

What if a Laid Off Worker Refuses to Return to Work under the PPP?

Labor & Employment Law Update

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A couple of weeks ago, we examined two general factors that the Treasury will be examining to determine PPP loan forgiveness, namely whether at least 75% of the borrowed funds have been spent on “payroll costs” and whether employers maintained the same headcount and salary levels for full-time equivalent (FTE) employees.

On Sunday May 3rd, the Treasury issued additional guidance regarding the impact of layoffs on the headcount calculation for purposes of loan forgiveness. Specifically, FAQ #40 asked whether a borrower’s PPP loan forgiveness amount would be reduced if the borrower laid off an employee, subsequently offered to rehire the same employee, but the employee declined the offer. The Treasury’s answer reads in part as follows:

...SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act’s loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, ***the borrower must have made a good faith, written offer of rehire, and the employee’s rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.***

Based on the Treasury’s answer, there should be no adverse impact on a business “headcount” for purposes of loan forgiveness even where the business initially laid off a worker, but then extended the worker a WRITTEN offer to return and the worker rejected the offer. However, the business should keep a record of the worker’s rejection of the offer just like other PPP loan related documentation, i.e. payroll tax filings, cancelled checks, payment receipts, etc.

It should also be noted that, while not required, the written offer should include a statement that if the worker chooses not to return to work after the offer is made, doing so may, under some circumstances, be deemed a voluntary

resignation potentially disqualifying the worker from continued unemployment benefits.

NOTE: This is general information and should not be construed as legal advice. New guidance is continually being published. This information is only current through May 3, 2020.

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