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Employment Question of the Day: April 10, 2020

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By Emily S. Pontius and Erin M. Edgerton

Question

Should I consider a short-time compensation or voluntary shared work program as an alternative to layoffs?

Answer

Many employers are trying to adjust their workforces with minimal economic impact on employees and long-term business planning. Short-time compensation or STC programs, also known as shared-work, work-sharing or voluntary shared work programs, may be appropriate for employers that can avoid layoffs by uniformly reducing work hours for a group of employees.

To participate in an STC program, employers must apply to the state agency that handles unemployment benefits. Requirements vary from state to state. Minnesota and Iowa, for example, require that hours be reduced 20 to 50 percent for included employees. But Nebraska allows participation if hours are reduced as little as 10 percent. States also vary in the minimum number of employees required to participate in an employee unit. Still, every state program must include the following elements:

- Participating employers must be reducing hours as an alternative to layoffs, and employers must provide an estimate of how many layoffs will be avoided by participation in the STC program.
- Participating employers must certify that employees with reduced hours under the program will be maintained on the employer's health and retirement benefits programs as if hours had not been reduced.
- Unemployment benefits paid under the STC program must be a pro rata portion of the benefits paid if the employee were unemployed.

The recently passed Coronavirus Aid, Relief and Economic Security (CARES) Act includes funding for 100 percent of STC unemployment benefits paid out by states. Funding is also available to states who do not currently have programs but take steps to implement programs. Short-term compensation programs are currently offered in a majority of states including Iowa, Minnesota, Nebraska, Kansas, Missouri and Wisconsin. Additional states may begin programs to qualify for the funding under the CARES Act.

The main benefits of STC programs are that employers maintain the employment relationship even when work slows, and employees are eligible for a pro rata share of unemployment benefits when hours are reduced as little as 10 or 20 percent. With the passage of the CARES Act, employees who receive STC unemployment benefits —even for a minimal reduction in hours—may also be eligible for the additional $600 dollars per week provided to individuals receiving unemployment benefits as a result of COVID-19.

There are drawbacks as well. After an employer submits an application and is approved, the employer must continuously report information back to the state agency such as hours worked for each employee, any layoffs and other changes to participating employees in the unit. Reporting requirements and procedures vary by state, and some employers may find the administrative burden outweighs the benefits of the program.

Additionally, these programs require advance planning and the ability to uniformly reduce hours over a period of weeks. The current crisis demands that some employers remain nimble so they can quickly respond to fluctuating productivity demands. Additionally, application of STC to exempt employees is thorny, if permitted at all, and using an STC may increase the employer's unemployment insurance premium in the subsequent years.

The best candidates for short-term compensation programs are employers who can forecast lessening workforce needs at least several weeks in advance and have the administrative support to maintain the necessary reporting to the state agency. However, even employers who do not meet that profile may want to explore short-term compensation to maximize employee income during this crisis.

For more information about how your business can navigate an STC program, please contact your Fredrikson & Byron attorney.

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