

Unemployment Assistance and the CARES Act: Minimizing Liability for Withdrawing Job Offers

Article By:

David L. Warren

Employers across the country are making difficult decisions due to the COVID-19 crisis. The economic downturn has affected current employees in a number of ways, including reduced pay, reduced work hours, furloughs, and even permanent reductions in force. To help keep their businesses afloat, employers also must make the difficult decision to withdraw job offers that have been extended to future employees, such as summer interns, coop students, and college graduates.

The withdrawal of job offers sometimes leads to litigation, such as discrimination claims (where some but not all job offers to a diverse group are withdrawn) or a variety of state law claims (statutory and common law). These claims may include breach of contract, fraudulent inducement (with detrimental reliance on promises made such as quitting a former job, breaking a lease, selling a house and moving to another state for the offered job, etc.), promissory fraud, promissory estoppel, and breach of the duty of good faith and fair dealing. The strength of such claims depends on the terms of the original offer (e.g., whether it clearly stated that the job offered was at will), whether there was a clear acceptance of the offer and all employment prerequisites have been met, the employer's knowledge of business conditions when the offer was extended, whether the employer acted promptly to notify the offeree of the withdrawal of the offer after concluding it would not be able to hire the individual, and facts regarding detrimental reliance.

To help reduce the chance of resulting litigation, it is important to carefully draft letters to offerees notifying them of the withdrawal of their job offers. In these letters, employers may want to include language that the withdrawal of the job offer may render the individual eligible for Pandemic Unemployment Assistance (PUA) under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#). Section 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act defines a "covered individual" under the PUA program as an individual who was "scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency."

On April 5, 2020, the U.S. Department of Labor issued [Unemployment Insurance Program Letter No. 16-20](#) and in Section C.1.g. of Attachment I (the PUA Implementation and Operating Instructions), the agency reiterates the definition of "covered individual" to include the following situation:

An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health

emergency.

So, if a job offer must be withdrawn “as a direct result of the COVID-19 public health emergency,” the employer may want to consider including in the notification letter not only this stated reason for the withdrawing the job offer but also language that the individual may be eligible for PUA benefits under the CARES Act. Why is this important? If these individuals can bridge the gap between the withdrawn job offer and a new job with up to 39 weeks of PUA benefits (including the applicable state weekly benefit and the additional \$600 weekly benefit), they may have less of an economic motive to sue the employer that withdrew their job offers. The fact that the PUA program forbids states from charging employers’ experience ratings for the enhanced \$600 weekly federally funded benefits makes this approach even more attractive (see Unemployment Insurance Program Letter No. 15-20 at Attachment I, Section A). Finally, employers may want to check their state’s unemployment compensation program website for additional information to include in the notification letter, since states are starting to implement the federal PUA program into their own unemployment compensation programs.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume X, Number 114

Source URL: <https://natlawreview.com/article/unemployment-assistance-and-cares-act-minimizing-liability-withdrawing-job-offers>