

Coronavirus Economic Relief for Transportation Services (CERTS) Act Employee Recall/ Rehiring Requirements

This document summarizes the responsibilities of CERTS grant recipients to recall or rehire employees.

The CERTS statute provides that Treasury must require that providers of transportation services, as a condition of receiving CERTS assistance, must recall or rehire any employees laid off, furloughed, or terminated after March 27, 2020, to the extent warranted by increased service levels. The statute further stipulates that this requirement applies after the date that is 30 days after the receipt of funds.

To implement the CERTS statutory requirement, paragraph 7 of the CERTS grant agreement provides that the grantee and its covered subsidiaries shall, after the date that is 30 days after the grantee first receives funds from Treasury, recall or rehire any employees laid off, furloughed, or terminated after March 27, 2020, to the extent the grantee deems warranted by increased service levels.

Therefore, to the extent a CERTS grantee deems it warranted by the demand for its services, a CERTS grantee must commence action to recall or rehire any employees it laid off, furloughed, or terminated after March 27, 2020. This action can begin immediately, but does not have to begin until 30 days after the grantee first receives funds from Treasury under the grant agreement. (Note: this recall or rehire requirement does not apply to employees terminated for cause, or to seasonal employees that were terminated after the season. The requirement applies to employees involuntarily laid off, furloughed, or terminated due to the disruption of the pandemic.)

Under the CERTS grant agreement, a “recall” is defined as notifying an employee who was involuntarily terminated or furloughed that the employee may return to employment within a reasonably specified period, consistent with any collective bargaining agreements entered into before December 27, 2020. A grantee may provide notice of a recall in various ways, including but not limited to mail and email, and the notice of the recall must provide a reasonable amount of time (for example, at least two weeks or one month) for the employee to return to work. Employees are not mandated to return to work, or even required to respond to the recall notice, but they must be provided the opportunity to return to work.

To reiterate, the CERTS statute specifies that the requirement to recall or rehire employees applies only to the extent a grantee deems it warranted by the company’s service levels.

If a grantee does recall and rehire any employees after signing its grant agreement, the CERTS statute provides that grant funds may be used for restoring lost pay and benefits to such employees, subject to certain statutory restrictions. However, the CERTS statute does not mandate that grantees must restore lost pay and benefits – it simply allows restored compensation as an eligible use of funds.

Treasury will contact grantees regarding the reports they are required to submit to Treasury regarding their compliance with the CERTS grant agreement, including the recall and rehire provisions. Treasury will make the report form available for grantees to complete on-line in the CERTS portal. For now, please note that, as part of the quarterly report required under paragraph 12 of the CERTS grant agreement, grantees will be required to select and certify to one of three statements related to the legal requirement to recall or rehire employees:

1. My company did not involuntarily terminate or furlough employees after March 27, 2020.

OR

2. My company deemed that its service levels did not warrant the recall of any employees involuntarily terminated or furloughed after March 27, 2020.

OR

3. My company deemed that its service levels warranted the recall of some or all of the employees it involuntarily terminated or furloughed. *[If a grantee certifies to this third option, it will be asked to provide at least two numbers in the report: (1) the number of such employees it re-hired after signing its grant agreement, and (2) the number of such employees to whom it issued recall notices, but who decided not to return to work, after signing its grant agreement.]*