



The below is a new Q&A published by Treasury on CARES Act layoffs. I had already understood that you cannot force anyone to return to work and can replace them with another worker to keep the FTE numbers intact, but this goes further and would simply exclude the employee from the forgiveness calculation. In addition, an employee who fails to return to work after an offer of rehire no longer is eligible for unemployment because they declined employment. The below adds that you should document a worker's offer/rejection of the offer of rehire. In some states, you also may have a duty to inform the state DOL/unemployment benefits agency of the rejection.

Question: Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

Answer: No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, 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.