

How State Workshare Programs Can Help Employers Reduce Costs, Avoid Layoffs, Furloughs

By Tanya A. Bovée, Samia M. Kirmani, Stephanie E. Satterfield, Patrick O. Peters, John J. Porta, Marla N. Presley, Keerthi Sugumaran,

April 15, 2020

Meet the Authors



Tanya A. Bovée

(She/Her)

Principal

(860) 522-0404

Tanya.Bovee@jacksonlewis.com



Samia M. Kirmani

Principal

(617) 367-0025

Samia.Kirmani@jacksonlewis.com



Employers are struggling to balance competing priorities during the COVID-19 pandemic. These include, for example, reducing costs, maintaining workforces, and ensuring employee safety and economic welfare. In many states, a short-time compensation (also known as “workshare” or “shared work”) program offers an alternative to furloughs and layoffs that minimizes the financial impact on employees.

Workshare programs are unemployment benefits schemes that permit participating employers to reduce hours and corresponding wages temporarily for some or all of their employees. The affected employees, in turn, become eligible to collect partial unemployment benefits, enabling them to recoup some of the lost pay. The programs benefit employers because they permit them to implement cost-saving measures while maintaining their workforces (so that they are ready to resume normal hours and operations in the future) and minimizing the financial impact on their employees. The programs benefit employees because they allow them to keep their jobs while collecting partial unemployment benefits, even when they otherwise would be ineligible to do so because their income, even as reduced, is too high.

When considering whether to implement layoffs, furloughs, or hours reductions for some or all of their employees, therefore, employers should consider whether a workshare program is right for them. The time to do so is particularly ripe now because the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides that any employees who collect unemployment benefits (whether full or partial) receive an additional \$600 per week, at least through July 31, 2020. The CARES Act requires states enter into agreements with the U.S. Department of Labor to participate in the new unemployment benefits provided under CARES Act, including the additional \$600 per week benefit.

Employers considering adding workshare program participation to their crisis management toolbox should do so with an understanding of the many issues that may arise. This special report explains what a workshare program is and outlines issues for employers to consider when evaluating whether to adopt one.

I. What Are Workshare Programs?

A workshare program is an optional arrangement offered by some states. Under a workshare program, employees of a participating employer are eligible to receive partial unemployment benefits for periods during which the employer reduces their hours and their pay, even if the employees otherwise would not qualify to receive them. For states that have adopted them, workshare programs are administered by the state agency responsible for handling unemployment benefits.

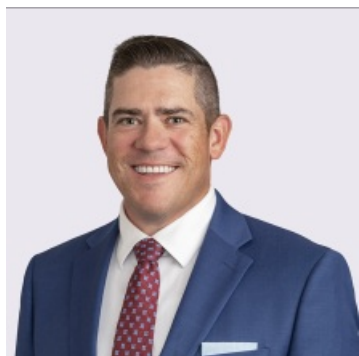
Stephanie E. Satterfield

(She/Her)

Principal

(864) 672-8048

Stephanie.Satterfield@jacksonlewis.com

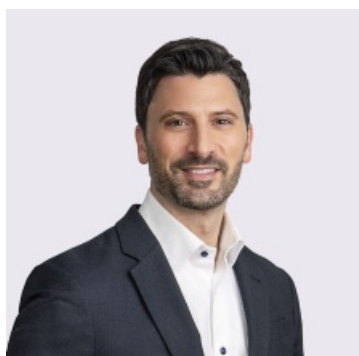


Patrick O. Peters

Principal and Office Litigation Manager

216-750-4338

Patrick.Peters@jacksonlewis.com



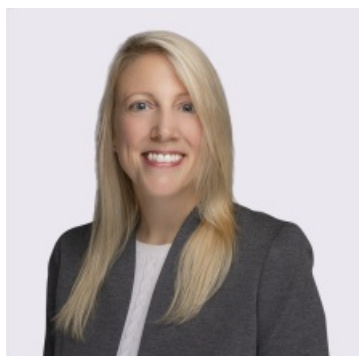
John J. Porta

(He/Him)

Principal

212-545-4043

John.Porta@jacksonlewis.com



Marla N. Presley

(She/Her)

Office Managing Principal and Office Litigation Manager

412-338-5148

Marla.Presley@jacksonlewis.com

Generally, to participate, an employer submits a workshare plan to the agency for approval. Once the agency approves the employer's plan, the employer may reduce hours and compensation temporarily for some or all of its employees in accordance with that plan, and the affected employees may collect unemployment benefits related to the reduction.

For example, instead of laying off 20% of its workforce, a participating employer may reduce all hours (and payroll) across its entire workforce, or a segment of its workforce, by 20%. The affected employees would receive 80% of their regular pay from the workshare employer. They also would be eligible to collect partial unemployment insurance benefits from the state to off-set the reduction, at least in part.

Currently, 26 states and the District of Columbia have operational workshare programs in place. 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, Vermont, Washington, and Wisconsin.

Under the CARES Act, the federal government reimburses currently participating states for 100% of the workshare compensation benefits they pay. Recently implemented CARES Act incentives are prompting other states to create workshare programs of their own. The CARES Act provides states considering workshare programs with grant money and offers of full or partial workshare benefit reimbursement.

II. Why Employers Should Consider Workshare Programs Now

While each state offering a workshare program has its own formula and state-specific variations, there are two attributes common to all, which make workshare programs particularly attractive now.

First, employees who otherwise would not be eligible to collect unemployment benefits become eligible to collect partial unemployment benefits. This differs from standard unemployment insurance programs. Typically, if an employer reduces hours and compensation, 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 programs significantly relax such thresholds for employees participating in the employer's workshare plan. Thus, workshare programs can help employers alleviate the effect of cost-saving measures taken as a result of current circumstances.

Second, under the CARES Act, all employees who receive any unemployment benefits whatsoever (whether it is total unemployment benefits because they are not working at all or partial unemployment benefits due to reduced work hours) also will receive an additional \$600 per week (commonly referred to as the "unemployment boost") through July 31, 2020. This additional benefit alone will make most employees participating in a workshare plan whole or even have them come out ahead.

The following examples are illustrative, using the Massachusetts workshare formula,

Related Services

COVID-19

Reductions-in-Force/WARN Act

Wage and Hour

which had a statutory workshare program in place prior to enactment of the CARES Act. The workshare contributions represented 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 potentially may receive *double* their average weekly wages through July 31, 2020.

Regular Weekly Wages: \$500
Reduced Weekly Wages: \$400
Workshare Contribution: \$50
CARES Act: \$600
Total: \$1,050

Example 2

Likewise, an employee who makes \$150,000 per year and experiences a 20% reduction in hours and income through a workshare program potentially may receive more than their average weekly wages through July 31, 2020.

Regular Weekly Wages: \$2,884.62
Reduced Weekly Wages: \$2,307.70
Workshare Contribution: \$164.60
CARES Act: \$600
Total: \$3,072.30

III. What Employers Need to Know about Workshare Programs

While workshare programs make sense (at least through July 31, 2020, and, perhaps, beyond), employers should consider the following issues:

1. Existing state workshare programs vary in their eligibility and reporting requirements. As new states implement their own temporary or permanent programs, additional variations likely will emerge, with respect to, for example, whether a participating employer must:
 - Reimburse the state for amounts paid out to its employees (only in states that implement temporary workshare programs in response to COVID-19);
 - Submit certain reports on participating employees; or
 - Follow various rules about employee participation and work levels.

Employers should review carefully applicable state-specific requirements (in the states in which the employees work) before signing on to a program. Because of state-specific requirements, there is no one-size-fits-all solution and employers should prepare for the administrative burdens of creating a plan and completing the

application process. Employers also should prepare systems for monitoring and reporting on on-going compliance.

2. The \$600 unemployment benefit “boost” under the CARES Act is set to expire July 31, 2020.

3. Employers participating or considering participating in the [federal Payroll Protection Program](#) should be aware that participation in workshare programs may affect the terms of their participation. Additional guidance is expected on this issue.

4. Employers should consider carefully the scope of their potential workshare plan and identify specifically the groups that will be affected. Employers have some flexibility in defining the applicable “group” or “unit” of employees under a workshare plan (*e.g.*, by department, job function, and shift). Depending on the state, employers may submit multiple plans for different groups. For example, an employer could submit one plan for a 20% reduction in hours for its marketing department and a second plan for a 30% reduction in hours for the operations department.

5. In most states, workshare programs typically require a uniform reduction in hours for all employees within the defined group. The reduction in hours (and commensurate reduction in pay) is generally 10%-60%, although the range may be smaller in some states. For the duration of the program, employees generally are prohibited from working for their employer for more than their reduced schedule. Performing work for the employer that is outside their defined reduced schedule could jeopardize the program for all participating employees.

6. Employers are required to maintain employee benefits, including health insurance and retirement benefits. Along with factoring in the cost of continued benefits, employers should review applicable plan documents and coordinate with benefits providers to ensure continuity during the program.

7. While many states permit exempt employees to participate in workshare programs, potential complexities may arise with including them in the workshare program. First, workshare programs require employers to track hours worked, which employers seldom do for exempt employees. Second, given that exempt employees’ compensation is not supposed to vary with hours worked, a reduction of hours (and pay) may end the exemption. While there is Department of Labor guidance to support the view that a temporary reduction in hours and proportional reduction in pay during an economic downturn will not violate the salary basis test and (therefore, not destroy the exemption), employers should be aware of the potential risks and explore options to mitigate them.

Once largely overlooked, workshare programs are taking center stage as more states implement, and more employers utilize, them. Employers should draft workshare plans that address the issues noted above and adhere to the plans once implemented.

Finally, as with any other employee-relations initiatives, employers implementing workshare programs should do so with transparent and thoughtful employee

communications.

Employers with questions about workshare programs and other potential management responses to COVID-19-related issues should contact a Jackson Lewis attorney.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.