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Employment Law Newsletter

March, 2009

Employment Insurance Work Share Program

The Employment Insurance Work Share Program (the “Program”) was created to assist employers during the recession in the 1980’s. Although in existence for 25 years, it is not well known and is therefore little used by employers to manage their workforce during difficult times.

The EI website describes the Program as *“an adjustment program designed to help employers and workers avoid temporary layoffs when there is a reduction in the normal level of business activity that is beyond the control of the employer. The measure provides income support to workers eligible for Employment Insurance benefits who are willing to work a temporarily reduced work-week.”*

How Does it Work?

Through this Program eligible employers are entitled to use EI benefits to supplement their employees’ wages for the days they are not working.

Who is Eligible?

To be eligible, three key criteria must be met:

1. The employer must:
 - (a) have been in year-round business in Canada for at least two years;
 - (b) show that the need for reduced hours is unavoidable and that the work shortage is temporary and unexpected;
 - (c) demonstrate (through a recovery plan) how the business will be maintained for the duration of the agreement and return to normal working hours as the economy strengthens;

- (d) not be undergoing a labour dispute; and
- (e) have the agreement of the union (if applicable) and employees.
2. The employees must be:
 - (a) “core staff”;
 - (b) eligible to receive regular EI benefits; and
 - (c) at least two in number.
3. The work shortage must be significant enough to warrant support of the Program (meaning a demonstrated decrease in sales/orders of at least 10%).

For How Long?

Currently Work-Sharing Agreements can have a duration of between 6 and 52 weeks.

How Do You Apply?

Work-Sharing is a three-party agreement involving an employer, employees and Service Canada. An application must be completed by the employer, signed by the affected employees, and submitted to Service Canada for approval at least one month before the anticipated start date. Further information about this program can be found at http://www.servicecanada.gc.ca/eng/work_sharing/index.shtml



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Upcoming Seminar: Employment Issues in an Economic Recession

On Tuesday, May 5th, the Employment Practice Group will be presenting a Breakfast Seminar at the Terminal City Club with advice and strategies for dealing with employment issues that arise in tough economic times. This two hour seminar will be of interest to employers, human resource and personnel managers, benefit plan administrators, other senior managers and employees. Topics will include:

1. Tools and strategies for managing employees during a business down turn.

- (a) forced vacations;
- (b) overtime schedules and payment obligations;
- (c) short term layoffs;
- (d) unpaid leaves of absence from work;
- (e) reduced work weeks; and
- (f) Employment Insurance Work Share Programs.

2. Duties and obligations of employers and employees after termination due to downsizing.

- (a) employer's statutory and contractual obligations to give notice of termination;
- (b) special rules that apply when dealing with group terminations;
- (c) employee obligations to give reasonable notice of resignation;
- (d) vacation pay due on termination;
- (e) handling Records of Employment and pay out of wages;
- (f) director and officer liability for unpaid wages;
- (g) mitigation opportunities with the same employer;
- (h) structuring ideas for severance offers, including the benefits of a salary continuance rather than a lump sum payout; and
- (i) how to properly settle claims, deal with statutory deductions and withholdings, obtain releases and protect confidentiality.

3. Post Employment Obligations

- (a) an employee's duties of good faith and not to compete unfairly against his or her former employer;
- (b) a senior employee's fiduciary duty not to solicit customers or employees after leaving; and
- (c) drafting tips for restrictive covenants in employment agreements and recent court direction on the enforcement of non competition and non solicitation provisions.

The date, time and place of this seminar are set out below. Space is limited so please register early. For a detailed invitation, see www.rbs.ca.

When	Tuesday, May 5, 2009 Registration: 8:00 a.m. to 8:30 a.m. Seminar: 8:30 a.m. to 10:30 a.m.
Where	Terminal City Club 837 West Hastings Street Vancouver, BC V6C 1B6
Cost	\$20.00 per registration (non-refundable). Pricing is inclusive of all taxes. Send a substitute in your place if you are unable to attend.
RSVP	By April 17, 2009 via email at employmentlaw@rbs.ca Questions? Contact Della Thomas at 604.661.9271.
Payment	Make your cheque payable to Richards Buell Sutton LLP and mail it together with your completed registration form to: Richards Buell Sutton LLP Attention: Della Thomas 700-401 West Georgia Street Vancouver, BC V6B 5A1