

PPP Loan FAQ:

As I previously reported, Frequently Asked Question 31 stated a borrower will be deemed to have made the necessity certification in good faith if the loan is repaid in full by May 7, 2020. The SBA yesterday issued new FAQ 43, extending the deadline for this safe harbor until May 14, 2020. The FAQ also says that SBA plans to give further guidance on how it will review the necessity certification prior to May 14. Accordingly, borrowers weighing repaying the loan should strongly consider doing so prior to May 14 but may want to wait for further guidance.

Employees Not Wanting to Return:

Ohio, Missouri, and Iowa are among at least a half dozen states that want companies to report employees who refuse to return to work during the Covid-19 pandemic to ensure they can't get jobless benefits.

In Missouri, where a plan to let businesses gradually reopen took effect Monday, the state labor department website tells employers to "report quits or work refusals as soon as possible." Ohio and Iowa have set up online forms for employers to flag employees who won't come back to work.

As businesses begin to reopen, a growing number of states that also include South Carolina and Oklahoma are reminding workers that refusing a job for fear of contracting the coronavirus will disqualify them from unemployment benefits. Workers who continue to claim those benefits may even be committing fraud, Alabama's labor department warned workers late last month.

EEOC Changes Guidance?

The EEOC removed guidance from its website Tuesday evening, hours after posting it earlier in the day. EEOC had said (in the now-scraped section) that businesses can potentially prohibit employees with an underlying medical condition from working during the coronavirus pandemic, but only if that condition poses a "direct threat" to the workers' health after an individual assessment.

"The information was subsequently misinterpreted in press reports and social media," the agency said in an update on its website. "We have removed it and are revising the information to ensure that it is clear."

The agency did not elaborate on what part of the guidance had been misinterpreted.

As a reminder, employers are barred under the ADA from asking about a worker's disability, which can include medical conditions, unless the inquiry is "job-related and consistent with business necessity."

The EEOC said in the now-removed guidance that an employer can ask about an employee's known medical conditions if "an employer has a reasonable belief, based on objective evidence, that due to a known medical condition an employee will pose a direct threat to himself in the workplace." An underlying medical condition can cause a person to contract a more severe case of Covid-19, the disease caused by the novel coronavirus.

EEOC Delays EEO Data Collections:

The EEOC will delay the anticipated opening of the 2019 EEO-1 Component 1 data collection and the 2020 EEO-3 and EEO-5 data collections because of the COVID-19 public health emergency, the agency announced today in a Federal Register notice.

EEO-1, EEO-3 and EEO-5 filers should begin preparing to submit data in 2021. Pending approval from the Office of Management and Budget under the Paperwork Reduction Act (PRA) the EEOC would expect to begin collecting the 2019 and 2020 EEO-1 Component 1 in March 2021 and will notify filers of the precise date the surveys will open as soon as it is available. The EEOC would expect to begin collecting the 2020 EEO-3 and the 2020 EEO-5 in January 2021 and will notify filers of the precise date the surveys will open as soon as it is available.