

## **NEW YORK SHARED WORK PROGRAM**

### **JOINT GUIDANCE PROVIDED BY REALTY ADVISORY BOARD ON LABOR RELATIONS AND SEIU LOCAL 32BJ**

**April 24, 2020**

Due to the COVID-19 public health crisis, many buildings throughout New York City have been closed for their usual business operations, severely impacting the many thousands of building service employees working in these buildings in the form of lay-offs of indeterminate duration. As a result, SEIU 32BJ and the RAB reached an agreement to implement a Shared Work Program (NY Labor Law, Art. 18, Title 7-A (§§ 602-612)) for cooperating employers within our industry.

The goal of Shared Work is keeping more employees working and covered by health care benefits, but on a reduced schedule of between 20-60% below previous work hours. The program is incentivized by providing certain state and federal unemployment insurance benefits to supplement employee's reduced earnings. This memorandum was jointly prepared by staff from SEIU 32BJ and the RAB to provide guidance for both union and management representatives as they implement Shared Work at various job sites in our industry.

#### **What are the advantages of Shared Work for employees?**

Under an approved Shared Work plan, covered employees receive the following benefits during the duration of the plan (for up to 26 weeks):

1. Avoid possible lay-off with continued part-time employment and income at regular wage rate;
2. Continued fringe benefits while on a reduced schedule, including health coverage;
3. New York unemployment insurance benefits ("UIB") in an amount that reflects lost hours as a percentage of their weekly UIB had they been fully unemployed (e.g., an employee who previously worked 40 hours and was reduced to 24 hours (40% reduction of hours) receives 40% of the UIB amount he/she would have received if fully unemployed; and
4. The \$600 weekly federal supplement under the CARES Act, in effect through July 31, 2020, is not pro-rated by hours worked.

### **What are the advantages of Shared Work for employers?**

Cooperating employers want to prevent the economic hardship on their employees that come from layoffs. While there are some continued costs for employers to maintain fringe benefits that are not applicable to layoff or furlough, there are corresponding business-related benefits to employers that favor Shared Work:

1. Maintaining the employment relationship preserves the morale and job security of skilled employees who may otherwise find another job if laid off. Preserving employment saves the significant time and costs of applications, hiring and training new employees when work returns.
2. Under the CARES Act, reductions in employees' work hours through Shared Work will not increase most employers' experience rating in the unemployment insurance system (which would otherwise increase future premium costs of unemployment insurance coverage) because the federal government reimburses the state for all benefits paid out under Shared Work.
3. Not-for-profit institutions that self-insure for unemployment coverage may be eligible for additional cost benefits through Shared Work under the CARES Act due to the 100% federal reimbursement of benefits paid by states through Shared Work programs.

### **What is required for an employer to participate in Shared Work?**

Shared Work requires participating employer to submit a plan application to the NY DOL that must be approved. Applying electronically through to NY DOL website is highly recommended and applications are usually approved quickly. The application must include certification by the employer that:

- a. The employer's Shared Work plan will prevent an identified number of employees from being laid off;
- b. The employees that remain employed will work under a new reduced work schedule that reflects a uniform reduction of some specific percentage of the employees' previous work schedule which must be equal among all the employees and in the range of 20-60% below previous work hours each week. This requirement prevents a Shared Work plan that is structured as one week on, one week off.
- c. The employees that remain employed shall continue to be provided the same fringe benefits they received under their previous schedules.
- d. The Union has agreed to the employer's proposed plan.

- e. All employees working in the defined “unit” covered by the plan have their hours reduced in a uniform amount (i.e., covered employee are working under a schedule reflecting a 40% reduction of work hours from previous full-time schedules).

### **Which employees can be included in a Shared Work plan?**

The employer’s Shared Work plan must be defined by a “unit” of employees (greater than one), which may not be the same as the bargaining unit under the collective bargaining agreement. A unit could be all an employer’s employees or an entire department of employees.

In our industry, the unit would typically be a rational grouping of employees in a particular building, such as cleaning employees or security employees.

Shared Work does not require all aspects of an employer’s operations be subject to the same threat of layoff. If only some portion of a building’s operations will be reduced—for example, evening shift cleaning when tenant floors are less occupied—it is possible to apply to Shared Work for that “unit” of the building’s operations while other shifts and functions are not included. Specifically, employers do not necessarily need to structure shared work “units” to include all members of a bargaining unit or all members of a given title. The program is structured to permit great flexibility and units may be configured to accommodate business needs, employee scheduling concerns, and other applicable workplace requirements.

### **What Reporting is required to the NY DOL?**

Employers and employees must submit weekly certification forms to the NY DOL.

1. The employer certifies the percentage of reduced hours for that particular week, which must be a reduction of between 20-60% below previous schedule at the time of plan approval.
2. Use of paid sick day or vacation day under Shared Work is treated and reported as a paid work day, which should not affect the employee’s UIB for that week.
3. Employees certify to continued employment with the employer and whether the employee worked for any other employer during that week. Employees working for another employer while under Shared Work will have their UIB reduced to reflect the additional earnings.

### **What are the terms of the Agreement between 32BJ and the RAB on Shared Work?**

Under the statute on Shared Work, the employees' representative must consent to an employer's plan application. This has been achieved for RAB members and includes the following conditions for any Shared Work plans with 32BJ-represented employees:

1. Employees must be scheduled for a minimum of 8 hours per scheduled shift, or the employer's equivalent duration for the shift of full-time employees;
2. Scheduled days of the week should be fixed; and
3. Employer shall maintain all fringe benefits for all participating employees in the same form and level as provided to the employees under their previous schedules.

### **What will the reduced schedules be under Shared Work?**

Applying for DOL approval for a Shared Work plan does not require any specific scheduling structure, only the prevention of lay-offs through a reduced schedule that results in 20-60% less work hours for remaining employees. In addition, the Agreement between 32BJ and RAB requires shifts to be a full eight (8) hours, where such employees were full time prior to implementation of a Shared Work Plan. Under these combined parameters, the simplest and least controversial reduced schedules for full time employees are these:

1. 20% reduction (32 hours): 4 days on, 1 day off each week  
40% reduction (24 hours): 3 days on, 2 days off each week  
50% reduction (20 hours): 3 days on, 2 days off, 2 days on 3 days off,  
alternating weeks  
60% reduction (16 hours): 2 days on, 3 days off each week
2. A reduced schedule in the form of alternating one week on and one week off is not permitted. While amounting to a 50% reduction of work hours overall, the employees' weekly certifications would reflect a 0% reduction on weeks they are working and a 100% reduction on the weeks they are not. This would disqualify employees from Shared Work each week.
3. Shared Work does not protect overtime hours employees previously worked. A Shared Work schedule is based reduction from a previous work week schedule that does not exceed 40 hours/week.

### **Can the terms of an approved Shared Work plan be changed as conditions change?**

Yes. The Shared Work Program is flexible and can change week by week within the parameters of the Program.

1. If an employer submits an application for Shared Work for a 40% reduction of the employees' prior schedule and client demands change to require either an increase or decrease in required work hours, the employer may adjust the schedule in subsequent weeks provided that change is accurately certified in the weekly reporting requirements to the DOL by the employer and employees and applied uniformly to all employees in that unit.
2. If an employer needs to lay-off, or recall, a certain number of employees before being in a position to establish a workable reduced schedule for the remaining staff, Shared Work allows for that. However, the program may not be applied retroactively; i.e., if an employer previously enacted a reduced schedule, it may submit the existing schedule for approval as a Shared Work plan, but the enhanced UIB to employees would not be applied retroactively to when the reduced schedule began.
3. If employees working under Shared Work leave or are discharged, that position can be filled with a new employee. The program is not limited to specific employees working at the time of application.