

California Gets Back On-Track - Tips to Re-Ignite Your Business

By Richard K. Citron and David Deutsch

LOS ANGELES, CA, UNITED STATES, June 2, 2020 /EINPresswire.com/ -- As the California economy opens up again and companies begin to invite employees to the workplace, common questions arise from employers on what they are permitted to do with respect to their returning employees. In addition, many questions remain on how the Paycheck Protection Program ("PPP") loan may be used to qualify for forgiveness. Below, we provide five of the most common questions recently asked in hopes that it gives you some helpful tips - used for informational purposes only. Should you have any follow-up questions on the topics or on any related matters, do not hesitate to call or email us.

1. If your employee took paid or unpaid COVID-related leave, can he/she return to the old job upon return to the office?

Yes. In most circumstances, an employee returning from a Families First Coronavirus Response Act ("FFCRA") paid sick leave or family leave must be restored to the same or equivalent position prior to the office closure. However, the employer may deny accepting the employee back to his/her former position if (i) the employee would not have otherwise been employed if, due economic reasons, the employer would have terminated that position (e.g. due to a company layoff), or (ii) if denying restoration is necessary to prevent "substantial and grievous economic injury" to the employer's operations.

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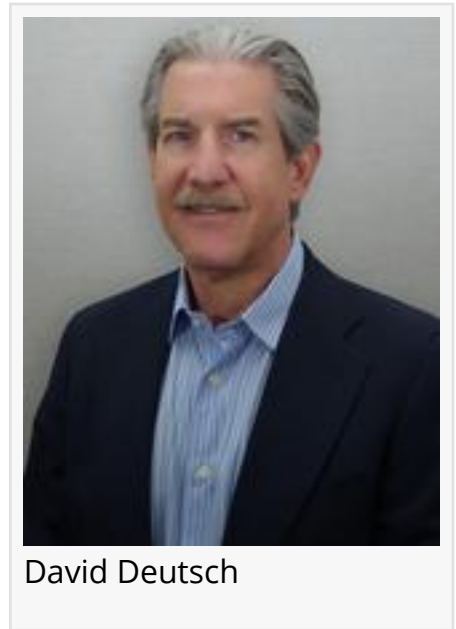
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Under the FFCRA, an employee working for an employer with fewer than 25 employees may be denied restoration to his/her former position if:

- (i) the employee took leave under the Emergency FMLA for child-care reasons;
- (ii) the employee's position no longer exists because of economic conditions or other changes caused by the public health emergency during the leave period; and
- (iii) the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the one-year period after the employee's leave.



2. Is an employee eligible for unemployment if he/she had to quit due to reasons related to COVID-19?

Yes. An employee is generally not eligible for unemployment if he/she quit without good cause. However, if he/she quits for reasons related to COVID-19 (for example, having to stay home to take care of a sick family member, for kids that are out of school, or for children when no childcare can be obtained), he/she may be eligible for unemployment benefits under the CARES Act. Please note that quitting without good cause simply to obtain unemployment benefits is considered fraudulent and may result in having to pay back the benefits and prosecution.

3. For the Paycheck Protection Program ("PPP") to be forgiven, how must the company use the funds?

For eight weeks from the date of funding, at least 75% of the funds must be used towards "Payroll Costs," and the other 25% must be used toward Rent and Utilities. Contact us for a spreadsheet or any related guidance. "Payroll Costs" include:

-Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);

-Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit; and

-State and local taxes assessed on compensation.

4. What if the employer cannot use the PPP funds during the eight-week period?

If you cannot use the PPP funds during the eight-week period, it can be returned or paid back over two years at a 1% interest rate (with a six-month payment deferral to start). If an employee does not return to work, the employer may still pay her from the PPP at least 75% of her usual pay even if she is not working. The alternative is to return the loan if you believe that the wages are not required to support the ongoing operations of the business.

5. What should an employer do if the employee refuses to return to work?

If the employee refuses to return to work (or quits), the employer may hire a replacement employee or temp to maintain the employee headcount. Even if the employee claims she was laid-off to collect unemployment benefits, and the employer asked her to return to work and the employee refuses, the employer will not be penalized under the PPP if the employer achieves the same employee headcount by June 30, 2020. Remember that the employer only has to return to the same employee number that it had as of February 15, 2020 to qualify for loan forgiveness. Finally, the employer can aim to restore/maintain the wages to within 25% of the previous pay level and still obtain loan forgiveness under the CARES Act. Make sure to document that the employee refused to return to work after you contacted her (in writing) and offered her the same pay.

Best regards,

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Please feel free to contact Citron & Deutsch at the contact information below if you wish to discuss any of the items contained in this Newsletter.

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