

Now Hiring: Getting Back to Work Amid the COVID-19 Pandemic

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By Sarah M. Sawyer

For much of 2020, my conversations with employers were around layoffs, furloughs, and terminations. With the uncertainty of the pandemic, many companies moved forward with mass layoffs and terminations. With businesses opening back up, individuals getting vaccinated, and more information about the virus, employers are bringing employees back and making new hires.

With these overall positive changes, there are also challenges with hiring or rehiring during a global pandemic. While there are the obvious complications associated with safety and COVID-19 compliance, many employers face complaints around who they rehired and who they didn't. Though employers are not required to reinstate employees they have laid off or terminated due to the pandemic; if they reinstate some employees and terminate others, their actions could come under scrutiny if they reflect a potentially discriminatory pattern.

For example, suppose an employer laid off similarly situated men and women of all ages but only brings back the young men under forty. In that case, the company could face age and sex discrimination claims. Employers are particularly susceptible to these claims when they do not bring back otherwise qualified candidates without any history of poor performance or misconduct. Accordingly, employers should be mindful of who they are bringing back and why and look for potential problematic patterns that could appear discriminatory.

Also, as a practical matter, in addition to avoiding a potential claim of discrimination, bringing back employees who are already trained and ready to hit the ground running can provide businesses with a leg up and allow a business to scale back up quickly. However, many individuals companies laid off have found other jobs. With many companies hiring simultaneously and many individuals still being cautious because of COVID, many employers are struggling to find qualified candidates. This is particularly true in the hospitality industry, where many employees, still reeling from the industry uncertainty caused by the pandemic, have left the industry in favor of jobs that are more likely to withstand the ebbs and flows of crisis.

Main Takeaway: As many employers go into hiring mode, they should think strategically regarding whether they rehire, who they rehire, and how they attract new talent. Former employees who were laid off or terminated and aren't rehired may challenge the company's hiring decisions and claim they were discriminatory or retaliatory.