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PPP Loan Forgiveness Reminder: Notify Unemployment Insurance Office of Rejected Offers to Hire or Rehire

By Bryn Goodman

Employers seeking Paycheck Protection Program (PPP) loan forgiveness should notify their state's unemployment insurance office if they have offered to hire or rehire an employee who has then rejected that offer. The Small Business Administration (SBA) has implemented [an interim final rule](#) effective May 28, 2020 that provides a safe harbor for employers who have made good faith attempts to hire employees, but the employment offers have been rejected, provided that the employer informs their state's unemployment insurance office within 30 days of an individual rejecting the offer of employment or reemployment.

In general, a reduction in full-time equivalent employees during the covered period of the PPP loan reduces the loan forgiveness amount by the same percentage as the percentage reduction in full-time employees. However, because of the unemployment insurance benefit enhancements provided by the government, many employers have complained that their offers of employment (or reemployment) have been rejected because individuals can earn more on unemployment than while working. This interim final rule is designed to protect those employers in such situations.

The interim final rule contemplates a scenario in which the employer is unable to hire or rehire a sufficient number of employees during the covered period. Under this new interim rule, when calculating whether a portion of an employer's PPP loan will be forgiven, the SBA will not include an individual who rejects an offer of employment in the headcount calculation of employees not rehired. In short, the failure to hire or rehire an individual who rejects an offer will not affect loan forgiveness, if the employer takes the following steps:

- 1) Makes a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;
- 2) Offers employment for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours, which is rejected;
- 3) Maintains records documenting the offer and its rejection; and
- 4) Informs the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

Some states have created (or already had) a mechanism for reporting an employee's rejection of an offer to rehire, but New York has no formal mechanism to inform the state of such employment rejection within 30 days.

Accordingly, if a New York employer wants to maximize the amount of PPP loan forgiveness, the employer should ensure that its offer of employment (or reemployment) is in writing. If the offer is rejected, the employer should work with counsel to prepare a letter to the New York Department of Labor's Unemployment Insurance Office to identify those individuals who rejected written offers of employment (or reemployment) and include copies of the written correspondence they sent offering such individuals jobs.

Below are two sample letters:

[ADDRESS FOR LOCAL OFFICE OF STATE UNEMPLOYMENT INSURANCE OFFICE]

To whom it may concern:

Please accept this as notice that **[INSERT FULL LEGAL NAME OF EMPLOYER]** (Company) offered **[NAME OF EMPLOYEE]** employment *[or reemployment]* consistent with the terms of the enclosed offer letter *[or email]* and on **[DATE]** **[NAME OF EMPLOYEE]** rejected the Company's offer. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
[COMPANY REPRESENTATIVE]

-OR-

[ADDRESS FOR LOCAL OFFICE OF STATE UNEMPLOYMENT INSURANCE OFFICE]

To whom it may concern:

Please accept this as notice that **[INSERT FULL LEGAL NAME OF EMPLOYER]** (Company) offered the following individuals:
[NAME OF EMPLOYEES] employment *[or reemployment]* on **[DATE]** and they rejected the Company's offer within the last 30 days. Enclosed please find the copies of the Company's offer letters and the employees' rejections of such offers of employment. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
[COMPANY REPRESENTATIVE]

For more information about this alert, please contact Carolyn D. Richmond at crichmond@foxrothschild.com or 212.878.7983, Glenn S. Grindlinger at ggrindlinger@foxrothschild.com or 212.905.2305, or Bryn Goodman at bgoodman@foxrothschild.com or 212.878.7975, or any member of the firm's New York Labor & Employment Group.

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