

# PPP Guidance for Employees Refusing to Return to Work

The Small Business Administration (SBA) recently issued new guidance regarding the Payment Protection Program (PPP), established to offset the economic effects of the coronavirus pandemic. Small businesses can request loans from the PPP to help cover payroll costs. This new guidance from the SBA concerns employees who refuse to return to work after a business reopens.

## Background

Small businesses can request loans from the PPP to be used as wages for employees, up to 2.5 times the average monthly payroll. Using the funds this way makes the loan entirely forgivable. The catch is that the business must rehire the same number of full-time employees that it used to calculate the PPP loan amount.

The problem is that many employers don't necessarily need all those staff members to return, especially if operations have been slowed. Furthermore, some employees may not even *want* to return—and not necessarily for coronavirus concerns. Some employees might be making more with unemployment benefits and don't want to lose them by returning to work.

## What's New

The SBA understands some employees may not wish to return for a number of reasons, so it issued new guidance. As long as businesses "make a good faith" effort to rehire employees—and explain that they may lose their unemployment eligibility by not returning—the businesses would not face a penalty under that portion of the loan.

Employers should carefully document any communication with employees in case they refuse to return to work and evidence is needed when requesting PPP loan forgiveness.

More specifically, employers should follow these steps to maximize their loan forgiveness in case an employee refuses to return:

1. Provide a written offer letter to a formerly laid-off employee.
2. Clearly articulate in the offer that the employee's salary, wages and number of hours will be the same as they were before the layoff.
3. Obtain a rejection from the employee—be it a letter, phone call or text message.
4. Document everything, including that an offer letter was sent and that a rejection was received. Include copies in the employee's file. If a rejection was received via phone, make a note of that in lieu of a physical copy.
5. Alert the local unemployment office within 30 days of the offer being refused.

Unfortunately, rejecting an offer of employment likely means a discontinuation of unemployment benefits. Employers should be sure to clearly explain this detail to employees who may be unsure if they wish to return to work, since their motivation may be based on temporarily higher compensation through these benefits.

Read the full text of the guidance on the following page:

Provided by Cloud, Minturn & Associates, LLC

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**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 reemployment may forfeit eligibility for continued unemployment compensation.*

For more information, visit [SBA.gov](https://www.sba.gov).