

Chapter 27: WORKSHARE PROGRAM

Summary: This Chapter establishes the requirements and procedures for employers and employees who choose to participate in Maine's Short-Term Compensation program, known as WorkShare. This Chapter provides additional guidance and clarifies definitions and processes enacted in Title 26 § 1198 of Maine State Law.

1. Definitions

- A. "Affected unit" means a specified plant, department, shift or other definable unit consisting of 2 or more eligible employees to which a WorkShare plan applies. Employees in the same classification, job title, functional unit, and/or skillset should be in the same unit.
- B. "Commissioner" means the Commissioner of the Department of Labor or the commissioner's designee.
- C. "Eligible employee" means an individual who usually works for the eligible employer submitting a WorkShare plan.
- D. "Eligible employer" means a public or private employer who submits a WorkShare plan that is approved by the Commissioner pursuant to the requirements set forth in this rule.
- E. "End date" shall coincide with the end of the last full benefit week within the 12th full calendar month after the effective date of the plan, or on the date specified in the plan if that date is earlier, unless the plan is previously revoked by the commissioner.
- F. "Fringe benefits" includes, but is not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave and similar advantages that are incidents of employment.
- G. "Good cause" includes, but is not limited to, failure to comply with assurances given in the WorkShare plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan and violation of any criteria on which approval of the plan was based.
- H. "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work or annually reoccurring reductions of work at a year-round business that has not been determined seasonal.
- I. "Seasonal employment" means employment in seasonal industries within the determined seasonal period as set forth in 26 M.R.S. § 1198.

- J. "Substantial change." For the purpose of Subsection 6 of the Law, a change or modification is "substantial" if that modification further reduces the approved plan reduction of work hours more than 10% for more than two weeks or changes the employees named in the approved WorkShare plan. A modification involving substantial change must be reviewed and approved by the department before implementation. No plan modification approval is required for a change that returns the participating employees to full time employment.
- K. "Usual weekly hours of work" means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

2. WorkShare Plan Applications

- A. The WorkShare application must include the following:
 - (1) Attest that the employer is not delinquent in the payment of contributions or reimbursements or in the reporting of wages;
 - (2) Identify the affected unit or units;
 - (3) Specify the effective date of the plan, which must coincide with the first day of a benefit week;
 - (4) Specify the end date of the plan, which must coincide with the last day of a benefit week and which may not be later than 12 calendar months after the effective date;
 - (5) Identify the eligible employees in the affected unit or units by name, social security number, usual weekly hours of work, proposed wage and hour reduction;
 - (6) Certify that the reduction in the usual weekly hours of work is in lieu of layoffs that would have affected at least 10% of the eligible employees in the affected unit or units and that would have resulted in an equivalent reduction in work hours;
 - (7) Specify the specific percentage of reduction in the usual weekly hours of work for eligible employees in the affected unit or units and certify that the reduction in hours in each affected unit is spread equally among eligible employees in the affected unit. This reduction must be not less than 10% and not more than 50%;
 - (8) Specify the manner in which the fringe benefits of the eligible employees will be affected. If the employer provides health benefits or retirement benefits under a defined benefit plan, the application must specify that the employer must continue to provide the benefits to employees participating in the WorkShare program as if the workweeks of these employees had not been reduced or to the same extent the benefits are provided to other employees not participating in the WorkShare program;
 - (9) In the case of eligible employees represented by a collective bargaining agent, certify that the WorkShare plan is approved in writing by the collective bargaining agent that covers the affected eligible employees. In the absence of a collective bargaining agent, certify that the proposed plan, or a summary of the plan, has been made available to each eligible employee in the affected unit.;
 - (10) Certify that the WorkShare plan will not serve as a subsidy of seasonal employment during the off-season or a subsidy of intermittent employment ;

- (11) Specify that the employer agrees to furnish reports relating to the proper conduct of the WorkShare plan and agrees to allow the commissioner or the commissioner's designee or authorized representatives access to all records necessary to verify the plan prior to approval and to monitor and evaluate application of the plan after approval;
- (12) Specify the number of layoffs that would have occurred absent the ability of employees to participate in the WorkShare plan;
- (13) Certify that eligible employees will be allowed to participate, as appropriate, in approved training, including, but not limited to, employer-sponsored training or worker training funded under the federal Workforce Innovation and Opportunity Act, Public Law 113-128, to enhance job skills if such training has been approved by the commissioner.

3. Approval and Disapproval of WorkShare Plan. The Commissioner shall approve or disapprove a WorkShare plan in writing within 10 business days of its receipt. The Commissioner's decision is final and not subject to appeal.

4. Modification of a WorkShare Plan.

- A. Modification that is Not a Substantial Change. An operational approved WorkShare plan may be modified by the eligible employer with the consent of a collective bargaining agent that covers the affected employees, if any, if the modification is not substantial, conforms with the plan approved by the commissioner and is reported promptly to the commissioner by the eligible employer.
- B. Substantial Change. A new plan application must be submitted for each substantial modification or change to any existing WorkShare plan. The decision of the commissioner is final and not subject to appeal.
- C. Recalling employees previously laid off by the WorkShare employer under the conditions of the approved WorkShare plan for the unit is allowed from the point of recall.
- D. Newly hired employees hired in a unit covered by a WorkShare plan are required to work no less than one week at their full, normal hours agreed upon at the time of hire before any WorkShare reduction in hours is allowed. After this one week, the employer must reduce the number of work hours of the new hire per the approved WorkShare plan for the unit in question. There is no impact on existing employees in the affected unit on WorkShare during this time.

5. Revocation of a WorkShare Plan. The Commissioner may revoke approval of a WorkShare plan at any time for good cause as defined in Section 1.G. The revocation order must be in writing, state the reasons for revocation and specify the date the revocation takes effect. The Commissioner's revocation order is final and not subject to appeal.

6. Multiple WorkShare Plans. An individual claimant may not participate simultaneously in more than one WorkShare program. Should an individual be included in more than one employer's approved plans, the individual shall choose the plan through which benefits will be claimed. The individual must notify the Bureau in writing of the selection. Once selected, the individual must remain on that plan until such time as the plan ends or is substantially changed. At that time, the individual may make another selection.

7. Initial claims. Once the employer notifies the affected employee(s) the WorkShare Plan has been approved, the employee must file an initial WorkShare claim.

8. Eligibility and Weekly Claims Filing

- A. After serving a waiting period as prescribed by the commissioner, an eligible employee is eligible to receive WorkShare benefits with respect to any week only if the commissioner finds that:
1. During the week, the eligible employee is employed as a member of an affected unit under an approved WorkShare plan that was approved prior to that week and that is in effect with respect to the week for which WorkShare benefits are claimed.
 2. The eligible employee is deemed unemployed in that the wages, which may include approved leave pay, are paid to that eligible employee in an affected unit is less than that eligible employee's normal weekly hours of work as specified under the approved WorkShare plan in effect for the week.
 3. The eligible employee is available and able to work the normal workweek with the WorkShare employer.
 4. The eligible employee meets other conditions of eligibility for regular benefits that are not inconsistent with the WorkShare program.
 5. Monetary eligibility must be established in accordance with subsection 5 of Section 1192 of Maine Employment Security Law.
- B. The employer and employee must both provide and certify the requested information in their respective portions of the WorkShare Weekly Claim Form, and submit it to the Bureau as directed.
- C. A separate WorkShare weekly claim form must be completed for each week.
- D. WorkShare Weekly Claim Forms shall be submitted to the Bureau by the claimant no later than 14 days after the week ending date of the weekly claim. An additional 7 days may be allowed if the claimant can show good cause for not filing within the first 14 days. Any weekly claim filed more than 21 days after the week ending date of the claim shall be considered late and benefits denied for that week.
- E. WorkShare weekly claims shall be submitted in a format prescribed by the Bureau.

9. Benefits

- A. The weekly WorkShare benefit amount is the product of the regular weekly benefit amount, including any dependents' allowances, multiplied by the percentage reduction in the eligible employee's usual weekly hours of work as specified in the approved WorkShare plan. If the weekly WorkShare benefit amount is not an exact multiple of \$1, the weekly WorkShare benefit amount must be rounded down to the next lower multiple of \$1.
- B. An eligible employee may not receive a total of WorkShare benefits and regular unemployment compensation in any benefit year that exceeds the maximum entitlement established for unemployment compensation, nor may an eligible employee be paid

WorkShare benefits for more than 52 weeks in any benefit year pursuant to an approved WorkShare plan.

- C. The WorkShare benefits paid must be deducted from the maximum entitlement amount established for an eligible employee's benefit year.
- D. If an eligible employer approves time off and the eligible employee has performed some work, meaning no less than one (1) full hour, during the week, the eligible employee is eligible for WorkShare benefits based on the combined work and paid leave hours for that week. An eligible employee is not eligible for WorkShare benefits if the claimant was sick and consequently did not work all the hours offered by the WorkShare employer in a given week.
- E. Processing of WorkShare ineligible claims. If an individual submits a weekly claim under a WorkShare plan, but does not meet the WorkShare eligibility requirements, the claim will then be processed as a claim against regular state unemployment. All eligibility requirements, with the exception of work search, of the regular state unemployment program shall then apply.
- F. Reporting of earnings. On a WorkShare weekly claim, the employer must report any earnings that will be paid to the claimant. In addition, the claimant must report earnings from any other employer during the same week.
- G. Treatment of Earnings. If an eligible claimant works in the same week for a WorkShare employer and an employer other than the WorkShare employer, the eligible claimant's WorkShare benefits must be computed in the same manner as if the eligible claimant worked solely with the WorkShare employer, except that if the eligible claimant is not able to work or is not available for the normal workweek with the WorkShare employer, WorkShare benefits may not be paid to that eligible employee for that week. Bonus payments during a WorkShare week shall be considered as earnings and shall not reduce their entitlements during the WorkShare week.

10. Benefit charges. All charges for benefits paid to an individual on an approved plan shall be charged to the unemployment experience rate of the WorkShare employer. The charges will also be assigned solely to the WorkShare employer when the weekly claim is paid through the regular state unemployment program, but within the timeframe of the approved WorkShare plan. Employers who make payments in lieu of contributions shall pay for the full cost of any benefits paid to an individual under an approved WorkShare plan.

11. Overpayment recovery

Collection of overpayments shall be in accordance with Section 1051 of Maine Employment Security Law.