



Labor, Employment & Employee Benefits

Tough Decisions: Rehiring Laid off and Furloughed Employees

Syracuse ♦ Ithaca ♦ New York City

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As businesses reopen, owners are confronted with untold challenges. Reopening and rehiring decisions are fraught with uncertainty in ordinary times but the governmental response to the pandemic adds additional considerations including:

- The impact on enhanced unemployment benefits.
- The need to accommodate employees as they cope with personal, child and elder care, and health concerns and demands.
- The impact of collective bargaining agreements and anti-discrimination laws and policies.
- Employment reduction penalties on forgiveness of a Paycheck Protection Program loan.

A brief legal alert cannot provide in-depth guidance on these circumstances. The facts for each business and possibly for each employee are unique. The considerations may be subjective. This alert is intended to provide some context for you as regions reopen and you begin to resume business operations.

Enhanced Unemployment Benefits: The CARES Act added \$600 of weekly benefits to regular unemployment compensation and created a pandemic unemployment assistance program that provided similar compensation to those not typically eligible for unemployment. Certain workers may continue to be eligible for this assistance even if they refuse an offer to return to work. Workers who cannot telework from home and are unable to work because of one of ten specified COVID-related circumstances may receive pandemic unemployment assistance even if they are not eligible for regular unemployment because they have been reoffered their job. The ten circumstances include:

- ✓ A member of the individual's household has been diagnosed with COVID-19;
- ✓ They are providing care for a family member or household member diagnosed with COVID-19; and
- ✓ A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19 and such school or facility care is required for the individual to work.

Accommodating Employees: The Families First Coronavirus Response Act (FFCRA) provides paid leave and job protections to employees affected by COVID-19, as well as tax credits to employers who provide paid leave. More information relating to these protections can be found here:

<https://bhlawpllc.com/publication/emergency-family-and-medical-leave-expansion-act/>

<https://bhlawpllc.com/publication/federal-emergency-paid-sick-leave-act/>

<https://bhlawpllc.com/publication/new-york-state-paid-sick-leave-and-covid-19/>

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Collective Bargaining Agreement and Anti-Discrimination Law and Policies: Collective bargaining agreements may have preferences for rehiring, such as seniority. Anti-discrimination laws and policies may limit your ability to select among employees to rehire based on age, gender, marital status and other protected status.

PPP Loan Forgiveness: A borrower may receive less than full loan forgiveness if the salary or hourly wages of certain employees during the reference period for the loan were less than during the period from January 1, 2020 to March 31, 2020. Loan forgiveness will not be reduced for positions for which a borrower makes a good-faith, written offer to rehire an employee during the reference period and the offer was rejected by the employee; and for any employees who during the reference period (a) were fired for cause, (b) voluntarily resigned or (c) voluntarily requested and received a reduction of their hours.

A borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met: (1) the borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the borrower then restored its FTE employee level by not later than June 30, 2020 to its FTE employee levels in the pay period that included February 15, 2020.

We encourage you to contact a member of our team to discuss the legal and regulatory parameters of particular decisions and your other reopening questions.



If we can provide you with additional insight and information regarding changing employment laws related to the current coronavirus pandemic and how to address internal issues at your business, please contact :

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BOUSQUET HOLSTEIN PLLC

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Bousquet Holstein PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



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