

# Employment, Labor and Benefits Advisory: New York Employers Now Have an Alternative to Layoffs during Temporary Declines in Business

6/12/2009

New York employers struggling during the current global economic downturn should consider New York's Shared Work Program as a vehicle to avoid layoffs. This Program, recently implemented by the New York State Department of Labor, permits qualifying employers to temporarily reduce the hours and wages of all employees or a particular group of employees while the State provides the affected employees with partial unemployment insurance benefits to supplement their lost wages. The Shared Work Program may be an attractive alternative for employers looking to maintain workforce levels during difficult economic times.

## Shared Work Plan Requirements

To qualify under the Shared Work Program, employers must first design a Shared Work Plan (the "Plan") for approval by the New York Department of Labor that meets the following specifications:

- The employer must reduce the affected employees' hours and wages by at least 20% but not more than 60%.
- The employer must apply wage and hour reductions equally to affected employees in a particular unit or department, but may apply varying wage and hour reductions to affected employees in different units or departments.
- The employer may only select those full-time employees who normally work between 35 and 40 hours per week.
- The employer may not reduce or eliminate the affected employees' fringe benefits.
- The employer's Shared Work Plan may only run up to a maximum of 53 weeks, with a maximum of 20 weeks of Shared Work benefits paid to any given employee in any benefit year.
- If a collective bargaining agreement covers affected employees, the collective bargaining agent must first approve the Shared Work Plan.
- The employer must propose a Shared Work Plan as an alternative to a layoff of an equivalent percentage of employees.

## Benefits of a Shared Work Plan

The DOL's Shared Work Program results in reduced wage costs for participating employers. It also allows employers to retain talented employees and to avoid the costs associated with a

layoff. The benefits to employees are obvious: maintaining employment while receiving compensation that he or she might not have received if unemployed. Strategically, an employer who participates in the Shared Work Program will maintain the ability to become productive and competitive more quickly as the global economy improves and it can return its employees to full employment, while avoiding the time and cost of recruiting, hiring and training new employees.

In considering whether to implement a Shared Work Plan, employers should also keep in mind that their unemployment insurance tax burden to the State may be reduced by implementing such a plan. Finally, a Shared Work Plan offers flexibility because it permits employers to modify their Plans while in effect, including permitting employers to lay off employees subject to an existing Plan.

## Potential Action Items For Employers

New York employers considering a layoff should think about the alternative of a Shared Work Program and take the following actions:

- Perform an “audit” to determine the number of positions that would be eliminated in a total layoff;
- Determine the total savings associated with the planned layoff;
- Consider whether reducing the hours and wages of all employees or a particular group of employees would yield a comparable savings; and
- Design a Shared Work Plan with the assistance of counsel who may review and assist in presenting it to the Department of Labor.

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*Please feel free to contact us with questions or for assistance in designing and implementing a Shared Work Plan.*

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*Employers are well advised to seek the advice of employment counsel to assist with the proposal and implementation of a Shared Work Plan. If you have any questions regarding the subject covered in this Alert, or any related issue, please feel free to contact one of the attorneys listed below or any of Mintz Levin’s Employment, Labor and Benefits attorneys.*

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