

Return to Work Checklist

What You Should Consider When Recalling Employees from Furlough/ Temporary Lay-Off, or Rehiring After Termination

What date should employees be recalled or rehired?

- Employers receiving loans available under the CARES Act and seeking loan forgiveness for payroll costs must recall or rehire no later than June 30, 2020 to receive unreduced loan forgiveness for layoffs occurring prior to April 26. Rehires must occur more quickly for unreduced loan forgiveness for May and June since loan forgiveness is reduced proportionately for reductions in FTEs and reductions in wages exceeding 75%.

If you have unionized employees, are there obligations under a collective bargaining agreement (CBA)?

- Check CBA for rehire/recall language, including agreed upon factors in order to bring employees back. Most changes will need to be negotiated with the union.

If an employee was terminated and signed a separation agreement, check the language to see if the rehire requires an amendment to the separation agreement.

Issue letter offering return to work.

- Will employee be recalled/rehired into same position?
- If organizational structure has changed, determine skills of employee and appropriate position to offer.
- Confirm pay rate for returning employees.
 - Employers receiving loans available to employers under the CARES Act and seeking loan forgiveness for payroll costs have certain obligations to restore and maintain compensation and benefits levels.

Will drug tests will be conducted?

- Depends on state law. Consult your CPA, financial advisor, or employment lawyer.

Are there state or local paid sick leave laws that require prior accruals to be reinstated?

- Depends on state and local law. Consult your CPA, financial advisor, or employment lawyer.

Check internal policies on rehiring to determine any reinstatement of accrued PTO or vacation time.

Are there state or local paid family leave laws under which contributions must be resumed?

- Depends on state and local law. Consult your CPA, financial advisor, or employment lawyer.

Does a new direct deposit authorization form need to be completed?

- Depends on state law. Consult your CPA, financial advisor, or employment lawyer.

Provide a new Form W-4 in case the employee wants to make changes upon returning to work.

Ensure “new hire” employee documents (i.e. employee handbook, arbitration agreement, etc.) are properly executed and effective.

Does the employee need an updated or new Form I-9?

- If employee was furloughed, updating is not required.
- If employee was terminated, and the employee is rehired within 3 years of the original hire date, section 3 of Form I-9 must be completed to indicate the rehire.
 - Check document originally shown, and, if still valid, complete name and certification fields.
 - If prior work authorization document (list A or C) has expired, view and update new work authorization documentation in section 3
- If employee is being rehired 3 years after original hire date, a completely new Form I-9 must be completed.

Did employee elect COBRA, State Continuation, or other conversion rights?

- Check with the TPA/insurer and consult your benefits plans to determine any waiting period requirement for health and other benefits.
- Check with the TPA/insurer to identify any other issues resulting from a break in service.

Determine status of health plans, cafeteria plans, and other fringe benefit plans, such as vision and dental.

- Check agreements, plans, and policies to determine if any modifications are warranted regarding eligibility and employee cost-sharing.
- Break in service of 30 days or less within the same calendar year, may result in reinstatement of FSA. (Check terms of cafeteria plan) Contributions will be recalculated to deduct the full amount by the year end.
- Break in service of over 30 days, or if rehired in a new calendar year, may require new FSA elections. (Check terms of cafeteria plan.) Consider potential special enrollment rights and qualified life event election changes (typically 30-day periods).
- Check with TPA, insurer, and agents.
- Evaluate plan eligibility changes (consider CBA, if applicable).

Determine implications for 401(k), 403(b), and pension plans.

- Check retirement plan documents with TPA/broker/advisors.
- Check plan break in service rules for eligibility, benefit accruals, and vesting (501 hours of service in a 12-month period).
- Evaluate plan eligibility changes (consider CBA if applicable).

Evaluate executive compensation and severance arrangements.

- Be aware of potential limitations on amounts of deferred compensation under CARES Act provisions
- Employers who take advantage of loans under the Exchange Stabilization Fund authorized by the CARES Act (which is separate from the Paycheck Protection Program or expansion of the Economic Injury Disaster Loan Program, which do not have executive compensation restrictions) are subject to restrictions on executive compensation.
- Evaluate possible cessation of elective and non-elective deferrals

Consider appropriate actions related to COVID-19 health pandemic

- If an employee has symptoms of coronavirus, send him or her home immediately. Consult with your HR professional or employment lawyer on recommended next steps.
- Consider if, and under what circumstances, employees may work from home. Employers should consult their HR professional or employment lawyer prior to asking employees any medical-related questions, including possible temperature screening.
- Determine employee eligibility for leaves of absence (paid or unpaid) under the Families First Coronavirus Response Act (FFCRA), state law, or company policies.
- Consider whether to provide employees with safety equipment, such as masks and gloves

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