



Reopening your Restaurant and Returning to Work

Thank you for joining us. The presentation will begin shortly.



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Questions?



Ask questions in the *Questions* section
or
Email Natasha Price at nprice@calrest.org.

We will post the presentation and Q&A after the webinar.





RETURNING EMPLOYEES TO WORK

Bringing Back Employees

- Los Angeles Ordinance proposed regarding the rehire of employees laid off during pandemic
- Devise a Plan of Action
 - 1) Identify the goals of the staff decision, in terms of labor costs to be eliminated and the number of employees by which your organization might be overstaffed.
 - 2) Identify the job functions and skills essential to successful operations after the staff decision.
 - 3) Eliminate or consolidate unnecessary jobs.



Bringing Back Employees

- Devise a Plan of Action (continued)
 - 4) Set a timetable for carrying out the staff decision.
 - 5) Unless business conditions require otherwise, attempt to act quickly and decisively in an effort to minimize morale problems.
 - 6) Be careful of cases where an employee can show he or she was laid off close to the time he would have qualified for a benefit (e.g., pension vesting rights, retirement eligibility). Even if technically lawful, these cases can appear to be inequitable a judge might be tempted to stretch the law.
 - 7) Do not use a layoff as a substitute for terminating an employee based on poor performance.
 - 8) Do not use age as a distinction in early retirement benefits provided as a result of a workforce reduction. For example, do not offer different benefits to employees under age 60 than those age 60 or older.



Bringing Back Employees

- Set up a furlough committee
 - To develop, standardize and implement the selection process
 - Function as “gatekeeper” and provide objective oversight
 - Perform disparate impact analysis
 - Analyze variables such as government decisions, ability to get supplies, etc.
 - Consult with counsel about legal issues



Lawful Criteria for the Decision Making Process

- 1) By length of service/seniority
- 2) By identifying and eliminating unnecessary job classifications
- 3) By classes of employees, e.g., eliminating all temporary, part-time, or contract workers initially
- 4) Preexisting job appraisal data, initially select employees who have been disciplined for severe or persistent performance problems; thereafter, select from remaining employees by evaluating and comparing their ability to perform the essential job duties remaining after the staff decision is completed



Lawful Criteria for the Decision Making Process

- Additional considerations when evaluating workforce needs:
 - Can employees be transferred into existing vacancies?
 - Is special high-level management review warranted for certain highly-paid or long-term employees?
 - Are older, minority, or female employees disproportionately affected by the company's initial selection procedures? If so, can the selection of these individuals be justified by business necessity? If not, alternative selections of individuals outside such protected classifications should be considered.
 - Create a graduated plan for return to work.



Informing Employees



- Employees should be informed in a professional manner and with sensitivity
- If possible, two members of management should meet with affected employees individually.
- The communicators should be brief, direct, and firm as to the company's decision.
- The communicators should be able to briefly explain the basis for the decision, if asked.
- The communicators should also explain: a) recall/rehire rights, if any; b) severance benefits (if any), health insurance conversion rights, and other monetary issues; and c) outplacement or other transitional services being offered, if any.
- The communicators should be prepared to cope with employee shock, surprise, and inability to absorb the information being imparted.



Return to Work from Furlough Template

Notification: Return to Work from Furlough

Date: _____

To: <<Team Member Name>>

From: <<Company>>



Subject: Return to Work from Furlough

As you know, the recent National and State Declarations of Emergency and the State of California Shelter at Home orders due to the threat of COVID-19 resulted in guidance to cease all non-essential activities, including the closure of all bars and all on-site dining.

The COVID-19 pandemic resulted in the company's needs and circumstances changing in ways that were not reasonably foreseeable, necessitating rapid changes in our workforce. The decision we were faced with was unimaginable and heart-wrenching during these unprecedented times. Our Team Members mean everything to us.

Sales conditions in our _____ location allow us to bring back additional team members to work. We are excited to be able to return you to the schedule effective April 15th, 2020. Should you be able to pick up shifts in the meantime, we welcome you back sooner.

We continue to modify operations to minimize contact between our guests and team members. Throughout this time, we remain committed to following the guidelines set by the Governor, our local governments and health departments to keep our teams and our guests safe. We will continue to monitor advice from these agencies, as well as the Centers for Disease Control to ensure we ensure a safe environment while providing our essential services to the communities and teams we serve.



Employees Who Remain In the Workplace



- Actions by your organization related to furloughed employees should be scheduled in close proximity to each other.
- Remaining employees should be provided with prompt and accurate information about the desired goals and anticipated timetables associated with bringing back furloughed employees. These could include new or increased work responsibilities, work schedule changes, direct report re-structuring etc.
- If possible, remaining employees can be provided with modest economic or non-economic incentives for increased productivity.



What if the Employee Refuses to Return to Work?



- Is the employee refusing for a qualifying reason under the FFCRA?
- Should employee be terminated?
 - What obligations?
- Should employee be put at the end of the re-hire list?
 - Employee wants to postpone return
 - No guarantee of employment
- Is the employee afraid to come back to work?
 - What OSHA guidance?
 - Is there a reasonable basis to believe that there is a dangerous condition at work?
- Can you provide unpaid personal leave?
 - What obligations?



When an Employee Refuses to Return to Work

Notification: Declined Offer to Return to Work

Date: ____8, 2020

To: <<Team Member Name>>

From: <<Company>>.

Subject: Declined Offer to Return to Work from Furlough

As you know, the recent National and State Declarations of Emergency and the State of California Shelter at Home orders due to the threat of COVID-19 resulted in guidance to cease all non-essential activities, including the closure of all bars and all on-site dining.

The COVID-19 pandemic resulted in the company's needs and circumstances changing in ways that were not reasonably foreseeable, necessitating rapid changes in our workforce. The decision we were faced with was unimaginable and heart-wrenching during these unprecedented times. Our Team Members mean everything to us.

Sales conditions in our _____ location allow us to bring back additional team members to work. We offered you a return to the schedule effective April 15th, 2020, but you have declined. Should you change your mind in the future, please reach out to your General Manager _____, and he will add you back to the list of those eligible and willing to return to work should additional schedule slots become available.

We continue to modify operations to minimize contact between our guests and team members. Throughout this time, we remain committed to following the guidelines set by the Governor, our local governments and health departments to keep our teams and our guests safe. We will continue to monitor advice from these agencies, as well as the Centers for Disease Control to ensure we ensure a safe environment while providing our essential services to the communities and teams we serve.





WORKPLACE SAFETY ISSUES

Managing Risk & Maintaining Safe Workplaces



OSHA Guidance & Mandates:

- The General Duty Clause
- OSHA Issued Guidance on Preparing Workplaces for COVID-19
- OSHA's Personal Protective Equipment (PPE) standards
- State Plan Guidance
- Need to understand health department guidance



Managing Risk & Maintaining Safe Workplaces



EEOC Guidance

- For what symptoms may employers screen or inquire?
- Can employers measure employees' temperature?
- Can employers require employees with symptoms to stay home?



Responding to Workplace Exposures



What should I do if I have an employee test positive for COVID-19 who was working with other employees?

- Reporting Obligations?
- Remediation Obligations?
- Communications to Employees?
- Quarantining and Testing Infected Workers?

What should I do if an employee tells me they *might* have been exposed to someone who is COVID-19 positive outside work?



Other Common Workplace Safety Issues



- Do I have to provide my employees with masks?
- What if I cannot supply them with PPE despite best efforts?
- Should I encourage employees to bring their own PPE?
- What if an employee refuses to come to work because they are afraid of getting infected with COVID-19?
- What measures to take to reduce workers' compensation claims?





ADA CONSIDERATIONS

Employee ADA Considerations



- Screening of returning employees? Screening as to job applicants?
- What can be done to handle employees who are higher risk than the general population? i.e. age, diabetics, asthmatics, immuno-compromised employees?
- What can be done with employees who claim COVID-19 mental conditions?
- What written documentation is permissible to request?
- What questions can be asked to an employee?



Accessibility Issues Under the ADA

- Accessibility for Pick-up and Curbside
- Accessibility Tables for Reopen
- Social Distancing Table Barriers
- Website & Zoom Lawsuits





CARES ACT AND PPP ASPECTS

CARES Act-Eligibility for Payroll Protection Program

- Less than 500 employees generally
- Location with no more than 500 employees i.e. food services, lodging
- Sole proprietors, independent contractors and self-employed
- Some franchises; or
- Meets SBA size standards



CARES Act-Payroll Protection Program

- All money utilized as of April 16, 2020
- Congress looking at additional funding
- Term of loan 2 years at 1%
- Money can be used for all items related to payroll, mortgage, rent or utility payments
- 2.5 times of monthly payroll
- \$100,000 for each employee's salary, plus employee benefits and state/local taxes



CARES Act-PPP Time Period to Use for Loan?



- Generally, aggregate payroll cost from previous 12 months or calendar year 2019
- Seasonal businesses may use average period between February 15, 2019 or March 1, 2019 and June 30, 2019
- If not in business from February 19, 2019 to June 30, 2019, may use average monthly payroll costs for January 1, 2020 through February 29, 2020



PPP-How does Loan Forgiveness Work?

- Will forgive payments on principal and interest equal to what you spend over eight week period including:
 - Payroll costs
 - Interest of mortgage
 - Rent of a lease agreement
 - Utility payments
 - Additional wages pay to formerly tipped employees who no longer get tips
- Must spend at least 75% of loan on payroll
- Forgiveness amount may be reduced if have lower number of employees or reduce wages by 25% or more from prior year



PPP-What If State Does Not Allow Reopening?

- PPP amount of forgiveness depended on payroll costs over eight weeks
- Eight weeks begins on date of the first disbursement of the PPP loan
- Lender first disbursement must be made - ten calendar days of approval
- If reduced number of employees or cut back wages from February 5-April 26, 2020, loan forgiveness if you restore by June 30, 2020-the number of employees or wages to level they were at during the same period
- If unable to do so due to state order, you can always return back the portion of the loan you did not use.



PPP- Areas to Fix PPP as to Restaurants

- NRA Advocacy efforts to ease restrictions for restaurants
- Second Loan Relief Program Eight
- Revise the way the eight weeks is counted
- Recognition and flexibility due to closure orders
- Recognize need of gradual rehiring due to COVID-19 challenges



Contact and COVID19 Resources

Wilson Elser:

https://www.wilsonelser.com/coronavirus_resource_center_home

California Restaurant Association:

<https://www.calrest.org/coronavirus-resources>

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CRA Helpline

800.765.4842 ext. 2743

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Visit Our Coronavirus Resource Center

