Legal Update Article

Consolidated Appropriations Act, 2021: Workshare Back in Play

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A technical amendment to the Coronavirus Aid, Relief and Economic Security (CARES) Act under the Consolidated Appropriations Act, 2021 (Act) again makes workshare a viable cost-cutting option for employers, while providing financial security for employees.

Summary of Relevant Amendments

The latest COVID-19 relief revives many aspects of unemployment relief rolled out in the CARES Act in March 2020, despite reducing many of the original benefits. The Act reinstates enhanced federal unemployment insurance by providing an *additional* $300 per week for all workers receiving unemployment benefits through March 14, 2021.

In addition, the Act includes a technical amendment that confirms workshare plans qualify as "unemployment benefits" for purposes of receiving enhanced federal unemployment insurance benefits. Currently, workshare plans are available in 26 states and the District of Columbia. States with workshare programs include Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wisconsin.

What This Means for Employers

As businesses continue to grapple with the economic impacts of COVID-19, workshare programs allow businesses to implement cost-cutting measures, while avoiding furloughs and layoffs. To participate, employers submit a plan to the state agency handling unemployment benefits, agreeing to reduce the hours and compensation of employees, usually between 10-60%. Once approved, the employees on the plan become eligible to collect partial unemployment benefits, as well as the *additional* $300 federal subsidy through March 14, 2021. If an employer simply reduces hours and compensation without a workshare plan in place, many employees would be ineligible to collect unemployment benefits because their wages, even as reduced, would remain above maximum eligibility thresholds for unemployment benefits. Workshare waives such income eligibility requirements.

Workshare programs offer compelling benefits for employers. First, the programs allow employers to maintain their workforce while operating at a reduced capacity, avoiding additional recruitment and training costs when employers are ready to resume normal operations. Second, the promise of continued employment and financial security helps improve employee morale and loyalty. Third, for employers experiencing staffing shortages due to concerns about the pandemic, the additional income provided through workshare programs may create an added incentive for employees to return to work.

Indeed, with the enhanced federal benefits, workshare programs prevent wage loss for affected employees or, at least, significantly reduce the impact a reduction in hours and pay would otherwise have on employees. The following examples are illustrative, using the Massachusetts workshare formula. The workshare contributions in the examples below represent 20% of the employee's maximum unemployment benefit based on weekly income, but do not account for outside income, dependent credits, or any other factors used by the state unemployment agency to calculate unemployment benefits. In addition, each state has its own maximum unemployment benefit and its own formula for calculating unemployment benefits. In Massachusetts, the maximum unemployment benefit is $823, which was used in calculating the workshare contribution in the second example.

Example 1

An employee who makes $26,000 per year and experiences a 20% reduction in hours and income on a workshare plan likely will receive 150% of their average weekly wages through March 14, 2021.

Regular Wages	**Workshare**
Weekly Wages $500	*Reduced weekly wages $400*
	Workshare Contribution $50
	CARES Act $300
Total $500	**Total $750**

Example 2

Likewise, an employee who makes $150,000 per year and experiences a 20% reduction in hours and income on a workshare program will recoup most of their average weekly wages through March 14, 2021.

Regular Wages	**Workshare**
Weekly Wages $2,884.62	*Reduced weekly wages $2,307.70*
	Workshare Contribution $164.60
	CARES Act $300
Total $2,884.62	**Total $2,772.30**

Does Workshare Work for You

While the reinstatement of this benefit will come as a relief to many struggling employers and employees, there are some prerequisites. Participating employers must comply with their states' certification requirements, which typically include a statement that the company is administering the plan in lieu of conducting layoffs and will continue to maintain employee health and retirement benefits at the pre-workshare levels. In addition, the reduction in hours and pay must be uniformly applied to defined groups identified by the employer.

Considering these factors and the recent popularity of workshare programs, employers contemplating traditional cost-cutting measures (*e.g.,* layoffs, furloughs, or even hours reductions) for some or all of their employees would be well-served to consider workshare programs. To the extent workshare programs are not a viable solution, employers should understand why such programs will not work for their business. Likewise, to avoid employee-relation issues, employers should be able to articulate why workshare programs were not pursued.

If workshare could be compatible with your workforce, reach out to your Jackson Lewis attorney to discuss.

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