

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 860 Session of 2011

INTRODUCED BY McILHINNEY, GREENLEAF, WAUGH, PILEGGI, WASHINGTON,  
TOMLINSON AND MENSCH, MARCH 22, 2011

REFERRED TO LABOR AND INDUSTRY, MARCH 22, 2011

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.

25 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

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

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

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

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

21 "Shared-work plan." A plan for reducing unemployment under  
22 which participating employees of an affected unit share the work  
23 remaining after reduction in their normal weekly hours of work.

24 Section 1302. Application to approve plan.

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

28 (1) The employer has filed all quarterly reports and  
29 other reports required under this act and has paid all  
30 contribution, reimbursement, interest and penalty due through

1 the date of the employer's application.

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

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

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

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

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

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

28 (4) A list of the week or weeks within the requested  
29 effective period of the plan during which participating  
30 employees are anticipated to work fewer hours than the number

1 of hours determined under section 1303(a) (5) due to  
2 circumstances included in paragraph (3).

3 (5) The employer's certification that the implementation  
4 of a shared-work plan is in lieu of temporary layoffs that  
5 would affect at least 10% of the employees in the affected  
6 unit and would result in an equivalent reduction in work  
7 hours.

8 (6) The employer's assurance that it will abide by all  
9 terms and conditions of this article.

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

12 Section 1303. Plan requirements.

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

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

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

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

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

25 (3) There are no fewer than two participating employees,  
26 determined without regard to corporate officers.

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

29 (5) The number of hours a participating employee will  
30 work each week during the effective period of the plan is

1 determined by the following formula:

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

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

7 (7) If any participating employee is covered by a  
8 collective bargaining agreement, the plan is approved in  
9 writing by the collective bargaining representative.

10 (8) The plan does not affect the fringe benefits of any  
11 participating employee not covered by a collective bargaining  
12 agreement.

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

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

18 (11) The reduction percentage satisfies the requirements  
19 of subsection (b).

20 (b) Reduction percentage.--The reduction percentage under an  
21 approved shared-work plan shall meet all of the following  
22 requirements:

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

25 (2) The reduction percentage shall be the same for all  
26 participating employees.

27 (3) The reduction percentage shall not change during the  
28 period of the shared-work plan unless the plan is modified in  
29 accordance with section 1308.

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

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

Section 1305. Effective period of plan.

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

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

Section 1306. Criteria for compensation.

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

(1) A participating employee shall not be required to be unemployed within the meaning of section 4(u) or file claims for compensation under section 401(c).

(2) Notwithstanding section 404(d)(1), a participating employee shall be paid compensation in an amount equal to the product of his weekly benefit rate and the reduction

percentage, rounded to the next lower whole dollar amount.

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

(4) A participating employee satisfies the requirements of section 401(d)(1) if the employee is able to work and is available for the employee's normal weekly hours of work with the participating employer.

(b) Equivalent remuneration.--For purposes of subsection (a), if a participating employee works fewer hours than the number of hours determined under section 1303(a)(5) for the participating employer during a week within the effective period of the approved shared-work plan, but receives remuneration equal to remuneration the employee would have received if the employee had worked the number of hours determined under section 1303(a)(5), the employee will be deemed to have worked the number of hours determined under section 1303(a)(5) during that week.

(c) Inapplicability of article.--A participating employee's eligibility for compensation for a week within the effective period of an approved shared-work plan shall be determined without regard to this article under any of the following circumstances:

(1) The employee works fewer hours than the number of hours determined under section 1303(a)(5) for the participating employer during the week and subsection (b) does not apply.

1       (2) The employee works more hours than the number of  
2       hours determined under section 1303(a)(5) for the  
3       participating employer during the week.

4       (3) The employee receives remuneration for the week from  
5       the participating employer for hours in excess of the number  
6       of hours determined under section 1303(a)(5).

7       Section 1307. Participating employer responsibilities.

8       (a) Filing claims.--The department shall establish a  
9       schedule of consecutive two-week periods within the effective  
10      period of the shared work plan. The department may, as  
11      necessary, include one-week periods in the schedule and revise  
12      the schedule. At the end of each scheduled period, the  
13      participating employer shall file claims for compensation for  
14      the week or weeks within the period on behalf of the  
15      participating employees. The claims shall be filed no later than  
16      the last day of the week immediately following the period,  
17      unless an extension of time is granted by the department for  
18      good cause. The claims shall be filed in the manner prescribed  
19      by the department and shall contain all information required by  
20      the department to determine the eligibility of the participating  
21      employees for compensation.

22      (b) Benefit charges.--Notwithstanding any other provision of  
23      this act, compensation paid to participating employees for weeks  
24      within the effective period of an approved shared-work plan will  
25      be charged to the participating employer.

26      Section 1308. Modification of plan.

27      An employer may apply to the department for approval to  
28      modify a shared-work plan to meet changed conditions. The  
29      department shall reevaluate the plan and may approve the  
30      modified plan if it meets the requirements for approval under



1 section 1304. If the modifications cause the shared-work plan to  
2 fail to meet the requirements for approval, the department shall  
3 disapprove the proposed modifications.

4 Section 1309. Termination of plan.

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

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

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

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

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

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

18 Section 1310. Department discretion.

19 The decision to approve or disapprove a shared-work plan, to  
20 approve or disapprove a modification of a shared-work plan or to  
21 terminate a shared-work plan will be made within the  
22 department's discretion. Such decisions are not subject to the  
23 appeal provisions of Article V.

24 Section 1311. Publication of notice.

25 The department shall transmit to the Legislative Reference  
26 Bureau for publication in the Pennsylvania Bulletin notice that  
27 the provisions of this article have been approved by the  
28 Department of Labor as required under section 3304(a)(4)(E) of  
29 the Federal Unemployment Tax Act (Public Law 86-778, 26 U.S.C. §  
30 3304(a)(4)(E)) and section 303(a)(5) of the Social Security Act

1 (49 Stat. 620, 42 U.S.C. § 503(a)(5)).

2 Section 1312. Severability.

3 Notwithstanding any other section of this act, if any  
4 provision or provisions of this article cause the Department of  
5 Labor to withhold approval of this article as required under  
6 section 3304(a)(4)(E) of the Federal Unemployment Tax Act  
7 (Public Law 86-778, 26 U.S.C. 3304(a)(4)(E)) and section 303(a)  
8 (5) of the Social Security Act (49 Stat.620, 42 U.S.C. § 503(a)  
9 (5)), the department is authorized to permanently suspend the  
10 provision or provisions.

11 Section 1313. Expiration.

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

13 Section 2. This act shall take effect as follows:

14 (1) The addition of Article XIII of the act shall take  
15 effect upon publication in the Pennsylvania Bulletin of the  
16 notice required under section 1311 of the act or July 1,  
17 2011, whichever occurs later.

18 (2) The remainder of this act shall take effect  
19 immediately.