

Paycheck Protection Program: What to Do if Your Rehire Offer Is Rejected

By Roy Maurer

June 5, 2020

New guidance that helps Paycheck Protection Program (PPP) borrowers with loan forgiveness may lead to a tricky employee relations issue.

The PPP offers forgivable federal loans intended to help employers cover up to 24 weeks of payroll expenses and business disruption costs incurred during the coronavirus pandemic. That's up from eight weeks after President Donald Trump signed into law a bill June 5 that gives employers more flexibility when using PPP funds and applying for loan forgiveness. Additionally, employers now have until Dec. 31, rather than June 30, to rehire certain laid-off workers if they are seeking loan forgiveness.

Employers that have laid people off can obtain loan forgiveness if they maintain headcount, which means rehiring those workers. But what if former employees decline the offer?

A new interim final rule from the Small Business Administration (SBA) finally addressed a "big issue that a lot of employers had under the PPP," said Robert Perry, an attorney in the New York City office of Jackson Lewis. "The rule provides that employers will not get penalized if they offer to rehire their workforce and the employees refuse."

That scenario has become real for many small businesses, including restaurants and retailers, because of the increase in unemployment benefits provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law in late March.

"The CARES Act created a situation where a lot of lower-wage employees are now making more money to stay at home than they were making when they were working," Perry said. "It's been a challenge for employers to get these workers to come back to work, which until the SBA clarified this exemption, they would have had to do, or their loan forgiveness amount would have been reduced proportionally."

Five Steps

Employers will need to meet five conditions to avoid having their loan forgiveness reduced, according to the SBA.

Perry explained that businesses must:

1. Clearly present an offer letter in writing to the laid-off worker.
2. Offer the same salary, wages and number of hours the employee had prior to the layoff.
3. Receive a rejection of the offer.
4. Document the offer and the rejection. "The refusal does not need to be in writing but should be documented and kept in the employer's PPP loan forgiveness file," he said.
5. Notify the state unemployment office within 30 days of the date the offer is refused.

It's this last step—which would presumably disqualify the employee from continuing to claim unemployment benefits—that could become an employee relations issue, Perry said.

"Under the PPP, the interests of the employer and employee are not always aligned, and in this case the notification may cause some potential discord with workers."

He added that the SBA plans to issue additional guidance on how the notification should be carried out.

Documentation

The documentation provision is a key step that some small businesses may not be used to.

Perry recommended specifying the terms and conditions of the prior employment in the offer letter instead of just stating "the same terms and conditions of employment." The offer can be sent via e-mail or written letter, but the rejection must be documented even if it is received by phone call or text. Employers are required to maintain detailed records on the rehiring-rejection process, and all documentation should be kept handy in a loan forgiveness file.

PPP Loan Flexibility

Loan forgiveness is an important consideration for those small business owners who received a PPP loan.

"Small businesses continue to face many challenges in operating their business in these difficult times," said Holly Wade, director of research and policy analysis with the National Federation of Independent Business (NFIB). "Congress and the administration have the authority to further lighten the burden for many of their immediate concerns, especially in offering more flexibility for PPP loans."

A survey among 685 NFIB members conducted May 18 found that 80 percent had applied for a PPP loan, and almost 90 percent received the loan. Most of the loans were deposited between mid-April and mid-May.

Over half (54 percent) of respondents with a loan are expecting all of their expenses to be forgiven. Another 27 percent of borrowers expect at least 75 percent or more of loan expenses to be forgiven.

Almost 20 percent of borrowers said that the forgiveness requirement that the employer's headcount match their precrisis headcount was very difficult to meet due to suspended business activity. Another 28 percent said it was somewhat difficult to maintain or return to their precrisis workforce staffing level.

Feedback

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

Email Address

CONTACT US (WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX) | 800.283.SHRM (7476)

© 2020 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

Disclaimer (www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer)

Feedback