

A GLIMPSE OF GUIDANCE ON PPP LOAN FORGIVENESS



For those employers fortunate enough to secure PPP loans, the big question remains how to ensure full loan forgiveness. With lingering questions, such as how to count “FTEs,” and will headcount be considered “reduced” if an employee takes a leave of absence or quits during the 8-week covered period, the Department of Treasury has offered little by way of clarity on the loan forgiveness component of the PPP thus far, but promises that guidance is on the way. That said, on Sunday night, May 3, 2020, the Small Business Administration (SBA), in consultation with the Treasury, added guidance to its PPP FAQs on the issue of whether employers’ loan forgiveness will be reduced if a laid-off employee declines an offer of re-employment. Specifically, FAQ #40 provides:

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.

In an unprecedented era where many employers are competing against increased unemployment insurance benefits (employees are eligible for \$600 per week more than normal), the SBA's guidance is positive news for employers because it means two things: (1) if employees decline to return to work, it will not reduce the employer's loan forgiveness under the PPP, and (2) employees are incentivized to return to work because declining work will likely render them ineligible for unemployment insurance benefits.

We look forward to further guidance on PPP loan forgiveness and will continue to keep our clients and friends of the firm informed. For now, [click here](#) for the SBA's most recent set of FAQs (from May 3, 2020) on the Paycheck Protection Program.

If you have any additional questions, please contact Sarju Naran.



Sarju Naran
Shareholder/Chair
Employment Law
+1.408.947.2456
[email here](#)

This information is provided as an educational service by Hoge Fenton for clients and friends of the firm. This communicate is an overview only, and should not be construed as legal advice or advice to take any specific action. Please be sure to consult a knowledgeable professional with assistance with your particular legal issue. © 2020 Hoge Fenton

Related Attorneys

- Sarju A. Naran