

COVID 19: California EDD Work Sharing Program

An employer facing business challenges that affect its workforce might consider California's Employment Development Department Work Sharing Unemployment Insurance Program. The EDD describes this program as a "practical alternative to layoffs." For example, instead of laying off 20% of a workforce, an employer could reduce payroll by 20% and Unemployment Insurance would pay part of the difference in wages to employees. This approach also could help employers by reducing the need to re-hire and re-train employees when business improves.

Employer Qualification Requirements

The employer must have experienced a reduction in production, services, or other conditions that cause it to seek an alternative to layoffs. As with any generous offer, certain terms and conditions apply:

- A minimum of two employees, comprising at least 10% of the regular workforce or a unit of the workforce, must be affected by a reduction in wages and hours worked.
- The reduction in weekly wages and hours worked must be at least 10%, not to exceed 60%.
- The employer must maintain employee health and retirement benefits under the same terms and conditions as prior to the reduction in hours and wages or to the same extent as for employees not participating in the plan.
- Corporate officers and major stockholders may not participate.

Other specifics appear at https://www.edd.ca.gov/unemployment/Work_Sharing_Program.htm

Employee Qualification Requirements

Participating employees must meet these requirements:

- Be a part of the employer's permanent regular workforce and not a leased, intermittent, temporary, or seasonal employee.
- Have qualifying wages in the base quarters used to establish a regular California UI claim, calculated by one of two alternative methods: The Standard Base Period and the Alternative Base Period. The Standard Base Period is the first four of the last five calendar quarters prior to filing the claim. The Alternative Base Period is the most recently completed four calendar quarters prior to filing the claim. If the employee has earned at least \$1,300 in one quarter of either type of Base Period, or \$900 in one quarter of either type of Base Period and total base period earnings are 1.25 times the highest quarter's earnings, then the employee would qualify. For more, see https://www.edd.ca.gov/pdf_pub_ctr/de8714ab.pdf
- Have completed a normal work week (with no hour or wage reductions) before participating in Work Sharing.

How do I sign up, and what comes next?

Fill out the Work Sharing Plan Application, DE 8686, and submit to the EDD. These instructions and the Form can be found online here: https://www.edd.ca.gov/pdf_pub_ctr/de8686.pdf

The EDD Special Claims Office will send a letter of approval, one mail claim packet for each participating employee, and a ten-week supply of weekly certifications for each employee. You'll need to issue these certifications to affected employees each week for the duration of the program. These forms must be mailed in weekly.

Benefits will also be paid weekly, proportionate to the percentage of reduction in hours and wages. This example from the EDD is instructive: An employee who normally works five days a week for \$500 is reduced to four days a week for \$400. The Work Sharing benefits for this employee would be 20% of the benefits the employee would receive if unemployed. If maximum UI benefits for this employee would be \$300, the employee would qualify for \$60 in Work Sharing Benefits, bringing their weekly pay to \$460.

The employer will be charged for Work Sharing Unemployment Insurance in the same manner as for regular UI benefits.

Can exempt employees participate?

California's Department of Labor Standard Enforcement in 2002 expressly opined that having exempt employees participate in the EDD Work Sharing Program destroyed pay on a "salary basis," meaning, in the DLSE's opinion, exempt employees could not participate. But that February 27, 2002 opinion letter was disapproved in 2009. The most current DLSE opinion letter appears to permit a bona fide reduction in both hours and salary for exempt employees (even if somewhat temporary, as long as it is not fluctuating), though it does not mention EDD Work Sharing. We do not know how courts would come down on this issue. It is possible that courts would consider exempt employees participating in Work Sharing to have been converted to non-exempt employees, subject to overtime and other non-exempt wage and hour requirements.

This sounds too good to be true, so what's the downside?

This program can be administratively burdensome, because of the application and weekly certifications. And employers must periodically re-apply. There is also a potential increase in your unemployment insurance tax rate, but layoffs would have the same result if laid-off employees seek unemployment insurance.