

Managing Workplace Reductions Due to COVID-19



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The COVID-19 pandemic is creating significant challenges in the workplace and those challenges will only increase as governments impose stricter and stricter restrictions on the movement of individuals in our society. This has significant impact on businesses and employees whether it is through ill or quarantined workers, closure of businesses due to government order or requirements to have workers working only from home. Employers trying to find ways to mitigate the significant impact that Covid 19 is having on business operations and at the same time take care of employees. The situation is constantly evolving, including the statutory regimes that govern workplaces.

Companies and employees must remember that this situation is temporary. Life will return to normal although there may be lasting changes in our workplaces due to the experience of COVID-19. When life returns to normal, business will again return to normal levels and

with that will be a requirement for the levels of staffing that companies had pre COVID-19. Employers have an interest in maintaining loyalty of their current work force, seeing their business survive from this unprecedented event and supporting their workers. There are three Federally funded programs that can help, all of which are connected to employment insurance. All of these programs existed prior to COVID-19 but have been revised in response to the pandemic and provide significant support to both employers and employees. These programs are the Employment Insurance Sickness Benefit, Work Share program and the Supplemental Unemployment Benefit. The Work Share program and the Supplemental Unemployment Benefit plan provide a means for employers to maintain an employees income at a reduced cost to the employer during periods of either reduced or eliminated work.

Employment Insurance Sickness Benefits

EI sickness benefits provide financial support for workers who are unable to work for a medical reason, which includes due to quarantine or self-isolation. To be eligible for the benefits the worker must experience a decrease in weekly earnings of more than 40% for one week. Eligibility requirements also include that the worker must have worked at least 600 insured hours in the year prior to the claim. For full time workers that means they must have worked approximately 15 weeks of the year prior to the claim being made.

The benefit that is payable under EI sickness benefits is 55% of the employee's insurable earnings up to a maximum of \$573 per month, less applicable taxes. Employees can receive these benefits for a maximum of 15 weeks. The Federal government announced waiver of the one week waiting period with the result that employees are now able to begin receiving the benefits as soon as the absence begins. As of March 11, 2020 the government has also waived the requirement of a medical certificate for individuals required to go into quarantine by either law or by order of a medical health officer.

EI Work sharing program

The EI Work Sharing program is a program designed to help eligible employers avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond the control of the employer. The program is available to both federally and provincially regulated employers. The program provides EI benefits to eligible workers. To be eligible, employees must agree to reduce their normal work hours and share work over a

specified period of time. Both the employer and the employee must apply to participate in the EI Work Sharing program.

To be eligible as an employer for the EI Work Sharing program the employer must:

- Have been in business in Canada year round for the last two years;
- Be a private business, publicly held company or a not-for-profit organization;
- Demonstrate that the shortage of work is both temporary and beyond their control;
- Demonstrate a recent decrease in business activity of at least 10%; and
- Submit and implement a recovery plan

designed to return the Work Sharing employees to normal working hours by the end of the program.

Some employees are not eligible to participate in the Work Sharing program. These include:

- Season employees or employees hired for the summer or for a coop term;
- Employees hired on a casual or on call basis; or
- Shareholders of the company whose shares provide them with significant decision-making power as to the direction of the company.

In implementing a Work Sharing program, the employees hours may be reduced by anywhere from 10% to 50%. EI benefits will be paid for the reduced work hours. The reduction in work hours can vary from week to week, as long as the average is maintained throughout the reduction period. The length of the program can be anywhere from 6 weeks to 76 weeks if related to COVID-19. Changes were made to the program in response to the COVID-19 pandemic. Prior to the pandemic the maximum length of the program was 38 weeks.



Employers are trying to find ways to mitigate the significant impact that COVID-19 is having on business operations and at the same time take care of their employees.

Supplemental Unemployment Benefit ("SUB") Plan

This plan allows an employer to top up EI benefits to lessen the loss of income experienced by the laid off employee. This applies to both regular EI and EI sickness benefits. SUB plans can be utilized when unemployment is due to a variety of factors, including a temporary stoppage of work or illness, injury or quarantine. The *Employment Insurance Regulations (Article 37(2))* require the following to be met to implement a SUB plan:

1. Identification of the group of employees covered by the SUB plan;
2. Employee must be in receipt of EI benefits related to a permitted type of unemployment, which with respect to COVID-19 in particular, would be temporary shortage of work due to illness or quarantine;
3. Plan may provide for payments to employees who are not in receipt of EI benefits when:
 - a. The employee is serving the waiting period before benefits begin to be paid;
 - b. The employee has insufficient hours of insurable earnings to qualify for benefits; or
 - c. The employee has received all of the benefits they are entitled to.
4. The combination of the weekly payment of EI benefits plus the provided SUB benefit must not exceed 95% of the employee's normal weekly earnings;
5. The SUB plan must be registered with Service Canada. If the plan is not registered with Service Canada the payments made by the employer under the SUB plan will be considered insurable earnings. The consequence of the payments made by the employer being considered insurable earnings is that they will be deducted from the EI benefits payable to the employee.

With respect to creating the plan to be registered with Service Canada, there is no specific template or form that must be used. A sample plan can be found on the Government of Canada website which can be used to create



the employer's plan. The plan must contain a description of the benefits as well as the following information:

- The group of employees that will be covered by the plan;
- The type of unemployment covered by the plan;
- A statement that the employee must be in receipt of EI benefits to be a part of the plan;
- The amount of the SUB payments;
- The length of time during which the SUB payments will be made;
- Plan details; and
- A statement that payments made under the SUB plan will not be used to reduce or increase any other remuneration.

A registration form, which can be found on the Government of Canada's website, must be submitted along with a copy of the plan. The registration form is called the "Supplemental Unemployment Benefit (SUB) Plan Registration". The form is number NAS5036. The stated purpose of the form is:

This form will be used by employers to register their SUB plan with Service Canada. Before any supplemental payments are paid to an employee who is in receipt of EI benefits during a period of unemployment due to a temporary stoppage of work, training, illness, injury or quarantine, the employer must receive the approval from Service Canada that all the required conditions are met.

Approval of Service Canada of the SUB plan must be received prior to any payments being made to employees under the plan.

In these unprecedented times, employers will be challenged to be creative in finding ways to not just keep their business afloat but also to take care of their employees and through doing so will obtain assurance that when the pandemic has passed their workforce will still be there. It is anticipated that further statutory changes will be announced to provide greater support to both employers and employees.

If you have any questions related to managing the Coronavirus in the workplace please contact our leading Workplace Law Group.

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