

Share the Pain for Tomorrow's Gain: California's Work Sharing Unemployment Insurance Program

By Christine A. Page, Esq.

Although the economy has seen promising signs of improvement over the past few months, many companies are not out of the woods yet and, in fact, are in need of further short-term cost savings after already weathering multiple rounds of layoffs. Conducting layoffs now, however, carries a real risk of losing highly valuable employees that will be needed for tomorrow's business demands, and having to incur the expense of recruiting, hiring, and training new employees. For companies seeking to avoid further layoffs while cutting costs, there is an underutilized "Work Sharing Program" available in California and a growing number of other states that allows employers to temporarily reduce working hours and compensation while the employees receive partial unemployment insurance benefits.

For example, if an employer needs to achieve a 20% reduction in payroll, it could reduce its workweek from five days to four days. All employees continue to earn wages for four days and are eligible for Work Sharing benefits for the fifth (nonworking) day. To qualify, there must be at least a 10% reduction in wages and hours worked for at least 10% of the

company's workforce or a designated work unit. A company interested in participating in Work Sharing must file an application with, and obtain approval from, the Employment Development Department. Typically, Work Sharing Programs are approved for up to six months and can be extended, if needed.

There are many advantages to Work Sharing, particularly at this stage of the recession. It minimizes the hardships on employees and allows the employer to quickly gear up when business conditions improve. On the other hand, if conditions do not improve, Work Sharing can be used as a phased transition to layoff. Unlike the EDD's Partial Claim program, a Work Sharing employee can receive unemployment insurance benefits even if the employee's reduced pay exceeds his/her weekly unemployment insurance benefit amount.

In addition, the California Labor Commissioner reversed last year its position that an employee's classification as exempt was jeopardized if it participated in a Work Sharing Program. Therefore, employers may now include exempt employees in their Work Sharing Program by

reducing the work schedule of an exempt employee with a corresponding reduction in salary provided the employee's reduced compensation still meets the salary test for exempt status.

Before applying for the Work Sharing Program, employers should consider various issues, including how to select employees for participation in an equitable and nondiscriminatory manner, how to designate participating work units, whether health plan eligibility will be affected, and whether existing employment agreements or policies limit participation in the program.

Should you need assistance in determining whether a Work Sharing Program is right for your business in lieu of a layoff, please contact **Christine Page** in our Employment Law Department (cpage@gilchrstrutter.com).



Christine A. Page is a partner at Gilchrist & Rutter in Santa Monica, Calif. Her practice focuses on business litigation & dispute resolution, emphasizing real estate, employment and securities matters.