

An illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on the left side of the image.

CRISIS MANAGEMENT FOR COVID-19

Week 25: Updated Guidance, Legal Changes, and Legislation

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INTRODUCTIONS



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Normal



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Legal & Regulatory Update



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1

Payroll Tax Executive Order Update

On August 28, 2020, US Treasury and IRS Issued Guidance on Executive Order Deferring Payroll Tax (Payroll Tax Holiday)

On August 8, 2020, 4 Executive Orders were entered absent Congressional action:

1. **Federal Unemployment Continuation**: \$300 Fed/\$100 Ky; Mid-September
2. **Renter and Homeowner Assistance**: Feds to help renters and homeowners avoid eviction
3. **Extension of Student Loan Relief**: 0% interest rate and 0 payments through 12/31/20
4. **Payroll Tax Holiday**: On August 28, 2020, Treasury and IRS issued new update (finally)
 - Applicable Wages: all wages paid to an employee on a pay date during the period beginning on 9/1/20-12/31/20, if less than \$4,000 for a bi-weekly pay period, or equivalency
 - The due date for employer payment of the withholding is 1/1/21-4/30/21
 - Not well written -- basically, it directs that if employers opt to allow the Holiday, employers must still pay their share, but not collect from employees –until 1/1/21-4/30/21. Then you must pay double what you are deferring during the first quarter..... Not what was intended.

1 PPP Interim Final Rule (Here we go again!)

New PPP Guidance announced on August 24, 2020 regarding “Treatment of Owners and Forgiveness of Nonpayroll Costs”

On August 24, 2020, the SBA and US Treasury made **huge** modifications to PPP:

- 1. Payroll:** As you may recall, on June 26, 2020, new “final” interim guidance was issued affecting payroll for “owner-employees,” but no definition of owner-employee was included
 - Answering that question, SBA and treasury **finally** identifies “owner-employees” as more than **5 percent ownership stake** in a C- or S-Corp (based on influence over proceedings)
- 2. Non-payroll:** No loan forgiveness for tenant, home-based businesses, or household expenses
- 3. Related-party:** Rent payments to a related party cannot be more than the mortgage interest owed on the property and the lease is older than 2/15/2020
 - Any ownership between the business and the property owner is a related party
 - Must provide lender with mortgage interest documentation to substantiate
 - Mortgage interest payments to a related party are not eligible for forgiveness.

1 US Dep't. of Labor Update on Remote Working

New Directive on Remote Working under the Fair Labor Standards Act (FLSA)

On August 24, 2020, the DOL Wage and Hour Division issued Field Assistance Bulletin 2020-5 regarding Employer's obligations to use reasonable diligence in tracking remote employee hours

- Under FLSA, employers are obligated to compensate nonexempt employees for all hours worked.
 - Even if not requested to perform work, if the employer has reason to believe work is being performed, the employer must pay the employee for the work
 - FLSA requires an employer to “exercise its control and see that the work is not performed”
 - Employer burden; must pay based upon “actual knowledge or constructive knowledge”
- DOL recognizes that remote work creates difficulties; Employer must “exercise reasonable diligence”
 - Work Schedule Policies may require review
 - Establish clear recording and reporting obligations
 - Assure management has consistent enforcement across all nonexempt positions
- If employee fails to report unscheduled hours, “employer is generally not required to investigate further”

1 OSHA Guidance on Respiratory Protection Standards

On August 28, 2020, OSHA issued new Guidance designed to assist with understanding respiratory protection during COVID-19

Due to limited availability of respirators and fit-tested supplies, Occupational Safety and Health Administration issued additional guidance for Respiratory Protection standard (29 CFR 1910.134)

- Due to shortage of respirators, OSHA issued temporary enforcement guidance allowing discretion when considering citations under the Respiratory Protection standard
- Discretion only applied when circumstances beyond employer's control prevent compliance
 - Employer must explore options, modify practices, ensure avoidance of dangers
 - Not a blanket waiver; non-compliance still violates the standard
 - Must comply as soon as supply chain issues are resolved
- CSHO will investigate and determine compliance, policies, alternative respirators and measures, and appropriate monitoring of respiratory supply chain availability
- CSHO will apply an objectively reasonable effort analysis

CDC continues to issue new and revised updates on guidance previously issued

- August 24, 2020: New Guidance on Asymptomatic Testing:

- New guidance: “If you have been in close contact (within 6 feet) of a person with a COVID-19 infection for at least 15 minutes but do not have symptoms, you do not necessarily need a test unless you are a vulnerable individual or your health care provider or State or Local Public Health Officials Recommend you take one

- August 29, 2020: New Guidance on Antigen testing:

- Diagnostic testing: Identifies current infection with those with signs or symptoms
- Screening testing: Identify infected persons who are asymptomatic and without exposure
- Surveillance Testing: Ongoing monitoring of community or population level infection, not utilized for returning of a diagnostic test result to an individual or for individual decisions
- Rapid Antigen Testing: Immunoassays that detect presence of a specific viral antigen

Governor Beshear has still not issued any new business-related Executive Orders

Last Executive Order providing general guidance was entered on 5/11/2020

- Orders shutting down business and business sectors, but no general guidance
- On Friday, August 28, 2020, Attorney General Cameron Filed Kentucky's Brief against the Governor's use of Executive Orders
 - Over 150 Executive Orders have been entered without legislative oversight
 - Kentucky is challenging that executive action as an abuse of Executive authority
 - Supreme Court holds Oral Argument on September 17, 2020
 - Thus far, every case has struck down Governor's Executive Orders as Unconstitutional
 - I expect the Supreme Court to rule "quickly" after Oral Argument (typically a couple of weeks to a month)

Questions & Answers



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Hiring in the New Normal



John Coffee
Director of Talent
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WHAT WE'LL COVER

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Sourcing Outlook and Market Intelligence

How does the market look?

What things do I need to think about that might impact HOW we attract talent?

- According to BLS, insured unemployment claims nationally in March spiked as high as 14.8% and has now fallen to about 9.9% as of the UI release on August 27th.
 - The good news? Employers are hiring and employees are returning back to work!
 - The not so great news? Some industries are faring better than others
 - Lexington labor market: Information, Professional & Business Services, Government & Hospitality all seeing heavier overall impacts for the year than other areas like Education and Healthcare Finance and Manufacturing

1 Sourcing Outlook and Market Intelligence

How does the market look?

What things do I need to think about that might impact HOW we attract talent?

What does this **mean** for finding the right talent during a pandemic?

- Candidate pool may be higher dependent on the industry, but narrative and conversation with candidates still may need to change to win them over.
- Wunderman Thompson Data: when asked about work relative to COVID-19, at least 37% of people have shifted to working from home when possible in the current climate, while over 73% believed that's what their employer should be doing.
 - See the **writing on the wall**. Employees and candidates alike are internalizing how they should be working during a pandemic and looking at how employers are handling business, and treating their people in this landscape.

1

Sourcing Outlook and Market Intelligence

How does the market look?

What things do I need to think about that might impact HOW we attract talent?

At HRG, regarding the employer and employee/candidate relationship, we recognize four areas that candidates are focusing on:

- How a company is handling COVID-19 and what their protocols look like internally and externally
- Now more than ever, candidates are heavily evaluating the option to work from home and this is an increasingly important discussion point
- Candidates are doing more homework on employers - taking note of which companies have laid off recently or are publicly sharing any signs of financial downturn, and listening to what their employees are saying on social media platforms and Glassdoor
- Passive candidates in volatile industries are more inclined to stay put versus entertain new opportunities

1 Sourcing Outlook and Market Intelligence

How does the market look?

What things do I need to think about that might impact HOW we attract talent?

Suggestions for Reinforcement and Engagement:

- **Partner with your leaders** - Work with leadership to outline and get the buy in you need to share your strategy not only internally, but also externally to increase employer and candidate confidence
- **Be ready to address the elephant in the room** – Assume if a candidate comes into your process they may ask about layoffs or financial health of the company, and reinforce why their role is mission critical to the organization
- **Promote work from home flexibility if it exists** - If you are a company that has allowed work from home temporarily due to COVID or permanently - share, share, share and let it be known!

1 Sourcing Outlook and Market Intelligence

How does the market look?

What things do I need to think about that might impact HOW we attract talent?

Suggestions for Reinforcement and Engagement:

- **Assess and address** – Be proactive in communicating how your company is adapting during these unprecedented times and finding its strategy to win, constantly assess how the public is perceiving you, and partner with leadership to address questions that arise and identify gaps
- **Revive your marketing strategy** - Work with marketing to create evidence through your messaging and job postings that interviewing is safe with your company, what protocols are being followed, and how employees can be confident working with you during the pandemic

2

Re-design the Interview Process, Workplace Safety & gaining Leadership Alignment

What changes should I make to the interview process?

What plans do we have in place as an organization to protect our workers AND our candidates?

Evaluation and Re-Design of the Interview Process

- All of our clients interview a little differently as it relates to their business. During COVID, they ALL have made some change or modification to their interview workflows to accommodate workplace safety and reassure candidates.
- Recognize this is an enacted temporary or permanent **change management strategy**. Like all change management initiatives, it requires not only process design and execution, but belief and buy in from leadership and your workforce to make it work. This will require a tremendous amount of open and honest internal dialogue and communication, assignment of process owners and change champions along with an ongoing evaluation plan to gauge the effectiveness of the newly adopted process.

2

Re-designing the Interview Process, Workplace Safety and gaining Leadership

What changes should I make to the interview process?

What plans do we have in place as an organization to protect our workers AND our candidates?

Workplace Factors

- Before retooling the interview process, assess your protocols relative to COVID and how that could touch or impact candidates at each stage of the process. Here are a few examples to think about:
 - How are you currently handling visitors at your company? How will that be mirrored with candidates?
 - Are you including in the interview email confirmation of someone's interview slot information on what is required of them COVID-wise? (wear mask, sharing their temperature will be taken, assuring social distancing will be followed, etc.)

2

Re-designing the Interview Process, Workplace Safety and gaining Leadership

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Workplace Factors

- Will you provide protection for candidates in the process? Will you have additional masks and hand sanitizer available in all meeting rooms?
- Are your managers tasked with either disinfecting the space themselves following the interview or for notifying the appropriate cleaning folks when the interview is completed?
- Do you have the ability to encourage and facilitate meeting/interviewing outside when weather and space allows? (picnic tables, patio area, benches, etc.)

2 Re-designing the Interview Process, Workplace Safety and gaining Leadership

What changes should I make to the interview process?

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Interview Recommendations

- Promote usage of video interviews to replace early face to face interview steps or altogether
- No-contact greeting
- Limit the number of people allowed in conference room
- Aerial cleaning before and after a candidate is onsite for interview
- Verbally and via email confirm with candidates about facemask requirement and digital temperature process as they enter the building
- Find opportunities to further narrow candidates in the selection process prior to onsite visits

3 Hiring in the New Normal

Unlock what is motivating your candidate!

Hiring considerations

- **Educate leaders in their decision making**- Encourage leadership to take note of why a candidate may no longer be working abruptly due to economic impact
- **Learn the motivating factors for your candidates**– Candidate drivers can vary, but one thing is certain - we are seeing more interest in stability versus aggressive growth opportunity or large compensation increase requests
- **Be fair and transparent** – Candidates that are educating themselves in the process understand that things may move slower during cautious times, but it is still a good practice to update them, even if it is a simple check in, and report delays as they happen
- **Communicate frequently** – This seems like repeating what you already know, but we've seen this extra touch and dialogue with new hires go a long way. Open up the channels to the managers and keep them engaged. This will pay off in the return!

4 Best Practice Roundtable

We want to hear from YOU!

What are some of your success stories?

Questions & Answers



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