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Hotel Owners & COVID-19 Post-Pandemic Back-to-Business FAQs

As we look toward life after the worst of the COVID-19 coronavirus pandemic has passed, business recovery will be paramount. This includes assessing business operations, bringing employees back to work, and ensuring a safe workplace. Below are some FAQ applicable to hoteliers as they navigate the post-pandemic process.

Our employees have been on furlough. When we call them back to work, do we need to treat everyone as a new hire?

Some state laws address this situation, but generally, most employees returning from furlough or a temporary layoff do not need to “re-hired” in the traditional sense. If these employees stayed on your payroll, most employers can simply return the employee to their prior position at the same pay rate and benefit eligibility as the employee left. You should document the return-to-work date using your standard personnel action form document. If there are any significant changes to wages and benefits for the returning employee, those changes should be communicated in writing. Consult your legal counsel with questions specific to your hotel and staff.

If we terminated employees instead of laying them off or furloughing them, how do we go about rehiring them?

If you terminated employees and wish to re-employ them, the best practice would be to put the “applicant” through your company’s normal application screening process, even if you forego formal interviews. This should include an application, I-9 form (depending on the length of time the employee has been terminated), and the standard hiring paperwork. This process may also include criminal background and credit checks, drug tests, and post-offer/pre-employment physical exams. Once you have rehired the individual, you should require the incoming employees to execute all new hire paperwork, which may include a handbook acknowledgment, arbitration agreement, restrictive covenant agreements, to name a few.

When we rehire an employee, do we have to report the hire to a specific state employment agency?

Yes. Federal law requires employers to report newly hired employees to the National Directory of New Hires, which includes rehired employees who have been separated from employment for at least 60 days. State laws also have new hire and rehire reporting requirements.

What is the time period in which we must report rehiring an employee?

Typically, 20 days from the date of hire, but some states have time periods as short as seven days.

If we recall an employee from layoff or furlough on a reduced hours basis, can that employee still receive unemployment benefits?

Possibly. In general, if the employee is working less than full-time hours and the employee’s weekly wages are less than their weekly benefit amount as determined by the state, the employee may be entitled to partial unemployment benefits. Partial unemployment benefits differ per state. However, in general, a portion of an employee’s weekly gross earnings are excluded from the partial weekly benefit calculation.

Do we have to bring everyone back by June 30 that we laid off since February 15? Do we have to restore all wages too? Are both required?

To avoid reductions in total loan forgiveness of SBA loans under the CARES Act, you should seek to have on your payroll during the eight-week covered period the same number of full-time equivalent employees as you did during whichever choice period you choose as a comparison (February 15, 2019 – June 30, 2019, or January 1, 2020 – February 29, 2020). Achieving this objective could involve hiring previously terminated employees or rehiring/reinstating employees subject to layoffs, furloughs, and/or reductions in pay/hours.

Additionally, if an employee's pay level was reduced during the eight-week covered period by more than 25% in comparison to the average wage earned by the employee during the most recent full quarter in which the employee was employed, you should restore the wages to within 25% or risk having to reduce the level of forgiveness by the excess of the 25% reduction. However, if during the eight-week covered period employers cannot achieve the headcount goal and/or cannot restore/maintain wages to within 25%, the CARES Act provides employers the ability to avoid such loan forgiveness reductions by restoring headcount reductions or reductions in pay levels (made between February 15, 2020, and April 26, 2020) before June 30, 2020.

Do we have to pay them the same as what they were making as of February 15?

Without guidance from the SBA, the answer to this question is probably. Practically speaking, it makes sense that employers would need to return employee wages to what employees were making during the most recent full quarter, which likely includes the date of February 15, 2020. In this regard, several unanswered questions remain for how this applies to employees whose wages are based, at least in part, on commission, tips, bonuses, etc.

What if we have an employee who hasn't worked a full quarter? What rate do we use?

It is unclear at this point absent guidance from the SBA, but practically speaking, employers would use the most recent full quarter in which the employee was employed regardless of whether the employee was employed for the entire quarter.

If we bring someone back to work, is there specific onboarding paperwork recommended to maximize the chances of loan forgiveness?

You will want to document the restoration or rehiring of employees by providing employees with a written acknowledgment that they were returned to the same the position/level of pay held before staffing reductions occurred in response to COVID-19 conditions, and that your previous policies remain in force as those in place immediately before the reduction in force when the employee was employed previously. We have developed reinstatement agreements that can be tailored to employer needs.

Please contact John A. Mavros, Esq., Employment Attorney at Fisher Phillips with further questions on how to maintain business operations safely and legally in these challenging times. Phone: (949) 798-2134 Email: jmavros@fisherphillips.com