

# QUESTIONS & ANSWERS: REOPENING YOUR RESTAURANT AND RETURNING TO WORK WEBINAR



## CLOSURE

**Q1:** Prior to the closure by the state one of my restaurants was closed by Mall management. Do we fall under the same legal comments you are stating?

**A1:** *If the restaurant was closed due to COVID-19 reasons prior to the state's executive order and you are below 500 employees, you are subject to the CARES act.*

## DOCUMENT/TEMPLATES

**Q1:** Can you direct me to where we can download those two team member documents. I can't locate on [the] site. This is regarding return to work furlough templates.

**A1:** *Please visit **Notification: Return to Work from Furlough Form** and **Notification: Declined Offer to Return to Work Form***

## FURLOUGH

**Q1:** I've been told that, in California, we are limited to 10 Business Days (2 weeks) of furlough, and then have to terminate employees if we aren't yet able to bring them back. Is that correct? In a number of cases, given the many unknowns, it would be preferable to furlough some employees.

**A1:** *No, there is not a time frame for a furlough. The issue that arises if the furlough lasts longer than a pay period whether you need to pay.*

**Q2:** I believe CA Labor has already rendered direction regarding furloughs vs lay off.

**A2:** *To our knowledge, the DLSE has not given any guidance on furlough v. layoffs under these circumstances.*

**Q3:** We were very vague when we closed our restaurants and did not use the terms lay off or furlough. Does that effect how we bring employees back?

**A3:** *We would need to see how you described the terms to employees when you closed to determine if it was a furlough or a layoff. If the term layoff was used, one could argue that the employees were permanently separated, and a furlough is a temporary cessation of hours worked. If it was a permanent separation, that is a new hire process. Ultimately, we would need to see the terms to determine how to handle the return to work.*

## HEALTH

**Q1:** Do you think the FDA will change some rules in the model food code for the future health codes?

**A1:** *We have no information on this at the moment. However, it is something CRA and our firm is monitoring.*



## HEALTH CONT.

**Q2:** Are there now definitive answers, to your knowledge, as to how long the virus lives on surfaces: hard (metal/plastic) soft (cloth/paper/cardboard)?

**A2:** *We do not have definitive data. We know it can live for some period of time, but we have heard multiple different opinions.*

## HIRING

**Q1:** What if everyone was laid off, then can you decide whom you like to hire back?

**A1:** *Yes, you can but you need to do a careful disparate impact analysis as you bring people back.*

**Q2:** If employee declines to return to employment, are we required to inform the EDD of their decision? Does that affect their unemployment status?

**A2:** *Not required but need to be truthful when report to EDD.*

**Q3:** What if you have 25%-40% seasonal workers that we use as on call basis. Do we treat them as we would our PT and FT employees?

**A3:** *For seasonal business, the applicant may use average monthly payroll for the period between Feb 15, 2019 or March 1, 2019 and June 30, 2019. You should utilize the average employment over the same period to determine the number of employees for purposes of determining the employee -size standard to determine the number of full-time equivalent employees to qualify for complete forgiveness.*

**Q4:** Do you need to bring back by seniority or?

**A4:** *No, you do not strictly need to bring back employees based on seniority. When you are discussing seniority, you should bring people back based on experience and skill set. There are many factors to consider as to who to bring back. The key is a graduated approach based on need and that [it] does not appear to have a disparate impact.*

## LIQUOR

**Q1:** What /when do you predict the ABC will reinstate prior restrictions (i.e. allowing alcohol to go sales)?

**A1:** *At this point, we do not know. We recommend you continue to monitor and CRA will likewise also monitor and update.*

## OSHA

**Q1:** Will you be discussing Cal-OSHA's requirement to have a COVID-19 Risk Assessment in place?

## OSHA CONT.

**A1:** *It was discussed in the presentation. To the extent you implement PPE requirements, it will come under the domain of Cal-OSHA so you [will find] it important to follow Cal-OSHA requirements.*

## PAY

**Q1:** Can you lower a returning worker's pay rate as the business levels will be depressed?

**A1:** *Yes, you can. However, you can [only] reduce hourly employees due to economic conditions and notice is recommended. [For] exempt employees you can reduce the pay so you have a corresponding reduction in hours, but the pay cannot go below double the minimum wage in California or the employee will no longer be exempt.*

## POSTINGS

**Q1:** Is there a place where I can get the signs to post?

**A1:** *Yes, please visit - <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions> and [https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)*

## PPP

**Q1:** Do you have to hire back the same number of employees or just the FTE?

**A1:** *The loan forgiveness is based on the number of full-time employee (FTE) headcount. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made to obtain full loan forgiveness.*

**Q2:** Can I hire myself as a Full-Time employee?

**A2:** *Yes, you can hire yourself back as a full-time employee.*

**Q3:** Do you have any information about the possibility of the government extending the amount of time restaurants have to use the PPP loan?

**A3:** *In summary, the NRA and others are lobbying for flexibility in the calculation of eight weeks for businesses such as restaurants who cannot operate fully due to state orders not allowing in-room dining.*

**Q4:** Can we pay bonuses with PPP money and receive forgiveness? As long as the annual is less than \$100,000?

**A4:** *Yes, payroll definition is fairly broad. You need to document these issues and payments. Also, it is recommended that the PPP money is kept separate so its use can be tracked.*

**Q5:** Have there been any changes to the PPP that affect the forgiveness for restaurants?

## PPP CONT.

**A5:** *Not yet, but the NRA is actively working for additional time to complete loan forgiveness's eight-week period [that] begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.*

**Q6:** Our restaurant was only able to receive 2x for the PPP loan (2 times our monthly payroll). We won't be able to spend the full 8 weeks on 100% payroll and rent/utilities, etc. So, we are trying to devise a plan to ramp up staffing to hit the "by June 30" goal of full staffing from previous quarter.

**A6:** *We would recommend continuing the ramp up with full staffing from the previous quarter so you can try and meet the goal of full forgiveness.*

**Q7:** How do we guarantee full loan forgiveness in this scenario—if we pay 16% of loan on rent/utilities etc.? What criteria are we supposed to use to prove that we have brought staffing back to prior levels? Our 8 weeks ends around June 20 which is a week and [a] half before the June 30 date. If we bring staffing back during weeks 7 and 8 of the PPP loan and then have to reduce staff after that does that disqualify us from forgiveness?

**A7:** *For loan forgiveness, you can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.*

**Q8:** We are struggling with how to bring back 75% of our employees even though our 8-week timing is counting down now. We can hire on 75% of all employees but we aren't open and no sales. So, paying to just do nothing in order to get loan forgiven. Big issue to understand this... since we were funded two days ago.

**A8:** *This is a flaw of the PPP and as set forth in answer [A5] above. This fix has not occurred and may not occur. The NRA is actively lobbying to get the Treasury Department to allow flexibility on the eight weeks. One option is to get either new legislation or further regulation to extend the deadline beyond June 30. We will continue to update CRA as to any developments.*

**Q9:** Do we have to keep all employees to be able to have the PPP loan forgiven?

**A9:** *No, but you need to keep the FTE of the employees based on the average of the prior year's measurement period.*

**Q10:** How is the PPP loan forgiveness impacted by reducing employees to accommodate opening restrictions?

**A10:** *See responses to Hiring question 1, Pay question 1 and PPP question 4 above.*

## PPP CONT.

**Q11:** Clearly, we will have less employees when we first open. What about PPP loan?

**A11:** *See response to PPP question 1. Your loan forgiveness is based on two factors: Bringing back your employees to FTE level and not reducing salaries and wages by more than 25% of any employee that made less than \$100,000 annualized in 2019.*

**Q12:** If we get the SBA loan, we are required to return to work all furloughed employees, so we don't have a choice?

**A12:** *You do have a choice. You return the amount of employees that business has capacity but to get full forgiveness you need to return the FTE of employees that existed prior.*

**Q13:** Is trash considered a utility. I was told no.

**A13:** *We believe if trash is an expense of running the business that it would be part of the definition of utilities under the PPP much like phone, gas, water and electricity.*

**Q14:** What if we had to borrow money to payroll prior to getting the loan? Can we repay loan for this payroll and it is considered payroll money?

**A14:** Yes, this is part of your payroll and could be part of obtaining a PPP loan under the CARES act.

**Q15:** There was some talk about that 25 percent not used for payroll is not going to be forgiven?

**A15:** *Your loan forgiveness will be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019. Also 25% is the limit that can be used for non-payroll costs. If you utilize more than 25% for non-payroll you will not be eligible for full loan forgiveness.*

**Q16:** Do you know if the wages paid in the 8-week time would be tracked by pay date? Or dates worked? For example, if your 8-weeks is up on June 9, but the paycheck for that pay period is dated 6/20, do you get credit for the days employees worked before the deadline, even if they are paid after the deadline?

**A16:** *The PPP tracks the use of payroll from the date of disbursement of the loan to the company. So long as it is utilized in full during this 8-week period and you return the FTE employees, you are subject to full loan forgiveness.*

**Q17:** Can we pay severance if an employee needs to be laid off?

**A17:** *Yes, severance is covered under PPP as payroll costs.*

**Q18:** We have team members that applied for unemployment due to reduced hours. We have since received the PPP funds. Are we supposed to pay team members for their normal hours pre-COVID and should they then stop receiving unemployment? Do they stay as is, i.e., continue to work reduced hours and receive unemployment?

## PPP CONT.

**A18:** *If you have PPP funds and you have the capacity to hire employees back, you should do so. You should not continue the employees at reduced hours just so they can continue to receive unemployment. If there is work, it is important to put the employees to work and pay them at normal hours so you can get the PPP loan forgiveness.*

**Q19:** Will we receive updates from you regarding any changes to the forgiveness portion of the PPP in the new Congressional Bill?

**A19:** *Yes, if there is a change in forgiveness and flexibility as to the use, the CRA will provide updates.*

**Q20:** Within PPP is it possible to only offer some employees 100% former pay and others reduce by 25% or does it have to be all 75% or all 100%?

**A20:** *Yes, but please be prudent in doing so and watchable of any adverse employment issues and disparate impact issues as to which employees get 100% and which you reduce 25%.*

**Q21:** Can I raise my own salary (my GM quit in February) rather than rehire a new GM, and in order to meet the PPP 75% requirements, without raising a flag? I will legitimately be taking over the GM responsibilities. I am the owner.

**A21:** *Yes, you can.*

**Q22:** Is the Petition still being circulated?

**A22:** Yes, the petition can be found at: <https://actnow.io/blueprint>.

## REHIRING

**Q1:** What if you need to hire people back but they will earn less than what they are getting from UI + Federal \$600? Should I ask for volunteers?

**A1:** *You need to determine which employees based on your criteria of need and skillset to return to work. If an identified employee does not wish to return due to the UI benefits, that could subject that employee to elect to terminate his/her employment.*

**Q2:** I have a couple I 10(?) employees. Can I bring them back?

**A2:** *We assume you meant I-9 employees. So long as their documents are in order and not expired, there is no reason not to bring them back. In fact, it might be discrimination if you did not bring them back.*

**Q3:** I own two restaurants. Separate corporations. Can senior employees from restaurant A be transferred to restaurant B, bumping employees from restaurant B when returning to work?

## REHIRING CONT.

**A3:** *You should respect the corporate entities. Failure to do so may create additional liability including wage and hour, discrimination and tax consequences. This also raises age discrimination and disparate impact consequences. If you are considering this option, you should consult with a seasoned employment attorney who understands the risks and jeopardies such an action could cause.*

**Q4:** What if you hire workers outside of your furloughed employees?

**A4:** *If you furloughed a bunch of workers and are now seeking to [hire] entirely new workers and return the other workers, you would need to terminate the furloughed workers and be subject to paying them any outstanding vacation/PTO on the date of termination. Also, such action very likely could subject you to adverse employment claims based on discrimination, retaliation, and potential disparate impact. Any such action should not be done without consultation of an experienced employment lawyer.*

## REOPENING

**Q1:** Has there been any indication of when restaurants will be able to open at limited capacity. Our winery and restaurant are in Riverside County. Currently it is still indicating April 30th on the county website. I'm sure it will be longer. It is hard to know when/what to communicate to our employees.

**A1:** *We recommend you continue to monitor the state and county stay at home orders.*

## SICK LEAVE

**Q1:** What if an employee says they cannot return to work because they live with someone who is high risk?

**A1:** *The employer would need to inquire as to the nature of the "high risk" as to whether there is a diagnosis i.e. in contact with a COVID-19, were they diagnosed with COVID-19 or is it just a concern of bringing COVID-19 from working. Once we had that information, we could review the specific facts and give appropriate guidance. You should definitely consult with an employment attorney to discuss options.*

**Q2:** Can you discuss the CA food sector Paid Sick Leave—how to calculate for part time employees? If they work on average 3 days a week 5 hours a day, they get 30 hours or 70 (5\*14=70)?

**A2:** *The Emergency Family and Medical Leave Expansion Act does not distinguish between full and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive. The number of allowable sick leave hours for both is 80 hours. The difference is a full-time employee's regular rate of pay tends to be higher than a part-time employee.*



## TEMP CHECKS

**Q1:** How do smaller venues address the temperature issue? They may not be able to afford a “health professional.”

**A1:** *If you cannot afford a health professional, take the temperatures and reach to your local public health department for guidance on how to read the temperatures. Also, it is important that this is private, confidential information that should be maintained in a separate file.*

**Q2:** Do you have any information of what the expectations [are] of restaurateurs and/or employees taking temperatures of staff or even customers?

**A2:** *The State or County Health Divisions will set forth the expectations and standards as to temperature taking. We are seeking feedback and this information will be pushed out by the CRA and others once guidance and information is provided.*

## WORKERS COMP

**Q1:** When re-opening, can employees file for workers comp as a result of COVID-19? And will insurance companies (commercial liability) begin to cover for COVID-19?

**A1:** *If a determination is made that COVID-19 was contracted due to workplace interaction, there may be a valid worker’s compensation claim. As to the commercial insurance question, you should consult with your insurance professional as to coverage availability.*