Using EI Work Sharing to Avoid Layoffs During COVID-19 & Other Business Downturns

The 11 things HR directors need to know about the Work Sharing Program.

Using the Employment Insurance Work Sharing (WS) program may be an excellent way to keep employees on payroll, especially if you don't qualify for Canada Emergency Wage Subsidy (CEWS). WS is especially attractive now that the government has temporarily loosened the rules due to COVID. Here are the 11 things HR directors need to know to take advantage of WS.

1. What Work Sharing Is

WS is a federal program that helps companies experiencing significant decreases in normal work levels for reasons beyond their control avoid temporary layoffs. The employer and employees make a WS agreement redistributing hours worked by all employees within one or more work units. Normally, employees don't qualify for EI while they participate in WS even though their hours are reduced. But during COVID, WS participants can get EI benefits for their reduced hours.

2. Which Employers Are Eligible for WS

To qualify for WS, an employer must:

- Be a private business, publicly-held company, not-for-profit organization or Government Business Enterprise (aka, public corporation);
- Have a year-round business in Canada for at least one year (the normal minimum is 2 years); and
- Experience a business downturn not due to a labour dispute or seasonal work shortage.

3. Which Employees Are Eligible for WS

To qualify for WS, employees must:

- Be "core staff," i.e., year-round permanent full- or part-time employees required to perform everyday functions of normal business activity (during

COVID-19, eligibility has also been extended to employees essential to the business' recovery and viability);
- Be eligible for EI; and
- Not be seasonal, casual or self-employed.

4. Conditions for Participating in WS

All members of a WS unit consisting of employees with similar job duties or job descriptions must agree to reduce their normal working hours by the same percentage, ranging between 10% and 60%, and share the available work. You can't have some employees in the unit go into WS while others keep working normal hours. While the employer can't increase its workforce during a WS agreement, it may replace WS unit employees if they leave.

5. How to Apply for WS

The normal 30 calendar days before the requested start date application deadline has been temporarily reduced to 10 days. The government has also temporarily waived the requirement for a detailed Recovery Plan. During COVID-19, employers need only submit:

- Applications for a Work-Sharing Agreement form (EMP5100); and
- Attachment A: Work-Sharing Unit form (EMP5101).

Employers must email applications to the Service Canada branch office in the area their business or the maximum number of participants is located:

Location	**Email**
Atlantic Provinces	esdc.tp-atl-ws-tp.edsc@servicecanada.gc.ca
Québec	qc-dpmtds-lmsdpb-tp-ws-gd@servicecanada.gc.ca
Ontario	esdc.on.ws-tp.on.edsc@servicecanada.gc.ca
Western Canada & Territories	edsc.wt.ws-tp.esdc@servicecanada.gc.ca

6. What Happens After Submission of WS Application

Service Canada is processing WS applications within 10 rather than the normal 30 calendar days. Employers who are approved receive notice and an access code for employees to use to register with the agency online. The employer must then issue a Record of Employment (ROE) using the code "Work-Share."

7. How Long WS Agreements Can Last

A WS agreement must normally last between 6 and 26 weeks. ESDC can also grant a 12-weeks' extension. But during COVID, the ESDC can grant an additional 38-weeks' extension, meaning WS agreements can now run as long as 76 weeks. As before, parties may end the agreement early after 6 weeks.

8. The Employer Utilization Reporting Rules

After each pay period, the employer must send Service Canada a utilization report listing the following information for each employee in the WS unit:

- Hours worked;
- Hours on vacation (not available for work); and
- Hours absent (unable to work).

Employers must report any amounts of money paid to employees who worked 0 hours. If employees are on-call, employers need only report the number of hours they’re actually called in to work.

9. The Amount of WS Benefits Paid to Employees

The employer must maintain all existing employee benefits for the duration of the WS agreement. However, Service Canada notes that benefit amounts (including any subsequent payout of benefits) may be reduced if calculated based on earnings or hours of work. Service Canada pays employees a weekly benefit calculated by comparing the hours of work missed due to the WS agreement against the hours the employee would have normally worked. Benefits are paid as a percentage of hours missed based on the average over the previous 20 days.

10. The Taxation of WS Benefits

As with other EI benefits, WS benefits are considered taxable income.

11. The WS Agreement Renewal Rules & Waiver of the “Cooling Off” Period

Normally, the sides can make a new WS agreement once the old one expires after waiting a period equal to the number of weeks the previous agreement lasted. But under COVID, there is no “cooling-off” period and WS agreements can be renewed immediately after they expire. The new agreement must still be approved by ESDC.