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RECENT DEVELOPMENT

Department of Labor Issues New Guidance on Work Sharing Programs

By Chad Greeson and William Hays Weissman on May 5, 2020

The Department of Labor (DOL) recently issued new guidance to states on the Short-Time Compensation (STC) program provisions (also known as "work sharing" or "shared work") in the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). This opinion letter (UIPL 21-20) helps clarify the 100% federal reimbursement of certain state STC payments.

Internal Revenue Code section 3306(v) sets broad parameters for STC programs, with states accorded some flexibility in establishing them. About half the states currently have STC programs, with most of them permitting employers to reduce hours and wages between 10 and 60%. Section 2108 of the CARES Act provides for temporary 100% federal financing of STC payments in states with STC programs. Section 2109 permits a state that does not have an STC program to operate a temporary federal program, which provides federal benefits as opposed to state-funded benefits. Section 2110 of the CARES Act also provides $110 million in grants to support states in implementing and administering STC programs, promoting their use, and enrolling employers.

UIPL 21-20 reiterates the fundamental purpose of STC programs: to preserve jobs and employers' trained workforces during temporary disruptions. STC accomplishes this goal by reducing hours across an entire group of employees rather than laying off some employees while retaining others full-time. Work sharing cushions the adverse effect of the reduction in business activity on workers. By maintaining employees' connections with their employers, STC helps ensure that they will be available to resume their prior employment as business returns to normal. In return, those who participate in work sharing receive a pro-rata unemployment insurance (UI) benefit payment notwithstanding that they otherwise would likely have received no UI benefit due to the partial work. In addition, through July 31, 2020, employees eligible for at least $1 in UI benefits from work sharing are also eligible to receive the $600 per week in Federal Pandemic Unemployment Compensation (FPUC) benefits.

Importantly, UIPL 21-20 confirms that work sharing may be used in the context of *reopening* a business closed temporarily by the COVID-19 pandemic. The DOL notes that work sharing can serve as a "means of bringing most or all of a temporarily laid-off workforce back to the job, even if social-distancing measures, a decline in business, or other factors prevent operating at full staffing levels full time." This statement clarifies that work sharing UI benefits may be made available to individuals returning to work with reduced hours who worked for the employer prior to the temporary layoff due to COVID-19.

In sum, UIPL 21-20 demonstrates that STC or work sharing can be used to retain a skilled workforce by returning employees to partial employment following a temporary layoff. For some workers, the combination of partial wages, work sharing benefits, and the FPUC payment may meet or even exceed pre-layoff earnings or UI benefits for total unemployment. Work sharing not only helps avoid layoffs, it also helps minimize their duration. From now until July 31, 2020, work sharing provides an additional incentive in the form of the $600 per week FPUC payment to employees who were laid off due to COVID-19. Thus, employers should carefully consider work sharing as an effective means of recalling temporarily laid-off employees back to partial employment and as an interim step toward full-time employment while the FPUC program remains in effect.

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