COVID-19 - Flexibility in the Federal Work-Sharing Program: A Solution for Retaining Your Human Capital?

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Authors

Zeïneb Mellouli

Partner, Lawyer

Richard Gaudreault

Partner, Lawyer

Jessica Parent

Partner, Lawyer

In order to best support our clients and business partners, our team is following developments related to COVID-19 very closely. We invite you to visit on our website the page that centralizes all of the tools and information produced by our professionals.

There is a concern that simply laying off employees could lead to companies experiencing a major loss of expertise and skill. This expertise will be essential to rebuilding after the end of the crisis, a time that for many will be the greatest challenge in the history of their organization.

Organizations recognize that employees have value over and above their skills. They have acquired an in-depth understanding of the company's goals and operations. They have established a relationship of trust with the company, a network of contacts, and a certain degree of autonomy, to name only a few examples. These make all the difference. We are working with many employers to identify solutions designed to protect this invaluable asset during this unprecedented crisis.

The latest government announcements, which include provisions for increased wage subsidies for some companies, are certainly a positive response to current concerns and realities. Other programs with solutions that might be of interest include:

New Flexibility in the Federal Work-Sharing Program

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The federal government has recently established measures to increase the flexibility of the Work-Sharing program ("**WS**"), which has been the subject of many questions from both employers and employees.

Considering the frequent changes made to various government programs, it is possible that by the time you read this, some information may no longer be up to date. We therefore invite you to visit the Employment and Social Development Canada[1] ("**ESDC**") website or consult our labour and employment law professionals for more information.

What is the Work-Sharing program ("WS")?

The goal of the program is to allow employers to keep all of their workers by reducing hours rather than laying off part of their workforce.

This program may be a good option for employers who are facing a decrease in their normal level of operations due to COVID-19, but who still have some work for their employees in a reduced capacity.

During the program's implementation period, available work is redistributed equally among employees in one or more work units.

The employer submits an application and fills out the form outlining the agreement between the employer, the affected employees and their representative, through which the employees voluntarily accept a reduction in their work hours and the sharing of available work.

In order to compensate for this reduction in income, the program allows workers who are part of the agreement to receive employment insurance benefits. Under the *Employment Insurance Regulations*[2], remuneration received for a given week of work-sharing is not deducted from the benefits payable under the *Employment Insurance Act*[3].

For companies that are directly or indirectly affected by the decline in business due to the current situation, the program's duration is a minimum of six weeks and a maximum of 76 weeks. The reduction in employees' regular work schedules must be between a minimum of 10% and a maximum of 60% on average during the period of the agreement.

We invite you to visit the ESDC website or consult with our professionals to obtain more information about the eligibility criteria and the general requirements of the program.

What Are the New Measures Related to COVID-19?

On March 25, due to the downturn caused by COVID-19, the federal government updated its temporary special measures regarding the WS program, including the following, which:

- Reduce the requirements associated with preparing the application and the attachments. Starting now and until further notice, employers are no longer required to submit:
  - The recovery plan, Attachment B, which used to be required, has been removed and replaced with a single line in the text of the application;
  - Sales and/or production data from the last two years;
- Broaden program eligibility to include companies that have only been operating for a year, instead of the usual two years;
- Remove the required waiting period in between WS applications.

How to Submit an Application and the Expected Processing

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Following the recent changes made to the program, there is now a simplified way to submit the application. Employers must fill out the following forms, which have been revised by the federal government:

> Revised form: Application for a Work-Sharing Agreement (EMP5100)
> Form - Attachment A (revised): Work-Sharing Unit (EMP5101)

For businesses located in Quebec, the application must be sent to the following email address: QC-DPMTDS-LMSDPB-TP-WS-GD@servicecanada.gc.ca.

As of the date this bulletin was written, the ESDC website that provides information on the special measures implemented due to COVID-19 does not specify the amount of time it will take to process applications. However, it does indicate that employers are now asked to submit their applications 10 calendar days before the requested program start date, and that Service Canada will endeavour to reduce processing time to 10 calendar days.

Before COVID-19, employers had to send their Work-Sharing application (and the supporting documents) 30 calendar days before the requested start date.

Due to the major increase in applications, the federal government now has nine (9) processing centres in Canada for the purpose of processing WS applications and has the additional capacity to further support employers who have questions. A new email address has been created for the purpose of handling requests for information about the WS program: EDSC.DGOP.TP.REP-RES.WS.POB.ESDC@servicecanada.gc.ca.

Conclusion

Considering the constant changes, we invite you to consult our labour and employment law professionals to ensure that your decisions are in conformity with the various government programs. The federal government may further increase the flexibility of the program's conditions and wait times. If necessary, we will keep you informed of any changes to the program with future updates.

It is also important to note that there are other kinds of programs that could be of interest in the current situation, such as the Supplemental Unemployment Benefit Program, which allows employers to increase their employees' weekly earnings when they are unemployed due to a temporary stoppage of work or quarantine. If the conditions are met and the plan is registered with Service Canada, the amounts paid by the employer are not deducted from employees' employment insurance benefits[4].

The Lavery team is available to help you implement measures and determine the best way to endure this crisis, protect your organization and prepare to return to normal.

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1. See also https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html#h4.01.
2. *Employment Insurance Regulations*, DORS/96-332, subsection 47(1) and section 49.
3. *Employment Insurance Act*, S.C. 1996, c. 23.
4. *Employment Insurance Regulations, supra* note 1, subsection 37(1).

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