

## **Employment Insurance Work-Sharing Benefits During COVID-19**

As the COVID-19 crisis continues, employers continue to grapple with difficult staffing decisions that come with a slowdown in business. The Federal Work-Sharing program (“**Program**”), which is designed specifically for the types of circumstances that COVID-19 has created, offers a potential solution for employers.

The Program is an alternative option to layoffs. The Program is designed to help eligible employers avoid layoffs when there is a temporary reduction in the normal level of business activity which is beyond the control of the employer. The Program is beneficial to both employers and employees. Employers are able to avoid layoffs, retain qualified and experienced workers, and avoid recruiting and training new employees once business returns to normal levels. Employees are able to keep their jobs, maintain their work skills in difficult economic times, and receive Employment Insurance (“**EI**”) benefits for the days not worked.

In response to COVID-19, temporary special measures have been implemented to the Program to make it available to a wider group of employers with reduced administrative requirements to apply.

The key features of the Program are set out below.

### **What is Work-Sharing?**

- A program whereby employees agree to reduced hours as a result of a reduction in work, rather than the employer having to engage in layoffs;
- As a result, EI benefits are provided to the eligible employees for the missed work time as income support;
- Work-sharing applies to a reduction in work activity of the employees’ regular work schedule between a minimum of 10% (one half day) and a maximum of 60% (three days). The amount can vary week to week;
- The Program is available to both federally and provincially regulated employers.

## Which Employers are Eligible?

- To be eligible for a Work-Sharing agreement, a business must:
  - be a year-round business in Canada for at least 1 year; and
  - be a private business or a publicly held company.
- Due to COVID-19, eligibility was also extended to:
  - Government Business Enterprises (“**GBEs**”), also referred to as public corporations which officials with Service Canada have advised include entities such Lottery and Gaming Corporations (“**OLG**”), Public Universities and Colleges and Public Transit Groups; and
  - not-for-profit employers experiencing a shortage of work due to a reduction of business activity and/or a reduction in revenue levels due to COVID-19.
- **NOTE:** Businesses that are experiencing a reduction in business activity due to the following are not eligible for the Program:
  - a labour dispute;
  - a seasonal shortage of work; or
  - the decrease in business activity is due to a recent increase in the size of the workforce.

## Which Employees are Eligible?

- To be eligible for a Work-Sharing agreement, an employer’s employees must:
  - be year-round, permanent, full-time or part-time employees needed to carry out the day-to-day functions of the business ("core staff");
  - be eligible to receive EI benefits; and
  - agree to reduce their normal working hours by the same percentage and to share the available work.
- Due to COVID-19, eligibility was also extended to:

- employees considered essential to the recovery and viability of the business can now be eligible to participate in the Program (such as technical employees engaged in product development, outside sales agents, marketing agents, etc.).
- The following employees are not eligible for Work-Sharing agreements:
  - seasonal employees and students hired for the summer or a co-op term;
  - employees hired on a casual or on-call basis, or through a temporary help agency;
  - employees responsible for the direction of the company and who hold more than 40% of the voting shares in the business; or
  - self-employed individuals.

### **How Do Employer Apply for the Program?**

- Employers are requested to submit their applications 10 calendar days prior to the requested start date. The streamlined measures undertaken by Service Canada will aim to reduce the processing time to 10 calendar days.
  - Prior to COVID-19, employers were requested to send their Work-Sharing application (and supporting documentation) 30 calendar days prior to their requested start date.
- To apply for the Program, employers must submit:
  - [Applications for a Work-Sharing Agreement form \(EMP5100\)](#)
  - [Attachment A: Work-Sharing Unit form \(EMP5101\)](#)
  - Note: If the employer does not have enough room on one EMP5101 they can start another EMP5101 and use as many as they need.
  - Applications are to be sent via email, based on where the business is located. In Ontario, email: ESDC.ON.WS-TP.ON.EDSC@servicecanada.gc.ca

### **Other important information:**

- A “work-sharing unit” generally includes all employees in a single job description or all employees who perform similar work:

- Employees who do different work but whose jobs impact one another (i.e., slowdown in business affects one job resulting in less work for another job or jobs) may form one work-sharing unit provided that all employees can reduce their hours equally;
- It consists of a minimum of 2 employees;
- There can be more than one work-sharing unit.
- All members of a work-sharing unit must agree to reduce their hours of work by the same percentage and to share the available work.
- Work-Sharing agreements must have a minimum duration of 6 weeks, and as a result of COVID-19, the maximum initial agreement duration has been extended to 76 weeks.
  - Note that a Work-Sharing agreement can be terminated early by the employer, employees, or Service Canada. For example, if business returns to normal levels prior to the expiry of a Work-Sharing agreement, an employer has the right to terminate the Program.
- Also, as a result of COVID-19, the mandatory cooling off period has been waived for employers who have already used the Program so that eligible employers may immediately enter into a new agreement.
- The Program is voluntary, and employees must sign an agreement to participate. The members of each Work-Sharing unit must authorize an employee who will represent them in the agreement.
- A Work-Sharing agreement is a three-way agreement between the employer, employees and Service Canada.
- All benefits must continue during the term of the Work-Sharing agreement, although if disability benefits are tied to hours worked, they can be pro-rated to reflect the reduced work week.

#### **How it Works – An Example:**

- Norman works as a full-time employee at a manufacturing plant in Ontario.
- He earns \$40,000 per year (weekly earnings of \$769).

- Due to COVID-19, the plant faces significant reduction in workload because of decline in sales, and the employer considers the possibility of laying off a quarter of its employees.
- The plant decides to enter into a Work-Sharing agreement with Service Canada, where all eligible employees in Norman's work unit agree to reduce their work hours per week by 35% and receive EI Work-Sharing benefits for days where they do not work as a result of the agreement.
- Under the Work-Sharing agreement with their hours by 35% per week, Norman and his co-workers:
  - Receive 65% of their regular weekly earnings for hours worked, earning \$500 per week ( $\$769 \times 65\%$ ); and
  - Collect EI benefits for the remaining 35% of their average hours worked per week, equal to 55% of the value of the insurable earnings they would have received from the plant, earning \$148 per week ( $\$769 \times 35\% \times 55\%$ );
  - In total, they earn \$648 per week under the Program ( $\$500 + \$148$ ), and also benefit from keeping their jobs and maintaining their skills.
- Had Norman and his co-workers instead been laid off and received regular EI benefits, they would have received only \$423 per week ( $\$769 \times 55\%$ ).

This publication is intended only to provide general information. It should not be relied on as legal advice. For specific legal advice, please contact: [Leslie Dizgun](#), [Allyson Fischer](#), [Justin Anisman](#), [William McLennan](#), or [Alyssa Jagt](#).