

September 2009

NewsFlash!

Missouri Shared Work Program: A Unique Opportunity to Reduce Employees' Hours While Still Qualifying Them for Unemployment

By: Ruth A. Binger & David J. Binder

In a struggling economy, employers have to make difficult decisions pertaining to their businesses and employees. Faced with “hopefully” temporary losses in business, many employers are forced to terminate employees losing their experience and knowledge. On the other hand, if the employer elects to reduce hours, the employees receive lesser pay and are ineligible to collect unemployment benefits. Fortunately, employers do have a unique alternative under the Missouri Employment Security Law whereby they can retain their hourly workforce and reduce hours while at the same time allowing their employees to receive a proportional supplement of unemployment benefits. This article applies only to such programs that involve hourly-paid employees.

Shared Work Program—Unemployment

Under Missouri law, employers can develop a shared work program with the Division of Employment Security of the Missouri Department of Labor and Industrial Relations. The program allows an employer to decrease the working hours of a specific group of employees, which includes a specified department, shift, or other unit of three or more employees. The affected employees can continue to work for the employer at a reduced number of hours and also receive unemployment benefits in proportion to the reduction in hours and pay. For example, if the employer reduces work

hours by 20% to 32 hours per week, the employee will receive 20% of her weekly benefit amount under unemployment insurance. Thus, an employee who earns \$2,500 per month and is entitled to a \$300 weekly benefit amount would receive 80% of her pre-plan wages and \$60 in benefits each week under the plan. This program allows the employer to retain the knowledge and experience of the employees without having to drain the cash reserves of the company due to unneeded work hours.

Requirements to File - Missouri Law

A shared work plan under this program must satisfy the following requirements: (1) the plan applies to an affected unit of not less than three employees; (2) the plan applies to at least 10% of the employees in the affected unit; (3) the plan reduces the normal weekly hours of work of the employees by not less than 20% and not more than 40%; (4) the plan describes the manner in which the employer treats the fringe benefits of each employee in the affected unit; (5) the employer certifies that the implementation of a shared work plan is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours; and (6) the plan must be approved by the collective bargaining agent if any of the employees in the plan are covered by a collective bargaining agreement.

Questions? Call 314.726.1000

www.dannamckitrick.com

Submission to Division of Unemployment

When an employer has drafted a shared work plan, it must submit the plan to the Division of Employment Security. The Division will accept or deny the plan within 30 days of receipt. If the plan is denied, the employer may either elect to exhaust its administrative remedies or file a new plan with the Division within 45 days. Any accepted plan remains in effect for only 12 full months. The employer has the right to modify the plan to meet changed circumstances, but the modification cannot affect the expiration date originally set by the plan. The employer can always freely suspend the plan in order to return the employees to full-time employment. Given the restriction on plan modifications, it is critical for an employer to properly plan before implementing or modifying a shared work program.

Requirements to Maintain Plan

Once the plan is accepted by the Division, the employees affected still must satisfy the following requirements to receive unemployment benefits: (1) the individual is able to work, is available for work and works all available hours with the employer; (2) the individual does not work more than the reduced hours specified in the plan; and (3) the individual's normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages. Under the shared work plan, the employee is under no obligation to seek other employment and will not be denied benefits on this ground. However, the employee may not receive shared work benefits for more than 26 calendar weeks during the 12-month plan.

Ramifications of Plan on Employer Tax Rates

Although the shared work program can aid the employer in reducing the number of employees who are terminated, the program will still affect the employer's unemployment taxes in the same manner and to the same extent as other chargebacks of benefits. Thus, all benefits paid under the plan will be charged to the account of the participating employer for use in computing general tax rates. Although this will increase the employer's tax rate, it may cause more or less of an economic impact than a termination depending upon the structure of the shared work plan. Therefore, an employer must carefully set the terms of the plan so it remains advantageous despite the increased unemployment tax rate.

With the shared work program, Missouri law provides employers with an opportunity to retain their full workforce through a reduction in hours and a proportional supplement of unemployment benefits. However, there are some drawbacks to the program such as the employer's increase in unemployment tax rates. Depending upon the circumstances, the program may be a less attractive solution than an outright termination of employees. Despite these issues, the shared work program may provide Missouri employers and their employees a unique reduced hour program.

www.dannamckitrick.com

Questions? Call 314.726.1000

Ruth A. Binger
7701 Forsyth Blvd., Suite 800
St. Louis, MO 63105
www.dannamckitrick.com



Ruth A. Binger serves both emerging and mature businesses concentrating in corporate law, intellectual property and technology law, and labor and employment law. Her commitment to the success of small to medium-sized businesses, and her understanding of multi-faceted issues inherent in operations, are what distinguish Ruth's practice.

The choice of a lawyer is an important decision and should not be based solely upon advertisements. Disregard this solicitation if you have already engaged a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of us. The exact nature of your legal situation will depend on many facts not known to us at this time. You should understand that the advice and information in this solicitation is general and that your own situation may vary. This statement is required by rule 4-7.3 of the Supreme Court of Missouri.