

Temporary Special Measures Relating to the Work-Sharing Program

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On April 3 and 4, 2020, Service Canada published two new fact sheets outlining the temporary special measures it is implementing in relation to the federal work-sharing program in response to COVID-19. These measures, which expand upon previously-announced changes to the work-sharing program, are aimed at streamlining and expediting the work-sharing application process in an effort to help employers avoid further layoffs and dismissals.

Overview of the Work-Sharing Program

The federal work-sharing program is designed to help eligible employers retain skilled employees and avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond the control of the employer. Employees participating in the work-sharing agreement (collectively referred to as the "work-sharing unit") agree to work a reduced schedule by sharing the available work for the duration of the work-sharing agreement and receive employment insurance (EI) benefits as income support. In any given week, the work reduction may vary, as long as the average reduction in work hours over the course of the agreement is between 10% and 60% of the employee's normal work schedule.

Prior to the COVID-19 pandemic, employers were required to submit a recovery plan along with their work-sharing application, outlining the steps they would take over the course of the work-sharing agreement to alleviate the work shortage and return the work-sharing unit to normal working hours. Employers who had previously made use of the work-sharing program were also required to serve a waiting period equal to the number of weeks of the previous work-sharing agreement, up to a maximum of 38 weeks, before they could begin a new work-sharing agreement involving the same employees. As outlined below, the government has modified or eliminated these and other requirements in an effort to make the work-sharing program more accessible to employers across Canada.

Temporary Special Measures

(i) Extension of Duration and Elimination of Waiting Period Between Agreements

As we reported back in March, the federal government previously announced that it would be extending the

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maximum duration of work-sharing agreements from 38 to 76 weeks and waiving the waiting period between successive work-sharing agreements. The minimum duration of work-sharing agreements remains at six weeks.

(ii) Recovery Plans

The requirement to submit a recovery plan in support of a work-sharing application has been eliminated and replaced with a single line of text in the work-sharing application form. Now, employers need only submit the work-sharing application form and Attachment A: Work-Sharing Unit Attachment, listing the employees who have agreed to participate in the agreement.

(iii) Timeline for Submitting Work-Sharing Applications

Before COVID-19, employers were required to submit work-sharing applications at least 30 days prior to the start date in the proposed work-sharing agreement. Given the rapid economic downturn caused by the COVID-19 pandemic, this lengthy waiting period made work-sharing an impractical solution for many employers facing immediate financial challenges. Service Canada has now confirmed that employers may submit work-sharing applications 10 calendar days in advance of the requested start-date and that it is deploying additional resources to process work-sharing applications as quickly as possible.

(iv) Eligible Employers

To be eligible to participate in a work-sharing agreement, an employer must ordinarily (a) have been operating a year-round business in Canada for at least two years and must (b) submit records demonstrating a recent decrease in sales or production levels of 10% or more. Service Canada has now expanded eligibility to include employers that have been in business for only one year and has eliminated the requirement for employers to submit sales or production figures demonstrating a 10% reduction in business activity. Government business enterprises and not-for-profit employers experiencing a shortage of work due to a reduction of business activity or a reduction in revenue levels due to COVID-19 will also be eligible for work-sharing.

(v) Eligible Employees

Not all employees may participate in a work-sharing agreement. Only "core employees" (defined as year-round, permanent, full-time or part-time employees needed to carry out the day-to-day functions of the business) who are eligible to receive EI benefits are ordinarily eligible to participate. In response to COVID-19, the federal government has expanded eligibility to include employees considered essential to the recovery and viability of the business, including technical employees engaged in product development and sales and marketing agents assisting in the employer's recovery efforts. Seasonal and casual employees as well as employee-shareholders holding more than 40% of the voting shares in the business

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remain ineligible to participate.

(vi) Enquiry Unit

In response to the increased demand for work-sharing, Service Canada has deployed and cross-trained employees from other programs and has created an enquiry unit for employers seeking additional information related to the work-sharing program. Enquiries can be sent to the following email address: EDSC.DGOP.TP.REP-RES.WS.POB.ESDC@servicecanada.gc.ca.

The Employment & Labour Group at Cassels will provide further updates on governmental initiatives to support Canadian employers and their employees in the wake of the COVID-19 pandemic as they become available.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.