

Virginia Renews Work Share Program to Support Virginia Employers, Employees

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Wage and Hour

Prior to the passage of [SB 548](#), Virginia was one of 25 states without an active work-sharing program. On April 22, 2020, Governor Ralph Northam enacted a new work-sharing program, which will permit employers to reduce employees' normal hours of work between 10% and 60% and permit employees to receive unemployment benefits for those periods of reduced hours and income.

However, the law will not take effect until July 1, 2020, just 30 days before the current expiration of supplemental unemployment benefits provided under [the Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#).

Previous Program Expired

This is not Virginia's first work-sharing program. In 2014, the Virginia General Assembly enacted [SB 110](#), which created the Short-Time Compensation Program.

However, SB 110 provided that if federal grants to support the program were not received by the Virginia Employment Commission (VEC) by July 1, 2016, it would expire. Without the required funding, the program expired on that date.

Funding Provision

Likewise, the new statute provides that the program will expire if the VEC does not receive federal funding from the Department of Labor before January 1, 2021. This sunset provision could prove to be the undoing of the relief this program will provide to Virginians from the unprecedented effect of COVID-19 on employment levels, especially as public health officials predict a second wave of infections in late 2020.

Implementation

Once the VEC establishes an application and approval process, employers wishing to participate in the program must submit a written plan for approval. The written plan will be approved or rejected by the VEC within 10 working days. If the VEC rejects a proposed plan, an employer may submit a different plan.

Any plan approved by the VEC must specify an effective date and an expiration date for the plan.

Employee Eligibility

To qualify for work-sharing benefits, an employee must be otherwise-eligible to receive unemployment benefits, employed in an affected organizational unit approved under the plan, and working during work weeks within the effective dates of the plan. To be eligible, employees must also be available for their usual hours of work, which includes hours dedicated to participation in any job-skills training approved by the VEC.

Employees covered by a plan are deemed unemployed in any work week during the effective dates of the plan if their usual scheduled hours of work, and pay, are reduced in

accordance with the plan. Under § 60.2-712, a reduction in hours must be more than 10% but less than 60% of employees' regular work schedule.

Short-Time Compensation Benefits

Claimants for work-sharing benefits must file an initial claim for short-time compensation benefits and will receive a monetary determination. Under § 60.2-716, this weekly benefit amount will be equal to the percentage reduction in an employee's normal weekly hours of work multiplied by the regular weekly unemployment compensation award.

Employees will not be eligible for a total of combined benefits in any benefit year that would exceed the maximum entitlement established for regular unemployment compensation benefits for a period of 26 weeks.

If an employee is not provided any work by their employer participating in the work-sharing program or by another employer, and is otherwise eligible for unemployment benefits, the employee will be eligible to receive regular unemployment benefits. However, an employee who is not provided any work by the work-sharing employer, but who works for another employer and is otherwise eligible, may receive unemployment benefits for that week subject to the disqualifying income received from the other employer.

Modification, Revocation, Termination

A participating employer may request the VEC to approve a modification of its plan by proposing such modification and providing an explanation for the proposed modification. If plan modifications are not substantial, an employer need not request VEC approval, but must promptly report all such changes to the VEC.

The VEC may withdraw approval of a plan at any time for good cause, including an employer's failure to comply with the provisions of an approved plan, unreasonable revision of productivity standards for the affected unit, conduct that defeats the intent and effective operation of the plan, and violation of any criteria relied upon for approval of the plan. The VEC will have the authority to periodically review operation of an employer's plan to assure that good cause for revocation does not exist. The plan also may be revoked upon the request of the affected unit's employees.

A participating employer may terminate a program at any time upon written notice to the VEC. After receipt of the notice to terminate, the VEC must promptly notify each member of the affected unit of the termination date of the plan. However, following an employer's plan termination, the employer may submit a new application to participate in another plan.

For additional guidance on this issue, please contact a Jackson Lewis attorney.

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