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## **Legal Alert: How to Use New York State Shared Work Programs**

Shared Work is a program that was created by the New York Department of Labor (“DOL”) to give employers an alternative to employee layoffs. It allows employers to reduce the amount of hours worked by a group of employees, rather than reduce the number of employees. DOL then allows the employees whose hours and wages are reduced to receive some unemployment benefits to partially offset their lost wages.

### ***Eligibility***

Employers must meet two preliminary requirements to apply for the Shared Work program. First, they must employ five (5) or more full-time workers. Second, they must have been liable for unemployment insurance for at least four (4) completed calendar quarters.

### ***The Basics***

The Shared Work program is intended to allow employers to reduce employees’ hours and wages in lieu of employee layoffs. The idea is to allow employees to share in the loss of work. To this end, if you choose to participate in a Shared Work program, you must demonstrate that your organization is avoiding layoffs by participating in the program.

Only full-time employees who generally work 35-40 hours per week are eligible to participate. A Shared Work program will generally reduce hours for all full-time employees or for a class of full-time employees. For example, an employer may choose to reduce the wages and hours of all full-time employees in a single department or work group. Because the Shared Work program is not intended to supplement part-time work, employers generally cannot create programs that reduce the wages and hours of only one person, even if a department consists of only one employee.

A Shared Work program must cut employee hours by at least 20%, and no more than 60%. These hours must be cut on a weekly basis. Additionally, a shared work program cannot cut or eliminate employees’ fringe benefits.

Ideal candidates for the Shared Work program are organizations that are experiencing a temporary lag in funding, because the maximum benefits period is 53 weeks. These organizations’ budget shortfalls are the result of temporary economic conditions, rather than signs of a chronic fiscal shortfall.

## ***How to Apply***

To apply for the program, employers must submit three items:

1. Shared Work Plan
2. Form SW-2.1 (Application Form)
3. Form SW-2.2 (Participant List)

Both the SW-2.1 and the SW-2.2 are available online at [http://www.labor.state.ny.us/ui/PDFs/SW2\\_1\\_2\\_2.pdf](http://www.labor.state.ny.us/ui/PDFs/SW2_1_2_2.pdf). For fastest processing, FAX your application to DOL at 518-485-6172. You can also submit your application by mail:

New York State Department of Labor  
Unemployment Insurance Division  
Gov. W. Averell Harriman State Office Building Campus  
Albany, NY 12240

## ***Once I apply, when can I start cutting employee hours?***

The Shared Work plan you submit to the Department of Labor should specify a start date. The plan will commence on the specified start date, or on the first Monday following DOL's approval of the plan, whichever is later. Applications should be submitted at least two weeks prior to your desired start date in order to ensure they are approved in time.

## ***What increments can I use to cut hours?***

Employers must reduce work hours on a weekly basis. For example, you can reduce the workweek to four days from five, or you can reduce the workday to five hours from eight. However, you cannot reduce work hours by one week per month.

## ***Can I hire additional people while on a Shared Work plan?***

Employers cannot hire any additional employees for the department or group covered by a Shared Work plan. However, employers can replace any employees that depart while the plan is in place.

## ***Once on a Shared Work plan, what are my continuing obligations?***

Employers must complete a bi-weekly Shared Work continued claim form for each employee receiving Shared Work benefits.

***This alert is meant to provide general information only, not legal advice. Please contact Judith Moldover at Lawyers Alliance for New York at (212) 219-1800 x 250 or visit our website [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.***