What's New in HR Law

Fighting Tariffs and Avoiding Layoffs: Special Measures for EI Work-Sharing Program

March 28, 2025 | By Adele Zhang

Bottom Line

In response to the to the "threat or potential realization" of U.S. tariffs and the expected impact on Canadian businesses, the Government of Canada has implemented new special measures for the Employment Insurance (EI) Work-Sharing Program (the "Work-Sharing Program"). The Work-Sharing Program helps employers and employees avoid layoffs and provides income support to affected employees when their employer faces a decline in business for reasons beyond their control.

These special measures, announced on March 7, 2025, expanded employer and employee eligibility and the overall scope of the Work-Sharing Program for businesses affected by the U.S. tariffs ("U.S. Tariffs Special Measures"). The U.S. Tariffs Special Measures are in effect from March 7, 2025 to March 6, 2026.

Background

The ongoing U.S. tariff threats, and the potential realization of such tariffs, are forcing many employers to make difficult business decisions as they try to maintain their workforce while ensuring sustainability in the face of such tariffs. The Work-Sharing Program could be a helpful program available to employers to help them accomplish this goal.

The Work-Sharing Program assists employers to avoid layoffs where there is a temporary decrease in business activities due to reasons beyond the control of the employer, and where that decrease results in fewer hours available for employees to work. It does so by allowing eligible employees to collect EI benefits during these periods of reduced working hours.

To participate in the Work-Sharing Program, employers, employees, and unions (if applicable) must agree to be a party to a Work-Sharing Agreement. They then apply to Service Canada at least 10 business days before beginning the Work-Sharing Program. Further timelines apply once Service Canada approves the application, and employers have ongoing reporting requirements throughout the Work-Sharing Agreement.

On March 7, 2025, the Government of Canada announced special measures for the Work-Sharing Program to respond to the U.S. tariffs. These measures introduced two (2) key changes: (i) it expanded employer and employee eligibility requirements, and (ii) it increased the flexibility of the terms of Work-Sharing Agreement ("U.S. Tariffs Special Measures"). The government had previously announced different special measures in response to the COVID-19 pandemic and forest fires.

Expanded Eligibility for Employers and Employees

The U.S. Tariffs Special Measures expand both employer and employee eligibility for the Work-Sharing Program.

Previously, employers were eligible for the Work-Sharing Program if they met the following criteria:

- be a year-round business operating in Canada for at least 2 years;
- be a private business, a publicly held company or a certain type of non-for-profit;
- have experienced a decrease in overall work activity of at least 10% in the past six months to qualify for the Work-Sharing program;
- have recovery measures in place to return employees back to normal staffing levels and regular work hours by the end of the Work-Sharing agreement; and
- have at least two eligible employees in the Work-Sharing unit that must share the available work equally.

The U.S. Tariffs Special Measures have expanded the Work-Sharing Program to also include employers who:

- have been operating in Canada for a minimum of 1 year;
- have a minimum of 2 EI eligible employees who agree to a reduction in hours and to share any available work;
- are non-profit and charitable organizations experiencing a reduction in revenue levels as a direct or indirect result of the tariffs;
- are cyclical or seasonal employers; and
- are experiencing a decrease in work activity over the past six months.

Under the U.S. Tariffs Special Measures, employers may qualify for the Work-Sharing Program even if their decrease in work activity is less than 10%. In other words, the U.S. Tariffs Special Measures eliminate the firm threshold for a demonstrated reduction in work activity to qualify for the program. The only determinative factor for assessing a decrease in work activity is that the decrease must be active and current at the time of applying for the Work-Sharing Program.

Similarly, employee eligibility for the Program has been expanded to include:

- employees who are not year-round, permanent, full-time or part-time employees, specifically seasonal or cyclical employees; and
- employees assisting the employer recovery efforts – i.e. these special measures allow management employees to participate in the Work-Sharing Program.

This expanded eligibility significantly increases the support available under the Work-Sharing Program.

Flexible Work-Sharing Agreements

A Work-Sharing Agreement is typically a three-party agreement involving employers, employees and Service Canada, though unions must be involved if the workplace is unionized. Employees on a Work-Sharing agreement must agree to (i) a reduced schedule of work, and (ii) share the available work equally over the term of the agreement. Typically, Work-Sharing Agreements must have a minimum duration of 6 weeks and can last up to 26 weeks. If needed, an extension may be requested of up to 12 weeks bringing the initial agreement to a maximum total of 38 weeks.

However, these restrictions have been loosened by the U.S. Tariffs Special Measures. For example:

- the length of an Agreement under this special measure can be extended up to 76 weeks; and
- the required cooling-off period between successive Work-Sharing Agreements has been waived.

These changes to the Work-Sharing Agreements allow more employers to rely on the Program, and for a longer duration.

Takeaways

The U.S. Tariffs Special Measures introduced on March 7, 2025 have significantly expanded the reach of the Work-Sharing Program to support Canadian employers and employees by reducing lay-offs.

Employers who have been, or may be, able to offer fewer hours of work because of the U.S. tariffs may be eligible for the Work-Sharing Program. Although the Work-Sharing Program acts as an excellent tool to maintain businesses during times of economic downturn, employers should be alert to the reality that changes in the workplace may attract other legal considerations, like potential claims of constructive dismissal. Experienced counsel can assist with managing workplace changes and related risks.

Employers should be aware that there is also a Supplementary Unemployment Benefit (SUB) Program, as we discuss here.

Need More Information?

For more information or assistance regarding the Work-Sharing Program, contact Adele Zhang at azhang@filion.on.ca or your regular lawyer at the firm.

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