

**Maine Department of Labor
Bureau of Unemployment Compensation**

**Basis Statement
and
Summary of Comments and Responses**

Chapter 27: Work Share

This is a new Rule to set forth the procedures and requirements for employers who choose to participate in Maine’s Short-Term Compensation Program, known as the Work-Share Program. this Rule provides additional guidance and clarifies definitions and processes set forth in 26 M.R.S. § 1198 of the Employment Security Act

This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. §§ 1082 and 1198. The proposed Rule was posted on November 29, 2023. A public hearing was scheduled for December 19, 2023, but was rescheduled due to closings of state offices. The public hearing was renoticed and held on February 2, 2024 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330.

Comments were submitted by:

Commenter # 1: Maine Equal Justice

Commenter # 2: Peer Workforce Navigator Project

The public comment period ended on February 13, 2024.

Summary of Public Comments and Responses

Both commenters made the same or largely the same comments. Thus all comments are attributed to both commenters.

Rule Summary. We recommend that you amend the Summary introducing this new chapter by making clear that it establishes requirements and procedures for *both employers and employees*, who participate in Maine’s Short-Term Compensation program known as WorkShare. The fact that this rule impacts both parties must be made clear at the outset of this Chapter.

Response: We will make this change in the summary statement.

(2)(A) WorkShare Plan Applications

(2)(A)(9) Notice. Maine law expressly requires that the workshare plan (or summary) must be provided to any collective bargaining agent representing the affected workers, or the workers themselves. It does not give the Commissioner authority to waive notice, as would be permitted by this proposed rule. While federal law provides that the plan must require the employer to certify that (in the absence of a collective bargaining agreement) advance notice is given to affected employees only *if feasible*, Maine’s

law is more stringent. It requires, without exception, that: “In the absence of a collective bargaining agent, the work-sharing plan must contain a certification by the eligible employer that the proposed plan, or a summary of the plan, has been made available to each eligible employee in the affected unit.” Thus the employer must give notice to all affected employees prior to certifying to the Department that they have done so. The Commissioner may only approve a WorkShare plan if this condition has been met.

Response: We agree. We will remove the last sentence starting with “If advance notice...”. Such prior notification is currently required without exception. This reflects the current process.

(2)(A)(13) Training. We urge the Bureau to further clarify this paragraph to ensure that people in the WorkShare program are not mistakenly limited to only employer-sponsored training or training funded by WIOA. To ensure that this provision is clearly understood by all readers we ask that you amend the clause in the proposed rule to read: “participate in approved training, including, but not limited to, employer-sponsored training, or worker training funded under the Workforce Innovation and Opportunity Act”. We ask for this additional clarity, as we have seen numerous situations in which Maine’s general “approved training” policy has been misunderstood and want to provide for greater clarity going forward.

Response: We have made this change.

(3) Approval and Disapproval of WorkShare Plan. We very much appreciate the inclusion of a 10-day deadline for the Department to approve or disapprove a WorkShare plan. The lack of a deadline during the most recent recession caused considerable hardship to employees who had to wait long periods before their UI benefits were available. Thank you for including this important provision.

Response: Thank you for your comment.

(4) Modification of a WorkShare Plan. We strongly urge you to provide notice to all affected employees when both substantial *and* non-substantial modifications of a WorkShare Plan are proposed.

Response: Non-substantial changes are common and are often temporary. It is not operationally feasible, and not legally necessary, to provide advance notice to employees or agreement from a bargaining agent prior to a non-substantial change. We decline to make this change in the rule.

(5) Revocation of a WorkShare Plan. We recommend adding language to this Section to require the Bureau to give notice to all affected workers of any decision to revoke a WorkShare Plan, including notice that the worker may be eligible for regular UI benefits, how to apply for regular UI benefits, and where they can learn more about the UI program if they have questions. This notice must be written to be understandable, to the greatest extent feasible, at a 6th grade reading level. The notice must be provided in the individual’s preferred language as identified on their initial claim.

Response: A revocation of a WorkShare plan does not necessarily mean that workers are terminated from employment. In fact, it could mean that full hours are restored. The

Employment Security Act requires employers to notify individuals of the availability of unemployment benefits. It is not feasible or equitable to grant additional rights and to require additional administrative resources of BUC staff for this subset of unemployed individuals.

(7) Initial claims. Below we suggest several modifications to the proposed rule directed at mitigating problems that claimants encountered with the WorkShare Program during the most recent economic downturn.

First, we request any employer with an approved WorkShare plan notify their employees immediately upon approval of that plan that they have the right to apply for UI under the plan, and how their initial claim may be made. We request that the rule establish that it is the Bureau's responsibility to create a form for this purpose and make it available to employers to be given to each affected employee in accordance with this rule. The rule must require that this notice be written to be understandable, to the greatest extent feasible, at a 6th grade reading level and translated in the individual's preferred language as identified by the Bureau on their initial claim for benefits along with notice that translation services are available and how to access them.

Response: The current process of having claimants file their initial and continued WorkShare claims electronically through the ReEmployME application is the most efficient and timely way for this to take place. Paper claims usually result in inherent delays in reviewing and processing the forms, especially during times when unemployment levels are high. We decline to make this change.

Next, we ask that the rule include clear instructions related to how individuals who are claiming UI benefits under a WorkShare Plan may resolve any problems that they encounter, or ask questions related to their benefits.

We ask that the rule clearly delineate which claimant issues employers are responsible to address, and those which the Bureau must address. We strongly recommend that the rule designate the Bureau as having responsibility to address all issues, except those for which it does not have, or cannot access the information necessary in a timely manner to resolve the issue.

Response: This is already addressed in procedures. If there is an employer failure to comply with the plan there is a process for the agency to revoke the plan. The isolated issues during the pandemic were due to the volume of overall claims, employer and employee lack of familiarity with WorkShare, and a reliance on manual processes. Since the pandemic the BUC has made significant technical changes to both the claimant and employer side to reduce issues and expedite resolution. We have also engaged in significant promotion of the program and its procedures and requirements through flyers and other educational materials for both claimants and employers. No other changes will be made to the rule.

In summary, we urge to clearly delineate responsibility for claimant assistance under these plans, with the Bureau designated as the primary source of information and assistance for claimants and the helper of last resort when an issue cannot be resolved with the employer.

(8) Eligibility and Weekly Claims.

(8)(A) Waiting Period. As compared to regular UI benefits where a claimant is required by law to serve a waiting period, Maine’s WorkShare law provides the Commissioner with discretion as to whether or not to impose a waiting period. We strongly urge that the Commissioner use her authority to determine that WorkShare claimants will *not* be subject to a waiting week.

Response: The Employment Security Act, 1198(8)(G), mandates that all laws and rules applicable to unemployment compensation claimants apply to work-sharing claimants to the extent that they are not inconsistent with the established work-sharing provisions. Thus, the BUC is prohibited from waiving the waiting week for WorkShare claimants, while imposing a waiting week for all other claimants. Also, the Bureau as a policy matter wants to treat all unemployment claimants equally. We decline to make this change.

(8)(B) and (8)(C) and (8)(E) WorkShare Weekly Claim form. We request greater clarity with regard to the process of completing and filing the weekly claim form to ensure that it is done in the most timely and effective manner.

We request that the rule require both the employer *and* employee be prompted weekly by text or otherwise of the need to file a weekly claim. It must also require that the employer complete the information that they are responsible to provide in sufficient time to allow the employee to submit a timely weekly claim. While we appreciate the importance of the employer providing current wage information for the week claimed, we believe that this process would be strengthened by providing more detailed procedural requirements for the employer’s role in this process.

The proposed rule seems to contemplate electronic filing but that is not entirely clear, especially in light of the paragraph (E) which states that: “WorkShare weekly claims shall be submitted in a format prescribed by the Bureau.” We strongly encourage you to fully describe that process in the final rule. We also request that there be explicit provision for claimants who may need to use alternative filing mechanisms via phone or in-person to accommodate their individual circumstances and describe how a claimant may use those alternative filing methods.

Response: The BUC does not send reminders to other unemployment claimants and will not do so for this population. We are in the process of revising our current claim processes and educational materials using plain language for all claimants, including WorkShare claimants. No changes to the rule will be made.

Next, we strongly encourage that the rule requires the Bureau to provide instruction regarding how to file a claim and where to call for help. These instructions should be made available to both the employer and employee in writing and readable, to the extent feasible, at a 6th grade level, with options for non-English speakers to receive translated instructions.

Response: As a result of the pandemic, we have engaged in significant promotion of the program and its procedures and requirements through flyers and other educational materials for both claimants and employers. The claimant information includes a flyer with filing and contact instructions and information. Furthermore, we are in the process of reviewing existing correspondences and documents using plain language guidelines, as well as translating them into multiple languages. No other changes will be made to the rule.

(8)(D) Weekly Claim timeliness standards.

The proposed rule establishes a time standard for filing claim forms (filled out in part by the employer as well as the employee) for the workshare program to be the same as that described in Chapter 3 for ordinary claims. Claim forms must be filed within 14 days of the claimed week, but if there is good cause the Bureau will allow another seven days. This standard is unnecessarily strict, costing claimants weeks of benefits and resulting hardship across the UI program. Other states have been much more generous in this regard.

Response: The BUC declines to make this change for WorkShare only, but we will consider these comments when making changes to Chapter 3, which will apply to all claimants, including WorkShare claimants.

(9)(F) and (G) Reporting and Treatment of Earnings. We believe that the rule could be made clearer by removing the sentences in paragraph (F) related to the *treatment* of earnings, and including them in paragraph (G) which explicitly relates to the treatment of earnings. For example, the rule might read (we remove the sentence referring to sub-section 8(H) of the law as it is already stated in (G) below:

(F) Reporting of earnings. On a WorkShare weekly claim, the employer must report any earnings that will be paid to the claimant. In addition, the claimant must report earnings from any other employer during the same week. ~~All earnings shall be treated in a manner consistent with Subsection 8(H) of the Law. Bonus payments during a WorkShare week shall be considered as earnings and shall not reduce their entitlements during the WorkShare week.~~

(G) Treatment of Earnings. If an eligible claimant works in the same week for a WorkShare employer and an employer other than the WorkShare employer, the eligible claimant's WorkShare benefits must be computed in the same manner as if the eligible claimant worked solely with the WorkShare employer, except that if the eligible claimant is not able to work or is not available for the normal workweek with the WorkShare employer, WorkShare benefits may not be paid to that eligible employee for that week. Bonus payments during a WorkShare week shall be considered as earnings and shall not reduce their entitlements during the WorkShare week.

Response: We will make this change and move the sentence as suggested.

Additional provision requested. As noted above, one of the problems that claimants enrolled in a WorkShare Plan encountered during the pandemic was delay in receiving benefits. We request that you include a provision in this section requiring that the federal UI benefit payment promptness standard apply to WorkShare claims as well.

Response: WorkShare continued claims are not part of the population used to determine the Acceptable Level of Performance for first-pay timeliness. However, in practice, they are treated as if they are. We do not prioritize payment of other types of claims in any way. We decline to add this to the rule.

