

Human Resources

By Stephanie Ramsey

HR Reality Check

✓ *Yep, the Stories are True!*

HR CASE STUDY #19

Scenario: Kirkland Cremation and Funeral Services provides services to approximately 150 families in its community. The business is owned by Clark Kirkland. Clark has one other licensed funeral director besides himself and also relies on multiple part-time funeral assistants. Most of these funeral assistants work regular part-time hours averaging 24 hours per week.

In late March, when COVID-19 led to his state mandating “safer-at-home” orders, Clark made the difficult decision to lay off most of his part-time staff to do his part to help contain the virus. His expectation was this would be only a short period of time as he was an essential business and he needed his staff. However, the federal government then enacted the stimulus package providing additional benefits to newly laid off employees. For the past several weeks, even though Clark has offered his part-time employees their jobs back, they are not willing to return to work, telling him that they are making more money on unemployment. Clark called seeking some guidance and what his options are.

What Are the Rules? Unemployment rules are different for every state in terms of who can qualify and the maximum weekly payment to be received. However, the additional \$600 weekly unemployment benefit that was part of the CARES Act passed by Congress expired July 31, 2020. There is currently legislation before the U.S. House of Representatives (The HEROES Act) to extend this benefit. As of press time, when or if this would pass was uncertain, but there was a strong belief that some form of extended unemployment benefit would be provided.

There is currently no law that forces an employee to return to work after they have been laid off from a specific employer. It is possible that upon learning that the employer is

willing to bring the previous employee back to work that unemployment benefits would be reduced or stopped depending on state regulations.

Did the Employer Make Any Mistakes? It is always easier to look back at a situation and see a path that may have ended in a preferable result. Clark could have simply reduced employee hours (a form of furloughing employees) or outright furloughed employees. However, furloughing employees may have led to the same conclusion, as some states allow for furloughed employees to collect unemployment benefits. He also could have chosen to keep the employees on their regular schedules and followed the best social distancing and safety precautions

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available given their work environment as an essential business. But he may have put his work environment at greater risk of COVID-19 infection. There was no perfect answer in Clark's situation.

Resolution of the issue: Clark should tell the part-time employees he wishes to retain that he wants to place them back on the work schedule. If they indicate that they do not want to be placed on the schedule because they wish to continue receiving unemployment payments, he should remind them that the additional \$600 per week benefit is a short-time benefit that will be ending shortly and then the unemployment payments will revert to a lower weekly maximum.

He should also tell them that he will have no choice but to consider

that they abandoned their jobs and he will no longer be able to save their position as he needs help immediately.

While some states have established online reporting for employers to notify them when an employee fails to return to work, most do not have that functionality. It would not likely be worth Clark's time and effort to make calls to the unemployment office to notify them that the employees are not returning to work. Most unemployment offices are currently so swamped processing new unemployment claims and answering questions for those filing claims that they just do not have the resources to respond to each employer on these issues.

Preventive Measures: Given the continuing cases of COVID-19 and

the lack of a vaccine, it is possible that Clark will have to make future decisions about how to effectively staff his business to minimize the risk to employees and the families they serve.

Rather than laying employees off immediately, Clark may want to try staggering schedules of the part-time employees to create the ability to social distance more effectively in the work environment if possible. This may reduce the need for employees to be laid-off and file for unemployment. No one knows what the future holds in terms of this virus or the type of federal programs that may be in place to help employees economically. Funeral home owners can only make the best decisions they can based on the information that is available in that moment. •