

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1759 Session of
2005

INTRODUCED BY REICHLEY, BOYD, CAPPELLI, CLYMER, CREIGHTON,
DALLY, FRANKEL, JAMES, MCGILL, MCILHATTAN, R. MILLER, NICKOL,
PICKETT, ROSS, STEIL, TURZAI AND YOUNGBLOOD, JUNE 21, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 21, 2005

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," providing for a shared
16 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:

22 ARTICLE XIII

23 SHARED WORK PROGRAM

24 Section 1301. Definitions.

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

"Affected unit." A specified department, shift or other 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 1304 (relating to evaluation of criteria) and which the department approves in writing.

"Employer." The term includes all public and private employers, whether contributing or reimbursing.

"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.

"Full-time hours." The normal full-time hours of the employer but not less than 35 hours and not more than 40 hours per week. The term does not include overtime as defined in the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.).

"Participating employee." An employee who works a reduced number of hours under a shared work plan.

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

"Shared work benefit." An unemployment compensation benefit that is payable to a participating employee.

"Shared work plan." A plan for reducing unemployment under which participating employees who are members of an affected unit share the work remaining after reduction in their normal

1 weekly hours of work.

2 "Shared work program." A program designed to reduce
3 unemployment and stabilize the work force by allowing certain
4 employees to collect a pro rata portion of unemployment
5 compensation benefits if the employees share the work remaining
6 after a reduction in the total number of hours of work and a
7 corresponding reduction in wages.

8 Section 1302. Establishment of program.

9 The department shall establish a voluntary shared work
10 program as provided by this article. The department may adopt
11 rules and regulations and establish procedures necessary to
12 administer this program.

13 Section 1303. Application for shared work.

14 An employer seeking to participate in the shared work program
15 must submit a written shared work plan application to the
16 department for the department's approval. The application shall
17 be made according to such forms and procedures as the department
18 may specify and shall include information required by the
19 department.

20 Section 1304. Evaluation of criteria.

21 The department shall approve a shared work plan if all of the
22 following are met:

23 (1) The shared work plan applies to and identifies a
24 specific affected unit.

25 (2) The employees in the affected unit are identified by
26 name and Social Security number and the employer certifies
27 that each employee in the affected unit would be eligible for
28 normal unemployment compensation under Article IV (relating
29 to compensation).

30 (3) The shared work plan reduces the normal weekly hours

1 of work for an employee in the affected unit by not less than
2 20% and not more than 60%.

3 (4) The shared work plan describes the manner in which
4 the participating employer treats the fringe benefits of each
5 employee in the affected unit.

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

10 (6) The employer has filed all reports required to be
11 filed under this article for all past and current periods and
12 has paid all contributions or reimbursements due for all past
13 and current periods.

14 (7) The plan is approved in writing by the collective
15 bargaining agent for each collective bargaining agreement
16 covering any individual in the affected unit.

17 (8) The plan does not serve as a subsidy to seasonal
18 employers during the off-season or as a subsidy to employers
19 who traditionally use part-time employees.

20 (9) The plan specifies an expiration date that is not
21 more than six months after the effective date of the shared
22 work plan.

23 (10) The employer is a contributing employer as defined
24 in Article III (relating to contributions by employers and
25 employees) or has elected to make reimbursement payments as
26 defined in Articles X (relating to benefits to employees of
27 the Commonwealth), XI (relating to employees of nonprofit
28 organizations) and XII (relating to employees of political
29 subdivisions).

30 (11) As a condition for approval, a participating

employer must agree to furnish the department with reports relating to the operation of its shared work plan as requested by the department.

Section 1305. Approval or denial of shared work plan.

The department shall approve or deny a shared work plan no later than the 15th day after the day the shared work plan application is received by the department. The department shall approve or deny a shared work plan in writing and shall, in instances where an application is denied, include the reasons for the denial. When the department denies a shared work plan, the decision is final and may not be appealed. Following a denial, an employer may submit a new shared work plan application after a 15-day period following the denial.

Section 1306. Implementation and expiration dates.

A shared work plan is effective on the date it is approved by the department. The shared work plan expires six months after the effective date of the plan.

Section 1307. Modification of plan.

(a) General rule.--An employer may modify a shared work plan to meet changed conditions if the modification conforms to the basic provisions of the plan as approved by the department. The employer must report the changes made to the plan in writing to the department before implementing the changes.

(b) Reevaluation by secretary.--If the original plan is substantially modified, the secretary shall reevaluate the plan and may approve the modified plan if it meets requirements for approval under section 1304 (relating to evaluation of criteria). If the modifications cause the shared work plan to fail to meet the requirements for approval, the secretary shall deny approval to the modifications.

1 (c) Approval of modified plan.--The approval of a modified
2 plan does not affect the expiration date originally set for that
3 shared work plan.

4 Section 1308. Termination of plan.

5 The secretary may terminate a shared work plan for good cause
6 if the secretary determines that the plan is not being executed
7 according to the terms and intent of the shared work program.

8 Good cause shall include, but not be limited to, failure to
9 comply with the assurances given in the plan, unreasonable
10 revision of productivity standards for the affected group,
11 conduct or occurrences tending to defeat the intent and
12 effective operation of the plan and violation of any criteria on
13 which approval of the plan was based.

14 Section 1309. Employee criteria for shared work benefits.

15 (a) Eligibility criteria.--An individual is considered to be
16 unemployed for the purpose of the shared work program and is
17 eligible to receive shared work benefits with respect to any
18 week in which the department finds that:

19 (1) The individual is a participating employee in an
20 affected unit subject to a shared work plan that was approved
21 before the week in question and is in effect for that week.

22 (2) The individual is able to work and is available for
23 additional hours of work or full-time work with the
24 participating employer.

25 (3) The individual's normal weekly hours of work have
26 been reduced by at least 20% but not more than 60%, with a
27 corresponding reduction in wages.

28 (4) The individual has been continuously on the payroll
29 of an affected unit for at least three months immediately
30 before the employer submits a shared work plan for the

1 affected unit.

2 (b) Denial of benefits.--The department shall not deny
3 benefits under a shared work plan to a participating employee
4 based on availability for work or work search requirements or
5 for a refusal to apply for or to accept work with an employer
6 other than the participating employer as required under Article
7 IV (relating to compensation). An individual eligible for shared
8 work benefits shall not be subject to the provisions of Article
9 IV relating to partial unemployment benefits.

10 (c) Work in excess of reduced hours.--The department shall
11 not pay shared work benefits to an individual for any week in
12 which the individual performs work for the participating
13 employer in excess of the reduced hours established under the
14 shared work plan unless there is a corresponding modification to
15 the plan pursuant to section 1307 (relating to modification of
16 plan).

17 (d) Prior overpayments.--If an individual who is eligible to
18 receive shared work benefits has a prior overpayment which is
19 still outstanding, the department shall offset the overpayment
20 from shared work benefits in accordance with Article VIII
21 (relating to penalty provisions).

22 (e) Child support obligation.--If an individual who is
23 eligible to receive shared work benefits has been identified as
24 having outstanding child support obligations, the department
25 shall reduce the shared work benefits as provided in Article VII
26 (relating to protection of rights and compensation).

27 Section 1310. Payment of shared work benefits.

28 (a) General rule.--The department shall pay an individual
29 who is eligible for shared work benefits under this article a
30 weekly shared work benefit amount equal to the individual's

regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan.

(b) Maximum total benefits.--In no event shall total benefits paid in any benefit year, either under Article IV or this article, or both, exceed the maximum amount for which a claimant would be eligible under Article IV (relating to compensation).

(c) Period of eligibility.--An individual shall not be eligible to receive shared work benefits for more than 26 calendar weeks during the 12-month period of the shared work plan.

(d) Dependency allowance.--An individual who is eligible for shared work benefits shall not be eligible to receive a dependency allowance.

(e) Extended benefits.--An individual who has received all of the shared work benefits and regular unemployment compensation benefits available to him in a benefit year is an exhaustee for purposes of Article IV-A (relating to extended benefits program) and is entitled to receive extended benefits under Article IV-A if the claimant is otherwise eligible for such benefits.

(f) Ineligibility for other benefits.--While an affected employee applies for or receives shared work benefits, the affected employee is not eligible for:

(1) extended benefits;

(2) supplemental Federal unemployment compensation;

(3) benefits under any other Federal or State program;

or

1 (4) partial unemployment benefits as provided under
2 Article IV.

3 (g) Unemployment Compensation Fund.--All shared work
4 benefits under this article shall be payable from the
5 Unemployment Compensation Fund under Article VI (relating to
6 Unemployment Compensation Fund and Administration Fund).
7 Section 1311. Allocation of shared work benefit charges.

8 Shared work unemployment compensation shall be charged to the
9 employer's experience rated account in the same manner as
10 unemployment compensation is charged under Article III (relating
11 to contributions by employers and employes). Employers liable
12 for reimbursements in lieu of contributions shall have shared
13 work unemployment compensation attributed to service in their
14 employ in the same manner as unemployment compensation is
15 attributed.

16 Section 2. This act shall take effect in 60 days.