

Trying to Reopen in the Age of COVID-19 - The New Normal

May 11, 2020

Since mid-March, South Carolina's businesses have been navigating the ever-changing business landscape caused by the COVID-19 virus. Business owners in every industry have had to adapt to the realities of state-mandated closings, remote-work environments, layoffs or furloughs of their employees, cash-flow and other financial challenges, and monitoring the health and safety recommendations from federal and state agencies. In the midst of all of these challenges, employers are now facing perhaps the most difficult question - How do we return to normal or at least the "new normal?"

While the health and safety requirements for dealing with COVID-19 vary greatly depending on the industry type, employers across the state are all dealing with the realities of operating in the "new normal." Many employees across all industries are likely reluctant and nervous to return to work due to various concerns related to COVID-19. Employers must be ready to address these concerns and offer their employees the federal and state resources available while still allowing the business to reopen.

REHIRING

Governor McMaster's recent Executive Orders have allowed some non-essential businesses to begin reopening and additional Executive Orders are expected in the coming weeks that will likely allow almost all businesses to return to work in some form. These businesses must now begin to recall or rehire their workforces that were either furloughed or laid off due to COVID-19.

As of May 8, 2020, 55,000+ South Carolina businesses have received over 5.8 billion dollars in Paycheck Protection Program ("PPP") loans during the first and second rounds of this program. These 55,000+ businesses must ensure that their full-time employee head count returns to pre-Covid-19 levels before June 30, 2020, to ensure these loans are fully forgivable under the terms of the PPP.

Due to the special Pandemic Unemployment Assistance ("PUA") program available through the CARES Act, employees who were laid off or furloughed as a direct result of the COVID-19 virus are receiving weekly federal payments of \$600 in addition to the amount the employee normally would receive under South Carolina's unemployment benefits calculation. These federal PUA benefits can continue through the week ending July 25, 2020. Some employees may be reluctant to return to work and be denied these PUA benefits.

The Small Business Administration ("SBA") and Treasury have recently indicated that laid-off employees whom the employer offered to rehire (for the same salary/wages and same number of hours) can be excluded from the CARES Act's loan forgiveness reduction calculation. To qualify for this exemption, the employer must 1) make a good faith, written offer of rehire, and 2) the employee's rejection must be documented by the employer. Verbal offers of employment do not qualify for the exemption. Employers' written offers should indicate that the offer is for the same salary/wage and hours the employee was previously working and give a reasonable time period for response. If the employee refuses to respond in writing, the employer should send written correspondence to the employee that the offer was extended and the employee is refusing to return to work. While some employees may resist the offer of rehire in order to take advantage of the PUA benefits, these employees may forfeit eligibility for continued unemployment compensation by refusing the offer.

FEDERAL RESOURCES

Related Professionals

Belcher, Reginald W.

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Some employees may desire to return to work but their personal circumstances may prevent them from doing so. If they are unable to work do to COVID-19 related reasons, then the Emergency Family and Medical Leave Act ("EFMLEA") and/or the Emergency Paid Sick Leave Act ("EPSLA") could offer additional resources for the employee. For a more detailed look at these Acts, please refer to COVID-19 Response Tips for Small Businesses.

NEW NORMAL

Many employees are likely to express reluctance to return to work due to the possibility of exposure to the virus. While no employer can completely eliminate the risk of infection, all employers should carefully follow and implement the safety recommendations from the federal and state authorities in order to best protect their employees and customers. Even with these precautions, some employees may be uncomfortable or unwilling to work in this "new normal" environment. Employers should be cognizant of their employees' fears and work together to try to alleviate these concerns. Employers must understand the "new normal" and not rely solely on "the way we have always done it." It will be necessary for employers to be flexible in creating a safe work environment for all levels of their workforce. This flexibility may include temporary office spaces, mandated social distancing, the use of personal protective equipment, and the closing of social spaces within the offices. While these changes may be uncomfortable, business owners must balance normalcy with the ability to return to work.

If you need assistance with navigating the reopening of your business, Mark Goddard, Reggie Belcher and the rest of Turner Padget's COVID-19 Response Team is prepared to guide your business through these challenges.

(1) U.S. Small Business Administration Paycheck Protection Program Report, "Approvals through 12 PM 4/16/2020," and U.S. Small Business Administration Paycheck Protection Program Report, "Approvals from 4/27/2020 through 05/08/2020."

(2) U.S. Small Business Administration, "Paycheck Protection Program Loans: Frequently Asked Questions as of May 6, 2020," Question 40.