EI Commission Work-Sharing Program offers employers a cost-reduction option

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In the current economic climate, many companies are faced with the need to reduce costs. Often the means of achieving this goal is through workforce reductions or layoffs. For many employers, however, the termination and severance obligations associated with staff reductions can be costly. In addition, the use of temporary layoffs in the non-unionized workplace could potentially result in a claim for constructive dismissal.

One possible alternative the employers may want to consider is the use of work-sharing arrangements through participation in the Federal Employment Insurance Commission (the Commission) Work-Sharing Program (WSP).

How the program works

The WSP is designed to assist employers avert temporary layoffs by providing income support to workers eligible for Employment Insurance benefits who are willing to work a temporary reduced work-week when there is a reduction in the normal level of business activity that is beyond the control of the employer. The program involves the creation of Work-Sharing Units and Work-Sharing Agreements, which must be approved by both employee and employer representatives and by the Commission.

The minimum duration of a Work-Sharing Agreement is six weeks. For any applications received under the Work-Sharing Program after February 1, 2009, the maximum duration of a Work-Sharing Agreement is period is fifty-two weeks. This new maximum will be in effect only until April 3, 2010.

Employer eligibility

An employer must have been in business in Canada for at least two years to be eligible to participate in the Work-Sharing Program. Employers must show the shortage of work is temporary and unexpected, as the WSP is not intended to subsidize declining establishments, or to cover companies during an expected seasonal slowdown. The employer must also demonstrate that the need to reduce working hours is unavoidable.

An employer is not allowed to increase their workforce during a Work-Sharing Agreement, except for replacements of essential separating staff. Prior consent of the Commission is required when hiring such replacements. In addition, while participating in the WSP, the employer must maintain all existing employee benefits for the duration of the WSP. The WSP cannot be put into place where there is a labour dispute.

Application for participation

To apply for the WSP, an employer must provide a completed application form and a recovery plan. If the application is approved by the Commission, the employer and a representative acting on behalf of the employees must enter into a Work-Sharing Agreement with the Commission. The employer must also provide a list identifying the employees to be included in the Work-Sharing Unit.

The Work-Sharing Unit is the group of employees to be covered by the WSP and must consist of two or more people. The WSP is intended to cover "core staff" only (i.e. the minimum number of year-round permanent full-time/part-time employees who are required to carry out the functions that will lead to a full recovery within the time frame of the agreement). As a result, outside sales staff, managers and those who assign workloads are generally not eligible for inclusion in the Work-Sharing Unit.

An employer must also provide a written description of its plan for recovery (the Recovery Plan). The Recovery Plan must include the following:

- the expected duration and the actual cause for the work shortage;
- an outline of the steps to be taken to generate business and thus alleviate the work shortage (including objectives, activities, realistic timeframes, milestones and expected outcomes);
- a description of employer-initiated skills enhancement/upgrading (if applicable) to take place during the life of the Work-Sharing Agreement;
- projections for future sales and the business;
- a description of measures taken to overcome the downturn in business before applying for the WSP;
- any workforce adjustments to be made before or after the period of time for which the employer requires the use of a Work-Sharing Agreement;
- a description of what the company has identified as alternatives to a Work-Sharing Agreement;
- a description of the risks that may hinder the recovery of the business and what the alternative plan is.

The application must be received by the Commission at least thirty days in advance of the proposed effective date of the Work-Sharing Agreement. In addition, if approved, it is important to note that it will take up to twenty-eight days for employees to receive their Employment Insurance benefit payments.

Employee eligibility

The eligibility requirement for employees to receive WSP benefits is the same as for regular Employment Insurance benefits. Employees must have 420-910 hours of insurable employment before the effective date of the Work-Sharing Agreement (the exact number of required hours depends on specific region in Canada). This means that it is possible that individual employees covered by a Work-Sharing Agreement may not be entitled to collect benefits.

It is also important to inform employees that Employment Insurance benefits are taxable and are often not taxed at source. As a result, many employees participating in the WSP may have to pay income tax on benefits received on their annual income tax return.