

CLIENT ALERT

Employees in New York State May Now Petition Their Employers to Participate in a Shared Work Program as an Alternative to Layoffs

November 1, 2021

On Saturday, October 23, New York Governor Kathy Hochul signed legislation, [S. 17-A/A/ 737-A](#), to allow any group of employees who face or have faced an employment loss to petition their employer to instead participate in a shared work program. New York State's shared work program offers employers an alternative to laying off employees by equally reducing the work schedule and pay of all employees or a group of employees. These employees then receive unemployment assistance to cover lost wages. Employers are eligible for the program if they have: (1) two or more full-time employees working in New York State and (2) paid unemployment insurance contributions, or elected reimbursement of benefits paid to former employees in lieu of contributions, for the past four consecutive calendar quarters. To obtain approval, employers must submit a shared work plan to the New York State Department of Labor. Such a plan must: (1) reduce work hours and corresponding wages 20 to 60 percent; (2) apply to employees who normally work no more than 40 hours per week; (3) not reduce or eliminate fringe benefits (unless such reduction applies to the entire workforce); (4) not extend beyond 53 weeks, and (5) replace a layoff of an equal number of employees.

Employers cannot hire additional employees for the work group covered by the plan. Where a collective bargaining agreement is in effect, "the collective bargaining agent must agree to take part in the plan."

Under the new legislation, effective immediately, a group of employees who have been or reasonably expect to be laid off as a consequence of a reduction in force may petition their employer in writing to apply to participate in a shared work program "for purposes of avoiding such reduction in workforce or for purposes of re-hiring any former employee or employees of the employer that were laid off due to a reduction in workforce." If employees have already been terminated from employment, they may be re-hired in order to participate in this program.

An employer must respond to any petition within seven days and must explain whether or not it has decided to apply to participate in a shared work program and the reasons for that decision. Employers that decide to apply for the shared work program must also share the outcome of the application. The legislation also explicitly prohibits any retaliation or adverse action against employees for exercising their rights under this law.

The sponsoring memorandum that accompanied the bill when it was introduced in the New York State Senate explained that this statute does not create an obligation for employers to implement a shared work program, only an obligation to consider and respond to the petition. Rather, the legislation "encourages broader use of shared work programs." The memorandum lists several benefits to employers including re-hiring or retaining a larger portion of their workforce, reducing unemployment insurance benefit costs, and avoiding the transaction costs of having to hire and train new employees if and when the company is able to build back its workforce.

Employees in New York State who are considering reductions in force should familiarize themselves with these provisions so that they are prepared to consider and respond to any employee petitions for a shared work program.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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