JacksonLewis

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COVID-19 Daily Briefing Recap

Workshare Programs

A Tool for Employers Seeking to Avoid Layoffs or Furloughs

Please note that the following is a recap of our COVID-19 Daily Briefing from April 21, 2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s COVID-19 resource page for updates on workplace impacts and sign up here to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

Workshare 101

- Workshare allows employers to reduce the hours and payroll of its workforce (or a segment of its workforce) by a specific percentage to cut costs.
- Employees on workshare are eligible to receive partial unemployment insurance (UI) benefits, even if they would not otherwise meet the requirements for partial UI.
  - Example: Instead of laying off 25 percent of its workforce, ABC Co. reduces hours and payroll by 25 percent for its entire workforce. Employees receive 75 percent of their regular pay from ABC Co. and are eligible to collect partial UI benefits to offset the reduction.
- Twenty-six states and Washington D.C. have workshare programs in place:
  - Arizona
  - Arkansas
  - California
  - Colorado
  - Connecticut
  - District of Columbia
  - Florida
  - Iowa
  - Kansas
  - Maine
  - Maryland
  - Massachusetts
  - Michigan
  - Minnesota
  - Missouri
  - Nebraska
  - New Hampshire
  - New Jersey
  - New York
  - Ohio
  - Oregon
  - Pennsylvania
  - Rhode Island
  - Texas
  - Vermont
  - Washington
  - Wisconsin

Workshare Benefits - Employees[1]

- Employees can collect partial UI under a workshare program:
  - Example: An employee whose hours and pay are reduced by 25 percent may not qualify for partial UI under traditional unemployment rules. Under a workshare program, however, that employee is eligible for UI benefits, regardless of income level.
- The CARES Act provides a $600 per week unemployment boost for any employee that receives UI benefits through July 31, 2020 (provided they continue to qualify):
  - Example: An employee who makes $2,000 per week and receives a 25 percent reduction in hours and income will potentially be more than whole:
    - Regular weekly wages: $2,000
    - Reduced weekly wages: $1,500
    - Workshare contribution: $205.75
    - CARES Act contribution: $600
    - Total: $2,305.75
- Employees continue to receive health insurance and retirement benefits under the same terms and conditions.

Workshare Benefits - Employers

- Provides a significant cost-cutting tool that may help employers avoid layoffs or furloughs.
- Most states allow multiple plans, which offer flexibility to address varying needs within a company:
  - Example: An employer could submit one plan for a 20 percent reduction in hours for its marketing department and a second plan for a 30 percent reduction in hours for the operations department.
- Allows employers to retain their workforce and avoid the costs of recruitment and training when operations resume.
- Positions companies to quickly resume regular operations when the business environment improves.

Issues to Consider

- Ongoing reporting and compliance obligations create an additional administrative burden:
  - State-specific requirements preclude a “one size fits all” approach and could be particularly challenging for multi-state employers.
- Employees will receive the greatest benefit between now and July 31, 2020, when the $600 per week unemployment boost provided by the CARES Act expires.
- Typically, employers need to certify that the workshare program is in lieu of a layoff or reduction in force:
  - Participation may preclude employers from conducting closures, layoffs, or furloughs, or otherwise changing the workshare program for a specified period of time.

[1] The examples in this section are based on informal guidance from the Massachusetts Department of Unemployment Assistance (DUA), but do not account for all factors used by the DUA to calculate benefits.

  - Some states may preclude employers from making new hires until the existing workforce is returned to regular hours.
- Many states require a uniform reduction in hours for defined groups, which may pose operational difficulties:
  - During the program, employees are prohibited from working more than their reduced schedule. Work beyond the reduced schedule can jeopardize benefits for the employee or for the entire program.
- Potential complexities arise with respect to including exempt employees:
  - Hours worked must be tracked, which is seldom done for exempt employees.
  - A reduction in hours and pay may end an employee's exemption.
  - Some states require salaried employees to be paid hourly while on workshare.
- In more favorable economic circumstances, employers face retention risks when putting employees in workshare programs. This risk is mitigated during the current pandemic, where hiring is weak and unemployment is at historically high levels.

For More Information

Please see our special report, "How State Workshare Programs Can Help Employers Reduce Costs, Avoid Layoffs, Furloughs."

What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with Jackson Lewis' latest available information and resources.

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.