723**'s provisions, or lack thereof, will only delay rehiring and increase costs on employers. Specifically:

- **SB 723** forces an employer to repeatedly offer newly available positions to qualified employees, no matter how many times they have turned offers down, failed to respond to previous job offers, or explicitly declined previous offers to return to work.<sup>1</sup> Under SB 93 and similar local ordinances, this slowed down the hiring process significantly.
- **SB 723** would essentially eliminate the use of severance agreements, which benefit employees. No employer subject to such a retention right would have any reason to offer a severance agreement.
- **SB 723** forces an employer to send notices to all eligible, qualified employees for an available position and then wait five business days before moving on to other employees. Under SB 93 and similar local ordinances, this waiting period has slowed down hiring and will have the same impact here.
- **SB 723** forces employers to hire based on seniority, not skill. The bill ties the employer's hands as far as hiring because they are only allowed to consider seniority, not who is most qualified for the job. It further prohibits them from considering other applicants that may be best suited for the position.
- SB 93 increased administrative costs to the affected businesses due to the complexity of the recall process and administrative hurdles in hiring. Any good faith error results in penalties.

Further, this bill is unnecessary. The employers targeted under this bill include small and large hotels, event centers, airport hospitality operations, the provision of building services to office, retail, or other commercial buildings, and any restaurant or retail store that has a location inside a hotel or event center. Many of those

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<sup>1</sup> See FAQ No. 14 interpreting similar language in SB 93 (2021): [Frequently Asked Questions on Recall Rights](#):

businesses are presently struggling to hire. Hotels estimate their vacancy rates at about 20%. It is common sense and smart business practice to rehire known, trained, and former employees who previously had to be laid off due to economics or a required shutdown. **SB 723** simply adds to the difficulty of hiring and running a business, it does nothing to help these businesses.

### **There is No Justification for SB 723 and it Likely Violates the Contracts Clauses**

Unlike SB 93 or similar ordinances, **SB 723** is not the result of a unique obstacle such as the pandemic. Nor is it limited in time – it is a permanent statutory scheme that eliminates at-will employment and mandates hiring based on seniority alone. For this reason, **SB 723** likely violates the Contracts Clauses of the United States and California constitution because it modifies existing at-will contracts. Any law that substantially impairs pre-existing contractual obligations violates the contract clauses of both the federal and California constitutions. **SB 723** creates a novel, long-lasting retroactive right. As stated above, only in extreme circumstances has existing law recognized such a retention right. Under California law, and absent an agreement otherwise, all “employment may be terminated at the will of either party on notice to the other.” Labor Code Section 2922. Nearly every employment agreement in California either impliedly or expressly recognizes the at-will nature of the relationship. Employers hired workers assuming that, if the viability of their business was threatened, they could layoff these workers without granting them a possible cause of action. Given the fact that there is no justification for **SB 723** and its failure to implement any meaningful limitation in time or scope, it is unlikely that the state would be able to show that **SB 723** is “appropriate and reasonable” in serving a specific interest. *Sveen v. Melin*, 138 S. Ct. 1815, 1821–1822 (2018).

For these and other reasons, we are **OPPOSED** to **SB 723 (Durazo)** as a **JOB KILLER**.

Sincerely,



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Policy Advocate  
California Chamber of Commerce

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AH:am