

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,
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YOUNGBLOOD AND MANN, JANUARY 25, 2010

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 17, 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 XIIISHARED WORK PROGRAM

1 Section 1301. Definitions.

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

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

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

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

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

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

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

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

26 Section 1302. Application to approve plan.

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

30 (1) The employer has filed all quarterly reports and

1 other reports required under this act and has paid all
2 contribution, reimbursement, interest and penalty due through
3 the date of the employer's application.

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

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

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

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

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

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

30 (4) A LIST OF THE WEEK OR WEEKS WITHIN THE REQUESTED ←

1 EFFECTIVE PERIOD OF THE PLAN DURING WHICH PARTICIPATING
2 EMPLOYEES ARE ANTICIPATED TO WORK FEWER HOURS THAN THE NUMBER
3 OF HOURS DETERMINED UNDER SECTION 1303(A) (5) DUE TO
4 CIRCUMSTANCES INCLUDED IN PARAGRAPH (3).

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

10 (6) THE EMPLOYER'S ASSURANCE THAT IT WILL ABIDE BY ALL ←
11 TERMS AND CONDITIONS OF THIS ARTICLE.

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

14 Section 1303. Plan requirements.

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

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

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

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

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

27 (3) There are no fewer than two participating employees, ←
28 DETERMINED WITHOUT REGARD TO CORPORATE OFFICERS.

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

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

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

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

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

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

15 ~~(9) The plan does not serve as a subsidy to seasonal~~ ←
16 ~~employers during the off season or as a subsidy to employers~~
17 ~~who traditionally use part-time employees.~~

18 ~~(10) (9) The effective period of the plan is not more~~ ←
19 ~~than 52 consecutive weeks.~~

20 ~~(11) (10) The effective period of the plan combined with~~ ←
21 ~~effective periods of the participating employer's prior plans~~
22 ~~does not equal more than 104 weeks out of a 156-week period.~~

23 ~~(12) (11) The reduction percentage satisfies the~~ ←
24 ~~requirements of subsection(b).~~

25 (b) Reduction percentage.--The reduction percentage under an
26 approved shared-work plan shall meet all of the following
27 requirements:

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

30 (2) The reduction percentage shall be the same for all

participating employees.

(3) The reduction percentage shall not change during the
period of the shared-work plan unless the plan is modified in
accordance with section ~~1307~~ 1308.

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
provided for in subsection (b).

~~(b) Additional criteria.--FOLLOWS:~~

1 (1) A participating employee shall not be required to be
2 unemployed WITHIN THE MEANING OF SECTION 4(U) OR FILE CLAIMS ←
3 FOR COMPENSATION UNDER SECTION 401(C).

4 (2) Section 404(d)(1) shall be applicable as if it
5 provided as follows: A participating employee shall be paid
6 compensation in an amount equal to THE PRODUCT OF his weekly ←
7 benefit rate less the total of: ←

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

11 (ii) remuneration earned from an employer other than
12 the participating employer and remuneration from self-
13 employment that is not disqualifying under section
14 402(h), except that remuneration earned from employment
15 or self employment that commenced before the
16 participating employer applied for approval of the
17 shared work plan will not be deducted if the preexisting
18 employment or self employment does not increase during
19 the effective period of the plan. AND THE REDUCTION ←
20 PERCENTAGE, ROUNDED TO THE NEXT LOWER WHOLE DOLLAR
21 AMOUNT.

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

28 (4) A PARTICIPATING EMPLOYEE SATISFIES THE REQUIREMENTS ←
29 OF SECTION 401(D)(1) IF THE EMPLOYEE IS ABLE TO WORK AND IS
30 AVAILABLE FOR THE EMPLOYEE'S NORMAL WEEKLY HOURS OF WORK WITH

1 THE PARTICIPATING EMPLOYER.

2 (B) EQUIVALENT REMUNERATION.--FOR PURPOSES OF SUBSECTION
3 (A), IF A PARTICIPATING EMPLOYEE WORKS FEWER HOURS THAN THE
4 NUMBER OF HOURS DETERMINED UNDER SECTION 1303(A) (5) FOR THE
5 PARTICIPATING EMPLOYER DURING A WEEK WITHIN THE EFFECTIVE PERIOD
6 OF THE APPROVED SHARED-WORK PLAN, BUT RECEIVES REMUNERATION AS
7 IF THE EMPLOYEE HAD WORKED THE NUMBER OF HOURS DETERMINED UNDER
8 SECTION 1303(A) (5), THE EMPLOYEE WILL BE DEEMED TO HAVE WORKED
9 THE NUMBER OF HOURS DETERMINED UNDER SECTION 1303(A) (5) DURING
10 THAT WEEK.

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

17 (d) ~~Number of hours.~~ For purposes of this section, the
18 following shall apply UNDER ANY OF THE FOLLOWING CIRCUMSTANCES: ←

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

25 (2) ~~To the extent that a participating~~ FOR THE ←
26 PARTICIPATING EMPLOYER DURING THE WEEK AND SUBSECTION (B)
27 DOES NOT APPLY.

28 (2) THE EMPLOYEE WORKS MORE HOURS THAN THE NUMBER OF
29 HOURS DETERMINED UNDER SECTION 1303(A) (5) FOR THE
30 PARTICIPATING EMPLOYER DURING THE WEEK.

1 (3) THE employee receives remuneration for a THE week
2 from the participating employer for hours in excess of the
3 number of hours determined under section 1303(a)(5), the
4 employee will be deemed to have worked more hours than the
5 number of hours determined under section 1303(a)(5) for that
6 week.

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 1307 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

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~~ 1309. 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~~ 1310. 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 appeal provisions of Article V.

Section ~~1310~~ 1311. Publication of notice.

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

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

2 Section ~~1311~~ 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 (26
7 U.S.C. 3304(a)(4)(E) and section 303(a)(5) of the Social
8 Security Act, (42 U.S.C. § 503(a)(5)), the department is
9 authorized to permanently suspend the provision or provisions.

10 Section ~~1312~~ 1313. Expiration. ←

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

12 Section 2. This act shall take effect when notice is
13 published in the Pennsylvania Bulletin under section ~~1310~~ 1311 ←
14 of the act, or July 1, 2010, whichever is later.