



EMPLOYMENT LAW ALERT

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By: Kimberly Malerba, Esq.

Nicole E. Della Ragione, Esq.

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Back to Work Planning and New Guidance from the Department of the Treasury Regarding PPP Loan Forgiveness

As companies begin to plan for the reopening of their workplaces, one issue that many are bound to encounter is laid off employees who refuse to return to work. This issue may impact workforce planning, and also cause concern for those with PPP loans in connection with anticipated loan forgiveness.

The United States Department of the Treasury (the “Treasury”) has issued guidance relating to de minimis exemptions from the CARES Act limits on loan forgiveness. This new guidance will assist borrowers that have received PPP loans in understanding how loan forgiveness will apply in light of employees refusing to return to work.

In Frequently Asked Questions published on May 3, 2020, the Treasury stated that a borrower’s PPP loan forgiveness amount would not be reduced if the borrower laid off an employee and then offered to rehire the employee, but the employee declined to return to work. The Treasury further explained that the Small Business Administration and the 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.” Further, the interim rule will specify that the borrower must have made “a good faith, written offer of rehire” and the borrower must document the employee’s rejection. Notably, borrowers and employees should be aware that employees that reject offers of re-employment may lose their eligibility for unemployment compensation.

As the Treasury and Small Business Administration continue to promulgate interim rules and additional guidance, it is important that borrowers stay aware of the changing landscape in the implementation of PPP forgiveness.

For additional information, please contact

Kimberly B. Malerba
(516) 663-6679
kmalerba@rmfpc.com

-or-

Nicole E. Della Ragione
(516) 663-6687
ndellaragione@rmfpc.com

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