Managing Temporary Workplace Disruptions: Supplemental Unemployment Benefit Plans And The Employment Insurance Work-Sharing Program



As discussed in our *FTR Now* articles of February 6, 2025 and February 14, 2025, the economic uncertainty caused by the prospect of tariffs has led employers to consider temporary layoffs and mass terminations. However, such measures can contribute to employees' sense of job insecurity and cause employers to struggle to retain skilled employees.

Supplemental Unemployment Benefit Plans and the Employment Insurance (EI) Work-Sharing Program can help an employer provide greater workforce stability and be used to mitigate the disruptive effects of a period of economic uncertainty.

Supplemental Unemployment Benefit (SUB) Plans

In the normal course, an employee who receives earnings while also receiving EI benefits will see those EI benefits reduced as a result. A registered SUB Plan allows an employer to "top up" regular EI benefits to enable an employee to receive an aggregate of up to 95% of their normal weekly earnings. Without a registered SUB Plan, any top-up payments received reduce the amount of EI benefits payable to the employee.

A SUB Plan must be registered with Service Canada and must meet certain conditions to be approved. Among other requirements, the SUB Plan must:

- identify the employee group(s) covered
- apply to any period of unemployment caused by a temporary work stoppage, training, illness, injury, quarantine or any combination of these reasons
- require the employee be in receipt of EI benefits as a condition of payment or be serving the waiting period, have insufficient insurable employment hours to qualify for benefits, or have received all the benefits to which the employee is entitled
- be financed entirely by the employer, with separate accounts for top-up payments
- require that the combined payment of SUB Plan benefits and EI benefits not exceed 95% of the employee's normal weekly earnings
- provide that, on plan termination, all remaining SUB Plan assets revert to the

employer or be used for top-up payments or plan administration costs
- require that the SUB Plan be submitted to the Canada Employment Insurance Commission (Commission) prior to its effective date and that written notice of any change to the plan be given to the Commission within 30 days after the effective date of the change
- provide that the employees have no vested right to payments under the SUB Plan (except during specified periods of unemployment)
- provide that the amount of any SUB Plan benefits will not reduce any other employee remuneration or severance pay

EI Work-Sharing Program

The EI Work-Sharing Program allows eligible employees to access EI benefits while working a temporarily reduced work week as their employer recovers from a period of economic downturn, natural disaster or declared national emergency. The program, which is designed to prevent layoffs and help maintain a skilled workforce, requires the cooperation of the employer, participating employees, their union (if applicable) and Service Canada.

Service Canada must approve a work-sharing agreement before the program can be implemented. The arrangement may run from six to 26 weeks, with a potential for an additional 12-week extension.

To be eligible, an employer must:

- be a year-round business operating in Canada for at least two years
- be a private business, publicly held company or certain type of not-for-profit
- experience a decrease in overall work activities of at least 10% in the previous six months
- put recovery measures in place to return employees back to normal staffing levels and regular work hours by the end of the work-sharing agreement, and describe those recovery measures

Employers experiencing reduced business activity due to a labour dispute, seasonal work shortage, or an increase in the number of employees or their business decisions will not qualify.

The participating employer and employees (and the union, if applicable) must agree to participate in the work-sharing agreement. Only “core” staff can participate (*i.e.*, permanent, year-round employees who are needed to carry on the daily functions of the business). They must be eligible to receive EI benefits and agree to reduce their work hours and share available work equally between employees with similar jobs or roles, who will form a work-sharing “unit.” The members of each work-sharing unit must authorize an employee who will represent them in the agreement.

Employers must submit their work-sharing application in a prescribed form at least 10 business days prior to the requested start date.

Conclusion

The use of a SUB Plan or the EI Work-Sharing Program may be a useful tool for an employer that wishes to make use of the EI program to help retain its employees and provide financial stability during a period of economic slowdown. A prudent employer is well-advised to begin planning its approach early to position itself to be able to submit a SUB Plan or work-sharing application promptly when required.

The content of this article is intended to provide a general guide to the subject

matter. Specialist advice should be sought about your specific circumstances.

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