

Covid-19 Healthcare Layoffs: Who Returns to Work?

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Healthcare has long been assumed to be recession-proof. According to Bloomberg, in the last 30 years employment in the healthcare sector doubled to 30 million growing twice as fast as other non-farm payrolls. The great recession of 2008-2009? Healthcare added over one-half million jobs while other sectors of the economy lost millions of jobs.

Then came the Covid-19 pandemic! Recession-proof maybe, but evidently not virus proof. According to the U.S. Bureau of Labor Statistics, the healthcare sector lost over 1.4 million jobs in April alone.

The healthcare sector is the front line in dealing with the pandemic. We have all seen the news footage of medical ships in New York, field hospitals being set up to handle patients, ventilator/equipment shortages, and nurses traveling across country to assist in providing care. In spite of overflowing Emergency Departments and ICU's, the industry has suffered severe job losses in other areas not directly related to Covid-19 patient care.

Healthcare Sector Job Losses

According to the U.S. Bureau of Labor Statistics, here is how some of the major sectors of the healthcare industry were impacted:

<i>Sector</i>	<i>Job +/-</i>	<i>% Change from January</i>
Physician Offices	-243,000	-9.2
Dental Offices	-503,000	-53.2
Home Healthcare	-93,000	-5.2
Medical/Diagnostic Labs	-31,000	-11.2
Outpatient Care Centers	-87,000	-8.8
Other Health Care Practitioners	-205,000	-21.3

Nursing Care Facilities	-47,000	-3.1
Residential Mental Health	-27,000	-4
Elderly Community Care	-33,000	-3.3
Hospitals	-135,000	-2.3

All together, ambulatory health care services lost almost 1.2 million jobs in April. Regardless of the health care sector, if you are in HR you have been impacted by this. I am telling you nothing new as you have been dealing with the layoffs, furloughs or RIFs.

The good news is that most hospitals and larger providers have furloughed employees with the intent of recalling them as normal operations resume. I think all organizations have tried to minimize permanent separations. Unfortunately, some positions and possibly, entire practices may not come back.

Dentists have been particularly hard hit and it is estimated that 3% of the practices may permanently close—either due to practice changes or accelerated decisions by dentists to retire. Smaller clinics, physician practices, home health and other outpatient providers may experience similar results.

Employees will be returned to work

As healthcare providers resume more ambulatory and elective services, employees will be recalled to work. This can be an opportunity or a potential minefield if not handled correctly. What do I mean by this?

In the past several weeks, I have seen multiple HR blogs addressing how this is an opportunity to bring back only the productive workers. In other words, now is the chance to shed all the poor performers or nonproductive workers that you failed to performance-manage when they were actively working. So, the advice from some is to use productivity and/or job performance as the determinant in who gets to return to work.

Sounds great and your managers will love it. Weed out all the poor performers by applying “after the fact” productivity standards. You know I am big on productivity standards and am a strong proponent of their use in the workforce but I think we better slow down if we are going to take this approach. It can be

done but I would suggest some legal counsel if your organization has not previously had an established policy on callbacks from layoffs.

I would have great difficulty in applying any return to work standard that had not been communicated in advance. Larger organizations have probably been through some sort of RIF or “right-sizing” before and have developed clear written policies that define how/when jobs are eliminated, when it is a temporary/permanent separation, whether there is callback eligibility, and what determinants of returning to work will be.

Develop policy in advance

If productivity or performance are to be used in determining who returns to work, this should be determined and spelled out in advance. Some organizations have very clear policies that in the event of layoffs of multiple employees in the same job classification, job performance or some measure of productivity output will be used in determining who is recalled. Employees then know throughout their employment with the organization, that if layoffs were necessary who would be first in line to return to work.

The problem is not going to be with the large hospitals or healthcare providers. They generally know what they are doing because of past experience, or seek legal counsel before embarking on this path. The problem will be with the small or medium-sized providers, such as dental offices, clinics, etc. that see this as an opportunity to “get rid of dead weight”.

Be careful because you can become embroiled in an employment lawsuit without meaning to. HR professionals know that you can run afoul of Title VII and other employment laws not only by disparate treatment, but also by disparate impact. For example, you have laid off 3 Customer Service Coordinators in your clinic. You want to bring back Tom because you know his job performance is better than Emily's or Marsha's.

Unless you have documentation of his superior performance, you may end up owning a discrimination lawsuit based upon sex. Or it could be age or race or some other factor. In this example, it could be that your treatment is discriminatory but even if it is innocent, the claim could be made that it has a disparate impact on females.

So productivity and/or job performance can be used but I would be very careful. I would seek competent advice and would prefer that any such requirement be defined in advance.

Safe fallback - Seniority

Because of the potential pitfalls, most organizations will use seniority as the determinant in who returns to work first (or if at all). This is usually the determinant on both ends of the layoff. The one with the least seniority is laid off first, and would be the last to return to work. Seniority is the most common factor in these situations because it has withstood numerous court challenges and has generally been found to be nondiscriminatory in application.

If you have not previously defined how job performance or productivity would be applied to any return to work from a layoff, your best bet is probably to use seniority within the job position as the determinant.

Take advantage of this one opportunity

There is one big golden opportunity to achieve cost savings and possibly some position eliminations as a result of these recent layoffs. In any temporary layoffs, there are always some employees who take themselves out of consideration for a return to work. The law of inertia applies to employment status as well as physics! The layoff may have been an impetus to retire early or they may have found other employment while laid off. Do not automatically refill these positions because they were filled prior to the pandemic.

This is your opportunity to do some hard analysis on whether the position is really needed. When you can eliminate a position with no employee losing his/her job, this is a win for the organization. Perhaps a returning employee could be returned to a comparable position if his/hers was eliminated. Here is more information on the golden opportunity for improvement in every open position.

I have many posts on reducing positions in a win/win manner. Check them out. Take advantage of the opportunity you have in slowly resizing your organization but do it in a manner that keeps you out of the employment law quicksand-and of course, be aware of the optics!