

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2160 Session of 2010

INTRODUCED BY BRADFORD, REICHLEY, BELFANTI, GERGELY, BURNS,
BROWN, COHEN, DePASQUALE, DONATUCCI, FRANKEL, FREEMAN,
GALLOWAY, GIBBONS, GOODMAN, HARKINS, KORTZ, MATZIE, MCGEEHAN,
MELIO, MURPHY AND READSHAW, JANUARY 25, 2010

REFERRED TO COMMITTEE ON LABOR RELATIONS, JANUARY 25, 2010

AN ACT

1 Amending the act of December 5, 1936 (2nd Sp.Sess., 1937
2 P.L.2897, No.1), entitled "An act establishing a system of
3 unemployment compensation to be administered by the
4 Department of Labor and Industry and its existing and newly
5 created agencies with personnel (with certain exceptions)
6 selected on a civil service basis; requiring employers to
7 keep records and make reports, and certain employers to pay
8 contributions based on payrolls to provide moneys for the
9 payment of compensation to certain unemployed persons;
10 providing procedure and administrative details for the
11 determination, payment and collection of such contributions
12 and the payment of such compensation; providing for
13 cooperation with the Federal Government and its agencies;
14 creating certain special funds in the custody of the State
15 Treasurer; and prescribing penalties," further providing for
16 shared work program.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The act of December 5, 1936 (2nd Sp.Sess., 1937
20 P.L.2897, No.1), known as the Unemployment Compensation Law, is
21 amended by adding an article to read:

ARTICLE XIII

SHARED WORK PROGRAM

24 Section 1301. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affected unit." A department, shift or other organizational unit of two or more employees that is designated by an employer to participate in a shared-work plan.

"Approved shared-work plan" or "approved plan." An employer's shared-work plan which meets the requirements of section 1303 and which the department approves in writing.

"Fringe benefit." Health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave and any other similar employee benefit provided by an employer.

"Participating employee." An employee in the affected unit whose hours of work are reduced by the reduction percentage under the shared-work plan.

"Participating employer." An employer who has a shared-work plan in effect.

"Reduction percentage." The percentage by which each participating employee's weekly hours of work are reduced under a shared-work plan in accordance with section 1303(b).

"Shared-work plan." A plan for reducing unemployment under which participating employees of an affected unit share the work remaining after reduction in their normal weekly hours of work. Section 1302. Application to approve plan.

(a) Requirements.--An employer that meets all of the following requirements may apply to the department for approval of a shared-work plan:

(1) The employer has filed all quarterly reports and other reports required under this act and has paid all

1 contribution, reimbursement, interest and penalty due through
2 the date of the employer's application.

3 (2) If the employer is contributory, the employer's
4 reserve account balance as of the most recent computation
5 date preceding the date of the employer's application is a
6 positive number.

7 (3) The employer has paid wages for the 12 consecutive
8 calendar quarters preceding the date of the employer's
9 application.

10 (b) Application.--An application under this section shall be
11 made in the manner prescribed by the department and contain all
12 information required by the department, including the following:

13 (1) The employer's assurance that it will provide
14 reports to the department relating to the operation of its
15 shared-work plan at the times and in the manner prescribed by
16 the department and containing all information required by the
17 department, including the number of hours worked each week by
18 participating employees.

19 (2) The employer's assurance that it will not hire new
20 employees in, or transfer employees to, the affected unit
21 during the effective period of the shared-work plan.

22 (3) The employer's assurance that it will not lay off
23 participating employees during the effective period of the
24 shared-work plan, or reduce participating employees' hours of
25 work by more than the reduction percentage during the
26 effective period of the shared-work plan, except in cases of
27 illness, holidays, vacation or similar circumstances.

28 (4) The employer's certification that the implementation
29 of a shared-work plan is in lieu of temporary layoffs that
30 would affect at least 10% of the employees in the affected

unit and would result in an equivalent reduction in work hours.

(c) Multiple plans.--An employer may apply to the department for approval of more than one shared-work plan.

Section 1303. Plan requirements.

(a) General rule.--The department may approve a shared-work plan only if the plan meets all of the following requirements:

(1) The shared-work plan applies to one affected unit.

(2) All employees in the affected unit are participating employees, except that the following employees may not be participating employees:

(i) An employee who has been employed in the affected unit for less than three months prior to the date the employer applies for approval of the shared-work plan.

(ii) An employee whose hours of work per week determined under paragraph (5) is 40 or more hours.

(3) There are no fewer than two participating employees.

(4) The participating employees are identified by name and Social Security number.

(5) The number of hours a participating employee will work each week during the effective period of the plan is determined by the following formula:

employee's normal weekly hours of
work x (100% - reduction percentage)

(6) As a result of a decrease in the number of hours worked by each participating employee, there is a corresponding reduction in wages.

(7) If any participating employee is covered by a collective bargaining agreement, the plan is approved in

1 writing by the collective bargaining representative.

2 (8) The plan does not affect the fringe benefits of any
3 participating employee not covered by a collective bargaining
4 agreement.

5 (9) The plan does not serve as a subsidy to seasonal
6 employers during the off-season or as a subsidy to employers
7 who traditionally use part-time employees.

8 (10) The effective period of the plan is not more than
9 52 consecutive weeks.

10 (11) The effective period of the plan combined with
11 effective periods of the participating employer's prior plans
12 does not equal more than 104 weeks out of a 156-week period.

13 (12) The reduction percentage satisfies the requirements
14 of subsection(b).

15 (b) Reduction percentage.--The reduction percentage under an
16 approved shared-work plan shall meet all of the following
17 requirements:

18 (1) The reduction percentage shall be no less than 20%
19 and no more than 40%.

20 (2) The reduction percentage shall be the same for all
21 participating employees.

22 (3) The reduction percentage shall not change during the
23 period of the shared-work plan unless the plan is modified in
24 accordance with section 1307.

25 Section 1304. Approval or disapproval of shared-work plan.

26 The department shall approve or disapprove a shared-work plan
27 no later than 15 days after the date the employer's shared-work
28 plan application that meets the requirements of section 1302(b)
29 is received by the department. The department's decision shall
30 be made in writing and, if the shared-work plan is disapproved,

1 shall include the reasons for the disapproval.

2 Section 1305. Effective period of plan.

3 (a) Number of weeks.--A shared-work plan is effective for
4 the number of consecutive weeks indicated in the employer's
5 application, or a lesser number of weeks as approved by the
6 department, unless sooner terminated in accordance with section
7 1308.

8 (b) Start date.--The effective period of the shared-work
9 plan shall begin with the first calendar week following the date
10 on which the department approves the plan.

11 Section 1306. Criteria for compensation.

12 (a) General rule.--Compensation shall be payable to a
13 participating employee for a week within the effective period of
14 an approved shared-work plan during which the employee works the
15 number of hours determined under section 1303(a) (5) on the same
16 terms, in the same amount and subject to the same conditions
17 that would apply to the participating employee without regard to
18 this article, except as provided for in subsection (b).

19 (b) Additional criteria.--

20 (1) A participating employee shall not be required to be
21 unemployed.

22 (2) Section 404(d) (1) shall be applicable as if it
23 provided as follows: A participating employee shall be paid
24 compensation in an amount equal to his weekly benefit rate
25 less the total of:

26 (i) an amount equal to the product of his weekly
27 benefit rate and the reduction percentage, rounded to the
28 next lower whole dollar amount; and

29 (ii) remuneration earned from an employer other than
30 the participating employer and remuneration from self-

1 employment that is not disqualifying under section
2 402(h), except that remuneration earned from employment
3 or self-employment that commenced before the
4 participating employer applied for approval of the
5 shared-work plan will not be deducted if the preexisting
6 employment or self-employment does not increase during
7 the effective period of the plan.

8 (3) The department shall not deny compensation to a
9 participating employee for any week during the effective
10 period of the shared-work plan by reason of the application
11 of any provision of this act relating to active search for
12 work or refusal to apply for or accept work other than work
13 offered by the participating employer.

14 (c) Express work hours.--A participating employee's
15 eligibility for compensation for a week within the effective
16 period of an approved shared-work plan during which the employee
17 works more hours than the number of hours determined under
18 section 1303(a) (5) shall be determined without regard to this
19 article.

20 (d) Number of hours.--For purposes of this section, the
21 following shall apply:

22 (1) To the extent that a participating employee works
23 fewer hours during a week than the number of hours determined
24 under section 1303(a) (5) by reason of illness, holidays,
25 vacation or the like, the employee will be deemed to have
26 worked the number of hours determined under section 1303(a)
27 (5).

28 (2) To the extent that a participating employee receives
29 remuneration for a week from the participating employer for
30 hours in excess of the number of hours determined under

section 1303(a)(5), the employee will be deemed to have worked more hours than the number of hours determined under section 1303(a)(5) for that week.

Section 1307. Modification of plan.

An employer may apply to the department for approval to modify a shared-work plan to meet changed conditions. The department shall reevaluate the plan and may approve the modified plan if it meets the requirements for approval under section 1304. If the modifications cause the shared-work plan to fail to meet the requirements for approval, the department shall disapprove the proposed modifications.

Section 1308. Termination of plan.

(a) General rule.--The secretary may terminate a shared-work plan for good cause.

(b) Good cause.--For purposes of subsection (a), good cause includes any of the following:

(1) The plan is not being executed according to its approved terms and conditions.

(2) The participating employer fails to comply with the assurances given in the plan.

(3) The participating employer or a participating employee violates any criteria on which approval of the plan was based.

(c) Termination by employer.--The employer may terminate a shared-work plan by written notice to the department.

Section 1309. Department discretion.

The decision to approve or disapprove a shared-work plan, to approve or disapprove a modification of a shared-work plan or to terminate a shared-work plan will be made within the department's discretion. Such decisions are not subject to the

1 appeal provisions of Article V.

2 Section 1310. Publication of notice.

3 The department shall transmit to the Legislative Reference
4 Bureau for publication in the Pennsylvania Bulletin notice that
5 the provision of this article have been approved by the
6 Department of Labor as required under section 3304(a)(4)(E) of
7 the Federal Unemployment Tax Act (Public Law 86-778, 26 U.S.C. §
8 3304(a)(4)(E)) and section 303(a)(5) of the Social Security Act
9 (49 Stat. 620, 42 U.S.C. § 503(a)(5)).

10 Section 1311. Severability.

11 Notwithstanding any other section of this act, if any
12 provision or provisions of this article cause the Department of
13 Labor to withhold approval of this article as required under
14 section 3304(a)(4)(E) of the Federal Unemployment Tax Act (26
15 U.S.C. 3304(a)(4)(E) and section 303(a)(5) of the Social
16 Security Act, (42 U.S.C. § 503(a)(5)), the department is
17 authorized to permanently suspend the provision or provisions.

18 Section 1312. Expiration.

19 This article shall expire five years from its effective date.

20 Section 2. This act shall take effect when notice is
21 published in the Pennsylvania Bulletin under section 1310 of the
22 act, or July 1, 2010, whichever is later.