Compliance Briefing: The 11 Things You Need to Know about the EI Work Sharing Program

One of the best ways for struggling companies to avoid layoffs is to participate in the EI Work Sharing program, particularly if you don't have the necessary 30% revenue reductions to qualify for the new Canada Emergency Wage Subsidy (CEWS). Work Sharing has become an even more attractive option now that the rules have been temporarily loosened up in response to the COVID-19 emergency. Here are the 11 things HR directors need to know about Work Sharing to help their organizations take advantage of it.

1. What Work Sharing Is

Work Sharing (WS) is a federal program to help companies experiencing significant decreases in normal work levels for reasons beyond their control to avoid temporary layoffs. The way it works: The employer and employees enter into a WS agreement redistributing hours worked by all employees within one or more work units. Normally, employees who are still working don't qualify for EI even if their work hours are reduced. But if a WS agreement is in place, they can get work a reduced work schedule and still get EI. In addition to minimizing employees' income losses, WS buys employers a temporary reprieve to overcome rough patches without laying people off.

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 (GBE, aka public corporation);
- Have a year-round business in Canada for at least one year (the normal minimum of 2 years has been temporarily cut in half during the COVID-19 emergency); and
- Be experiencing a downturn in business activity that's not due to a labour dispute or seasonal shortage of work.

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 carry out everyday functions of normal business activity, as opposed to seasonal, casual, on-call or temporary employees;
- During the COVID-19 crisis, eligibility has also been extended to employees considered essential to the business’ recovery and viability, e.g., technical employees engaged in product development, outside sales agents, marketing agents, etc.; and
- Be eligible for EI, i.e., have 420 to 700 hours (depending on the unemployment rate in their EI region) of insurable employment during the 52 weeks before the start of their EI benefit period.

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. In other words, you can’t have some individual employees in the unit volunteer to participate in WS while others continue to work normal hours. Other required conditions:

- There must be at least 2 employees in the WS unit;
- The employer must agree to maintain all existing employee benefits, e.g., pension, group disability, vacation, health insurance, etc., for the duration of the agreement other than benefits based on earnings or hours of work; and
- The employer can’t increase its workforce during a WS agreement, but may replace WS unit employees if they leave.

5. How to Apply for WS

Normally, employers must request and send a WS application 30 calendar days before the requested start date, but that’s been temporarily reduced to 10 days during the COVID-19 emergency. In addition, the government has temporarily waived the requirement for a detailed Recovery Plan. During the COVID-19 situation, employers need only submit:

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

Employers must email their applications to the Service Canada branch office located 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

Due to the urgency of the COVID-19 situation, Service Canada is aiming to speed up its normal response time and process WS applications within 10 calendar days. If the application is approved, Service Canada will notify the employer and furnish an access code for employees to use to register with the agency online. The employer will then have to issue a Record of Employment (ROE) using the code "Work-Share."

7. How Long WS Agreement Can Last

A WS agreement must be between 6 and 26 weeks in duration but can be extended up to 12 weeks with ESDC approval. But in response to the COVID-19 emergency, the government is temporarily allowing an additional extension of 38 weeks. Translation: WS agreements involving business downturns due to COVID-19 have a 76-, rather than the normal 38-week maximum. Parties are also allowed to agree to terminate the agreement before the scheduled end date as long as it's lasted at least 6 weeks.

8. The Employer Utilization Reporting Rules

After each pay period, the employer must submit a utilization report to Service Canada in a format that the agency provides 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).**

9. The Amount of WS Benefits Paid to Employees

For each week of WS, Service Canada will pay employees a 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.

Example
Weekly benefit rate (55% of regular earnings to maximum of $573): $500 Normal work week before WS agreement: 40 hours Hours employee actually worked during WS week: 30 hours Hours missed during week due to WS agreement: 10 hours Benefit: $125, i.e., 25% of $500 benefit rate for the 10 hours of 40 hours (25%) missed due to WS agreement

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

After a WS agreement runs out, the employer and same group of employees can enter into a new WS agreement, but only after a "cooling-off" period equal to the number of weeks the previous agreement lasted. But during the COVID-19, the "cooling-off" period no longer applies and WS agreements can be renewed immediately after they expire. Of course, the new agreement must still be approved by ESDC.