



UPDATED COST DRIVER

April 16, 2025

TO: Members, Assembly Labor and Employment Committee

**SUBJECT: AB 858 (LEE) EMPLOYMENT: REHIRING AND RETENTION: DISPLACED WORKERS: NATURAL DISASTERS
OPPOSE/COST DRIVER– AS AMENDED APRIL 7, 2025**

The California Chamber of Commerce and organizations listed below are **OPPOSED** to **AB 858 (Lee)** as a **COST DRIVER**. **AB 858** seeks to both extend a time-limited, COVID-19-specific law and turn it into a new, broader mandate for the next two years. **AB 858** removes hospitality employers' flexibility and autonomy over hiring without justification. It also likely violates the Contracts Clauses of both the federal and California constitution. **AB 858** will do nothing but slow down hiring and add administrative costs to California's hospitality industry that will be passed on to the consumers at a time when they are worried about affordability.

AB 858 Undermines the Legislative Compromise that Became SB 93 (2021) and More Closely Mirrors AB 3216 (2020), Which Was Vetoed for Being Overly Broad and Onerous

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 its “patchwork approach” and the burden it would have placed on struggling industries:

. . . . 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. (emphasis added)

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 and will sunset this year on December 31, 2025.¹

AB 858 reverts back to the flawed AB 3216 by establishing a new, two-year right to recall for any worker laid off as a result of either COVID-19 or any “state of emergency,” which, like AB 3216, would vary county by county and city by city.

AB 858 preys on an industry that is vulnerable to economic hardship. Where there is a state of emergency such as the recent wildfires in Los Angeles, tourism and the hospitality industry will be hit economically. It is poor public policy to enshrine in statute a mandate that is too onerous a burden on hospitality employers navigating difficult economic challenges.

Further, states of emergency regularly last for significant periods of time, long past the time of a pressing emergency. For example, on December 23, 2019, Governor Newsom terminated more than 70 *ongoing* states of emergency that had been declared at various times over the last decade, from January 27, 2011 to November 30, 2018. Accordingly, this new mandate is not “limited” to defined periods of time, but rather will be an ongoing mandate long after the pressing emergency exists.

As Demonstrated by the Impact of SB 93, AB 858 Will Bog Down Hiring and Undermines Basic Management of a Business

AB 858 seeks to forever micromanage the rehire process for affected businesses. As demonstrated by the impacts of SB 93 and several similar local ordinances, **AB 858's** provisions, or lack thereof, will only delay rehiring and increase costs on employers. Specifically:

- **AB 858** 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,

¹ That sunset was extended in 2023 by SB 723 (Durazo), which was originally a permanent extension of SB 93 and was amended into a one-year sunset extension.

or explicitly declined previous offers to return to work.² Under SB 93 and similar local ordinances, this slowed down the hiring process significantly.

- **AB 858** 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.
- **AB 858** 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.
- **AB 858** 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. 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. **AB 858** simply adds to the difficulty of hiring and running a business, it does nothing to help these businesses.

There is No Justification for AB 858 and it Likely Violates the Contracts Clauses

Unlike SB 93 or similar ordinances, **AB 858** is not the result of a unique, time-sensitive obstacle such as the pandemic. It is a lengthy statutory scheme that eliminates at-will employment and mandates hiring based on seniority alone. For this reason, **AB 858** 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. **AB 858** 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 **AB 858** and its failure to implement any meaningful limitation in time or scope, it is unlikely that the state would be able to show that **AB 858** 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 **AB 858 (Lee)** as a **COST DRIVER**.

Sincerely,



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California Chamber of Commerce

Anaheim Chamber of Commerce
Brea Chamber of Commerce

² See FAQ No. 14 interpreting similar language in SB 93 (2021): [Frequently Asked Questions on Recall Rights](#):

California Chamber of Commerce
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Colusa County Chamber of Commerce
Corona Chamber of Commerce
Gateway Chambers Alliance
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
Newport Beach Chamber of Commerce
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Paso Robles and Templeton Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Rancho Mirage Chamber of Commerce
Roseville Area Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Valley Industry & Commerce Association
West Ventura County Business Alliance

cc: Legislative Affairs, Office of the Governor
Andrew White, Office of Assemblymember Lee
Consultant, Assembly Labor and Employment Committee
Lauren Prichard, Assembly Republican Caucus

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