

**JacksonLewis**

# **Southern Legislative Conference**

## **Work Share Programs**

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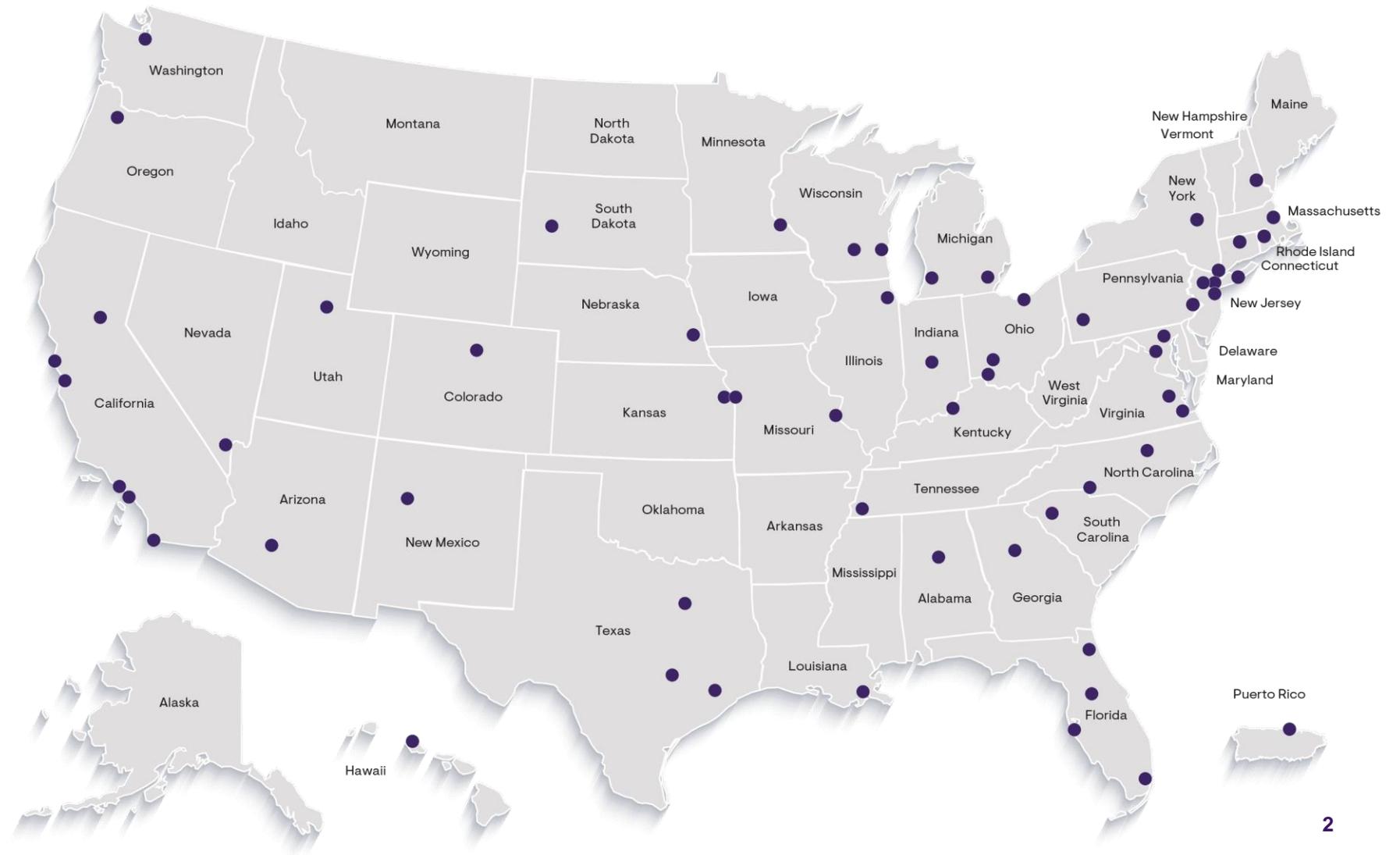
# Strategically Located to Serve Employers' Needs

61

Locations Nationwide

950+

Attorneys



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- Introduction
  - What is Workshare?
  - Historical Background
  - Technical Requirements
  - What If The State Offers Partial Unemployment?
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# Introduction

# COVID-19's Impact on Employers and Employees



The pandemic forced businesses to abruptly close and/or significantly reduced demand for goods/services. As a result, employers were forced to implement various cost-cutting measures that impacted the workforce, including:

- Reductions in Pay
- Reductions in Hours
- Furloughs
- Reductions in Force/Layoffs

# What were the ramifications?

- Between March and September 2020, approximately 22 million Americans lost their jobs;
- Many individuals also lost work hours and income;
- An estimated 14.6 million people likely lost health insurance at some point during this period.

# CARES Act

- March 27, 2020, the CARES Act was signed into law and infused \$2.2 trillion into the U.S. economic to address the pandemic's impacts. It provided several important benefits for businesses and employees including, among other things:
  - Paycheck Protection Program
  - Extended Unemployment Benefits
  - Expanded Qualifying Reasons for Unemployment Benefits
  - Provided an Additional \$600/week to Recipients
  - Provided fully funded work share programs through December 31, 2020
- Under the CARES Act, individuals who receive even a \$1 of unemployment will also receive an additional \$600/week.

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**Issue: How do we incentivize employees to return to work after the stimulus money was offered?**

**Answer: Work share**

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# CARES Act Work Share Incentives

- The stimulus applied even to benefits received under workshare programs.
  - Pros: This is a significant amount of money, which will help offset a reduction in pay.
  - Cons: The benefit expired July 31, 2020, and was briefly extended for a few weeks into August/September.

## **With An Unemployment Boost**

Regular Weekly Wages: \$2,000  
Reduced Weekly Wages: \$1,500  
Workshare Contribution: \$205.75  
CARES Act: \$600  
**Total: \$2,305.75**

## **Without An Unemployment Boost**

Regular Weekly Wages: \$2,000  
Reduced Weekly Wages: \$1,500  
Workshare Contribution: \$205.75  
**Total: \$1,705.75**

# What Is Workshare?

# What is Workshare?

- State-unemployment programs.
- Administered by unemployment agency (typically).
- Enables employer to reduce costs by reducing hours for employees while enabling employees to receive supplemental compensation from the government.
- Employers must maintain employee benefits, including health insurance and retirement benefits.
- An Example: Instead of laying off 20% of its workforce, an employer may reduce all hours (and payroll) across its entire workforce, or a segment of its workforce, by 20%. The affected employees would receive 80% of their regular pay from the workshare employer. They also would be eligible to collect partial unemployment insurance benefits from the state to off-set the reduction, at least in part.

# What's In It for Participants?

## Employers

- Retain workforce.
- Avoid future recruiting and retraining costs, particularly with skilled workforces.
- Boost employee morale and loyalty during pandemic.

## Employees

- Able to offset reduction in pay with unemployment benefits.
- Continue to receive benefits.

## State Governments

- Creates better financial stability among state residents vs. widespread unemployment, helps to maintain the overall state economy.
- Prevents layoffs among state employees.
- During economic crisis, the federal government may offer reimbursement

# Historical Background

# Historical Information

- Workshare has been around in one form or another since the 1920's, but historically underutilized
- To save jobs during the Great Depression, President Herbert Hoover promoted a voluntary form of work share that encouraged private employers to reduce employees' hours rather than lay them off. No supplements were offered.
- In 1933, the National Industrial Recovery Act created the National Recovery Administration, which allowed private businesses to adopt certain codes, including minimum wages and a reduction of weekly hours. This helped distribute work more evenly among workers, preventing longer work weeks for some workers and lack of jobs for others.

## Historical context (Continued)

- In 1978, workshare became a more formal labor policy, when California became the first state to implement a program.
- In 1983, the DOL published an unemployment insurance program letter (UIPL) providing states with guidance and legislative language for use in creating work share programs.
- In 1992, work share became a permanent part of the federal UI law through the Unemployment Compensation Amendments. In the Layoff Prevention Act of 2012, additional features were added, including a federal definition of work share and provisions for federal reimbursement.
- Played a mitigating role during the Great Recession. According to the National Employment Law Project, more than 500,000 jobs in the United States were saved from 2008 to 2013.

# Historical Utilization

- Up until recently, work share was significantly underutilized. This can be attributed to a variety of factors, including a lack of familiarity with the program, administrative burdens, etc.
- The pandemic significantly increased popularity, particularly because the federal government was funding the benefit

# Technical Requirements

# Federal Requirements for Work Share Programs

- the participation of an employer is voluntary;
- an employer reduces the number of hours worked by employees in lieu of layoffs;
- employees whose workweeks have been reduced by at least 10 percent and not more than 60 percent, can collect unemployment compensation;
- the amount of unemployment compensation payable is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;
  - Example, if totally unemployed, I could collect \$500 and my work week was reduced by 20%, I can collect \$100 on work share, while still receiving 80% income from my employer.
- employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;

## Federal Requirements (Cont.)

- eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Innovation and Opportunity Act) to enhance job skills if such program has been approved by the State agency;
- the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan to any employee, then such benefits will continue to be provided under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in work share;

## Federal Requirements (Cont.)

- the State agency shall require an employer to submit a written plan describing how the requirements will be implemented (including a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in work share;
- the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws; and
- upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a work share program

# A Tale of Two States

## Florida

- Eligibility:
  - Enroll two permanent employees in approved plan.
  - Must provide plan for notifying employees
- Required reduction of hours: 10% - 40%.
- Apply online or by mail.

## Maryland

- Notify employees that employer is applying for a plan
- Complete application and employee list within 7 days of your anticipated start date.
- The expiration date can be no more than 6 months after the effective date of the plan.
- A minimum of 2 employees
- The reduction must be 20%-50%,

# States With Pre-Existing Workshare Programs

Arizona

Arkansas

California

Colorado

Connecticut

District of Columbia

Florida

Iowa

Kansas

Maine

Maryland

Massachusetts

Michigan

Minnesota

Missouri

Nebraska

New Hampshire

New Jersey

New York

Ohio

Oregon

Pennsylvania

Rhode Island

Texas

Virginia (eff. 2022)

Washington

Wisconsin

**What if the State Offers  
Partial Unemployment?**

# Partial Unemployment v. Workshare

- Partial Unemployment considers employee's income, which may preclude partial unemployment eligibility in many cases.
- Even when an employee is eligible for partial unemployment, they tend to receive better benefits under workshare.

# Sample Calculations - California

## Employee earning \$25/hour, 40 hours/week (normally \$1,000/week)

	Work Share	Partial Unemployment
<b>20% Reduction</b>	Wages: \$800 WS Benefit: \$90 CARES: \$600 Total: \$1,590	Wages: \$800 Partial UI: Not eligible* CARES: Not eligible Total: \$800  *Reduced wages must be under \$600 per week to qualify for partial UI
<b>50% Reduction</b>	Wages: \$500 WS Benefit: \$225 CARES: \$600 Total: \$1,325	Wages: \$500 Partial UI: \$75* CARES: \$600 Total: \$1,175  *Maximum Weekly Benefit amount (\$450) minus 25% of Weekly Wage (\$375).

## Employee earning \$50/hour, 40 hours/week (normally \$2,000/week)

	Work Share	Partial Unemployment
<b>20% Reduction</b>	Wages: \$1,600 WS Benefit: \$90 CARES \$600 Total: \$2,290	Wages: \$1,600 Partial UI: Not eligible* CARES: Not eligible  Total: \$1,600  *Reduced wages must be under \$600 per week to qualify for partial UI
<b>50% Reduction</b>	Wages: \$1,000 WS Benefit: \$225 CARES: \$600 Total: \$1,825	Wages: \$1,000 Partial UI: Not eligible* CARES: Not eligible Total: \$1,000  *Reduced wages must be under \$600 per week to qualify for partial UI

# Sample Calculations - Connecticut

## Employee earning \$25/hour, 40 hours/week (normally \$1,000/week)

	Work Share	Partial Unemployment
<b>20% Reduction</b>	Wages: \$800 WS Benefit: \$92 CARES: \$600 Total: \$1,492	Wages: \$800 Partial UI: Not eligible* CARES: Not eligible Total: \$800  *Reduced wages must be under \$692 per week to qualify for partial UI
<b>50% Reduction</b>	Wages: \$500 WS Benefit: \$230 CARES: \$600 Total: \$1,330	Wages: \$500 Partial UI: \$127 CARES: \$600 Total: \$1,227  *Partial Benefits = WBA (\$461) less 2/3rds of earnings

## Employee earning \$50/hour, 40 hours/week (normally \$2,000/week)

	Work Share	Partial Unemployment
<b>20% Reduction</b>	Wages: \$1,600 WS Benefit: \$129 CARES \$600 Total: \$2,329	Wages: \$1,600 Partial UI: Not eligible* CARES: Not eligible Total: \$1,600  *Reduced wages must be under \$974 per week to qualify for partial UI
<b>50% Reduction</b>	Wages: \$1,000 WS Benefit: \$324 CARES: \$600 Total: \$1,924	Wages: \$1,000 Partial UI: Not eligible* CARES: Not eligible Total: \$1,000  *Reduced wages must be under \$974 per week to qualify for partial UI

# Lessons Learned From An Employment Perspective



## The Leg Work

# Implementing Workshare Involves Administrative Work



- The application process and requirements:
  - How many applications will an employer need to complete depending on their plan?
  - Think about logistical issues (wet signatures, notaries, etc.).
- Weekly reporting requirements.
  - Outside employment
- Audit requests.

# Defining Work Units Requires Careful Planning



- Employers need flexibility in defining work units:
  - How are groups defined (e.g., entire company, department, job function, shift, etc.)?
  - How many groups will be needed?
  - Will certain groups come out of workshare sooner than others?



## Managing Program Requirements

# Benefits

- Generally, benefits must continue under the same terms and conditions as though the employee was working his or her regular schedule:
  - Health insurance;
  - Retirement plans;
  - Lack of clarity with respect to other fringe benefits.

# Unions

- Obtain consent from Union Representative in advance of application.

# Communication to Employees



- Programs usually require employers to communicate certain information to employees either before or after the application has been submitted.



## Exempt Employees

# Requirements that Impact Exempt Employees

- Most workshare programs require employer to track hours.
- No issue for non-exempt hourly employees under FLSA and relevant state wage hour laws.
- However, FLSA does not permit this tracking for exempt employees.
- Can an employer place exempt employees in a workshare program?
  - Typically – Yes.
  - However – Conversion to hourly pay is likely required.
    - Additional considerations with this change:
      - Overtime pay – time-and-a-half.
      - State-specific rest and lunch break periods.
      - Shift in mentality from working whatever hours necessary to satisfy requirements to working within the confines of a reduced schedule.

# Will Workshare Affect Exempt Employees Status?

- Potentially, depending on the changes implemented and state-specific requirements.
- When is conversion from exempt to non-exempt absolutely necessary?
  - A reduction in pay brings an exempt employee below the minimum weekly salary of \$684 (note: state requirements).
  - The employer intends to modify the workshare plan regularly to reflect business needs. For example, at the start of the pandemic, an employer may have implemented a reduction in hours and pay by 60% due to slow business. As closures orders are lifted and business improves, on July 1, 2020, the employer modifies the plan to reflect a 25% reduction in hours/pay. By September 1, 2020, the employer is ready to return to normal hours.

# Closing Thoughts



Questions?

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**Thank you.**