

LABOR AND EMPLOYMENT

ALERT

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Pennsylvania's Shared Work Program May Provide Options for Employers Looking to Avoid Layoffs

By Karen Baillie

In 2011, in response to the Great Recession, Pennsylvania joined a handful of states in enacting work sharing legislation (also known as short-time compensation). Congress first created a temporary, three-year short-time compensation program in 1982, and revived the program and made it permanent in 1992. In 2012, the federal government passed the Layoff Prevention Act, which set national program standards and provided incentive grants to states with conforming work sharing laws. Pennsylvania conformed its shared work laws to the federal standards in 2014. The new CARES Act gives states \$100 million to support work sharing programs. Hence, the framework is already in place for Pennsylvania employers looking for options to avoid layoffs in the midst of the COVID-19 crisis.

Here's how it works. A Shared Work Program is an alternative to layoffs. It allows employers to reduce hours on a temporary basis and allows employees whose hours have been reduced to collect unemployment compensation without having to certify that they are looking for work. Employers benefit because they forgo having to recruit and train new workers when the employer seeks to staff up to normal levels after a downturn.

Rather than layoff any employees, the employer identifies a group of employees and reduces their hours between 20 and 40% for a temporary time period. The employer must submit an application agreeing not to hire new employees into the designated group of employees and must not lay off the participating employees during the agreed to

shared-work plan. The employer must agree to maintain fringe benefits. The employees in the department must work a percentage of their regular hours, between 60 and 80 percent. All employees in the department are then eligible to collect a percentage of their unemployment compensation benefits, equal to the percentage their hours have been reduced. The participating employees are relieved from the usual requirement to look for alternative work and to file paperwork certifying their job search. Shared work plans may last up to 52 consecutive weeks. However, an employer is limited to a maximum of 104 weeks of shared work in a 156-week period.

By using work sharing program, businesses may operate during a downturn without losing valuable employees and without the need and cost of hiring and training staff once economic conditions improve. The program may also improve worker morale by avoiding layoffs and offsetting the economic impact of work reduction through the pro-rated unemployment benefit.

As an added benefit, the Federal Pandemic Unemployment Compensation (FPUC) program awards an additional \$600 per week to each worker eligible under existing state unemployment compensation programs for the time period between March 27, 2020 and July 31, 2020, provided the state has signed an agreement with the Secretary of the Department of Labor and provided the individual worker is otherwise eligible for at least \$1 in state unemployment compensation.

Pennsylvania employers contemplating work share programs should take the following into consideration. Participating in a work share program may increase the employer's state unemployment insurance tax rate. Employers must seek Commonwealth approval for changes to the plan, such as further reductions to worker hours or adding or removing employees participating in the plan. Multi-state employers must navigate a patchwork of different state programs with varying requirements.

Information about Pennsylvania's program is found on the Department of Labor and Industry's website. <https://www.uc.pa.gov/faq/Employer/Pages/Shared-Work-Program-FAQs.aspx>

This Alert is based on information available at the time of publishing. It is subject to change. Business leaders should consult with counsel and refer to government websites and publications for the most up-to-date information.

For more detailed analysis on a wide range of legal issues, please see Schnader's COVID-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center. ♦

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