

LEGALLY SPEAKING

by Bob Dunlevey and Nadia A. Lampton
Taft/Law



Avoiding Layoffs by Reducing Hours Using Unemployment Benefits with SharedWork Ohio

The outbreak and threatened spread of the Coronavirus pandemic has led to a complete disruption of the everyday routines for nearly everyone around the globe. Not surprisingly, federal, state, and local governments have intervened to curb the continued spread of the virus and to address other health, business, and financial concerns of their respective communities. At the federal level, the Families First Coronavirus Response Act was passed and signed into law, which provides for employer-paid sick and family leave to address the impact of the COVID-19 national health emergency. While this new law, which becomes effective April 2, 2020, provides added financial security to many employees across the country, it also puts additional strain on employers, many of whom are uncertain of their financial ability to furnish these extra benefits.

For these employers, many of whom are experiencing mandated closures or a substantial downturn in business (and therefore revenue), some are considering layoffs or permanent closure in response to the crisis. However, employers in Ohio have a middle ground to consider – SharedWork Ohio – one that provides employers an opportunity to

retain their trained workforce and avoid layoffs while simultaneously reducing overall labor costs. For some employers, this program might provide enough relief to get them through the crisis without taking drastic layoff or closure measures. The following provides an overview of what employers need to know about the program.

SharedWork Ohio

Program Overview: SharedWork Ohio (“SWO”) is a layoff aversion program managed by the Ohio Department of Job and Family Services (“ODJFS”). The program allows employers to temporarily reduce the weekly work hours for a unit of employees in a uniform manner during times of reduced business activity. During this time that unit employees work a reduced schedule, ODJFS provides eligible individuals in the unit with unemployment benefits proportionate to their reduced hours.

Plan Requirements: To participate in SWO, Employers must:

- Designate a minimum of two employees from each affected unit to participate in the employer’s SWO plan. An affected unit is a specific department, shift, or other organizational unit designated by the employer.
- Provide certain information to ODJFS about each participating employee, including their name, social security number, and typical number of weekly hours worked.
- Disclose the estimated number of employees who would be laid off if the employer could not participate in the SWO program.
- Outline its proposed hour reductions for the affected unit. The reductions to weekly hours must be by percentage between 10% and 50% and must be

applied uniformly to the entire unit. The employer may apply for multiple SWO plans in order to have different reduction percentages for different units.

- Disclose any anticipated temporary closures that the employer may experience and any other issues that the employer foresees during the plan period that might impact the weekly hours of participating employees.

Eligible Employers: Ohio employers may apply for SWO if the following conditions are met:

(1) The employer has at least two affected hourly employees who are not seasonal, temporary, or intermittent employees;

(2) The employer is registered with Ohio's unemployment insurance program, has an unemployment insurance program account number, has access to the Ohio Job Insurance benefit system, and is current on all Ohio unemployment insurance reporting and tax obligations; and

(3) The employer agrees to abide by the program requirements, as set forth by the ODJFS.

Employers are not eligible to participate in SWO if they are seasonal employers or if they are not required to pay unemployment insurance taxes.

Eligible Employees: The following conditions must be met in order for employees to qualify for SWO benefits:

(1) The employee must be employed year-round with the employer on either a full or part-time basis;

(2) The employee must be able and available to work for his or her normal weekly hours;

(3) The employee must meet certain eligibility requirements for unemployment benefits, including earning enough wages and working at least 20 weeks in “covered employment” for an employer that paid unemployment taxes, and if the employee has an existing unemployment claim, he or she must have an available balance remaining; and

(4) The employee must not be otherwise disqualified from obtaining unemployment benefits in the state of Ohio, such as unresolved suspensions or a recent termination (during the previous 15 months) for dishonesty.

Employer Assurances: To obtain approval of a SWO plan, employers must provide several assurances to ODJFS, including that: (1) the employer’s purpose of its SWO plan is to prevent layoffs; (2) the employer will maintain all existing employee benefits that non-participating employees receive; (3) the employer will notify ODJFS of any changes to the employer’s ownership structure; (4) the employer will abide by all federal and state laws; (5) the employer is current and will remain current on all obligations under Ohio’s unemployment compensation laws; and (6) the employer will not reduce the hours of a participating employee by more than the reduction percentage set forth in the SWO plan.

Application Process: Employers who want to implement a SWO plan must submit an online application with ODJFS at <http://jfs.ohio.gov/ouio/SharedWorkOhio/>. ODJFS will review the application and provide written notification either approving or denying the plan within 30 days of receipt of application. If an application is denied based on an employer not meeting all of the SWO requirements, ODJFS will attempt to assist the employer in meeting program requirements. However, if an employer cannot meet SWO requirements, ODJFS will issue a decision denying the application. Such decisions

are final and not subject to appeal. However, employers are able to submit application for another plan.

Effective Dates of Plan: An approved SWO plan may last up to one year. The SWO plan becomes effective on the Sunday following the date of approval, and will remain in effect until expiration, which will occur on the Saturday of the plan's 52nd calendar week, unless the employer designates an earlier termination date.

Employer Responsibilities: Employers with approved SWO plans must actively maintain their plans. Employers are responsible for providing all participating employees with information about the program, such as program guidelines and other resources provided by ODJFS, including the Participating Employee Information Sheet and the SWO Claim Filing Instructions. Employers are also responsible for reporting to ODJFS the weekly compensated hours for each participating employee, including any approved paid leave, so that participating employees receive all of the benefits they are entitled to receive. This information must be submitted on a weekly basis. Importantly, third-party administrators ("TPA") are able to report employee hours for continued claim filing on behalf of an employer, but TPAs are not allowed to submit SWO applications or modification requests on behalf of an employer.

Participating Employee Responsibilities: Employees participating in a SWO plan must be available for work, which means that they are available for their normal weekly hours of work with the SWO employer. Participating employees must certify the weekly claim information within 21 days after the employer completes its portion. Unlike recipients of traditional unemployment benefits, participating employees of a SWO plan

are not required to apply for other employment, and if participants have other jobs while working for a SWO employer, their outside employment will impact their benefit eligibility.

Benefit Waiting Period: Upon approval of a SWO plan, participating employees receive both an unemployment determination and a SWO determination. Typically, participating employees are required to serve a one week waiting period before receiving SWO benefits; however, in response to the Coronavirus pandemic, Governor DeWine's March 16, 2020 Executive Order 2020-03D suspended the waiting period.

Benefit Charging: SWO benefits are typically charged proportionally to employers in the same manner as traditional unemployment benefits; however, Governor DeWine's March 16, 2020 Executive Order 2020-03D provides that such benefits will be charged to the mutualized account, except for reimbursing employers.

Plan Modifications: Employers may adjust an approved plan by submitting an online request to modify the plan. Such requests should be made whenever the employer seeks to add time periods for unanticipated shutdowns, add or remove employees from a plan or affected unit, or change the reduction percentage for participating employees in the affected unit. Modifications to a plan without ODJFS approval may result in termination of the plan. ODJFS will review requests for modifications to a previously approved SWO plan and will issue a written decision within 10 business days from receipt of the request.

We will be hosting a [webinar](#) in the next week or two to address these issues and more. Details of the webinar will be shared with you as soon as plans are finalized.

For more specific information, contact **Bob Dunlevey**, Board Certified Specialist in Labor and Employment Law, at rdunlevey@taftlaw.com or (937) 641-1743 or **Nadia A. Lampton** at nlampton@taftlaw.com or (937) 641-2055.