

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1256 Session of 2011

INTRODUCED BY REICHLEY, BOYD, CLYMER, CUTLER, DAY, DENLINGER, FARRY, GEIST, GIBBONS, GINGRICH, GRELL, GROVE, HEFFLEY, HESS, HICKERNELL, KAUFFMAN, KNOWLES, MILLER, MILNE, MURT, QUINN, SCHRODER, STEVENSON, SWANGER AND WATSON, APRIL 1, 2011

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 1, 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," 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:

ARTICLE XIII

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 plan." An employer's shared work plan which meets the requirements of section 1304 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 which 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 weekly hours of work.

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

7 Section 1302. Establishment of program.

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

12 Section 1303. Application for shared work.

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

18 Section 1304. Evaluation of criteria.

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

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

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

27 (3) The shared work plan reduces the normal weekly hours
28 of work for an employee in the affected unit by not less than
29 20% and not more than 60%.

30 (4) The shared work plan describes the manner in which

1 the participating employer treats the fringe benefits of each
2 employee in the affected unit.

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

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

11 (7) The plan is approved in writing by the collective
12 bargaining agent for each collective bargaining agreement
13 covering any individual in the affected unit.

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

17 (9) The plan specifies an expiration date which is not
18 more than six months after the effective date of the shared
19 work plan.

20 (10) The employer is a contributing employer as defined
21 in Article III or has elected to make reimbursement payments
22 as defined in Articles X, XI and XII.

23 (11) The employer agrees to furnish the department with
24 reports relating to the operation of its shared work plan as
25 requested by the department.

26 Section 1305. Approval or denial of shared work plan.

27 The department shall approve or deny a shared work plan no
28 later than the 15th day after the day the shared work plan
29 application is received by the department. The department shall
30 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 shared work 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 shared work plan as approved by the department. The employer must report the changes made to the shared work plan in writing to the department before implementing the changes.

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

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

Section 1308. Termination of plan.

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

work program. Good cause shall include, failure to comply with
the assurances given in the shared work plan, unreasonable
revision of productivity standards for the affected group,
conduct or occurrences tending to defeat the intent and
effective operation of the shared work plan and violation of any
criteria on which approval of the shared work plan was based.

Section 1309. Employee criteria for shared work benefits.

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

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

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

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

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

(b) Denial of benefits.--The department shall not deny
benefits under a shared work plan to a participating employee
based on availability for work or work search requirements or
for a refusal to apply for or to accept work with an employer
other than the participating employer as required under Article

1 IV. An individual eligible for shared work benefits shall not be
2 subject to the provisions of Article IV relating to partial
3 unemployment benefits.

4 (c) Work in excess of reduced hours.--The department shall
5 not pay shared work benefits to an individual for any week in
6 which the individual performs work for the participating
7 employer in excess of the reduced hours established under the
8 shared work plan unless there is a corresponding modification to
9 the plan under section 1307.

10 (d) Prior overpayments.--If an individual who is eligible to
11 receive shared work benefits has a prior overpayment which is
12 still outstanding, the department shall offset the overpayment
13 from shared work benefits in accordance with Article VIII.

14 (e) Child support obligation.--If an individual who is
15 eligible to receive shared work benefits has been identified as
16 having outstanding child support obligations, the department
17 shall reduce the shared work benefits as provided in Article
18 VII.

19 Section 1310. Payment of shared work benefits.

20 (a) General rule.--The department shall pay an individual
21 who is eligible for shared work benefits under this article a
22 weekly shared work benefit amount equal to the individual's
23 regular weekly benefit amount for a period of total unemployment
24 multiplied by the nearest full percentage of reduction of the
25 individual's hours as set forth in the employer's shared work
26 plan.

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

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

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

8 (e) Extended benefits.--An individual who has received all
9 of the shared work benefits and regular unemployment
10 compensation benefits available in a benefit year is an
11 exhaustee for purposes of Article IV-A and is entitled to
12 receive extended benefits under Article IV-A if the individual
13 is otherwise eligible for those benefits.

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

17 (1) extended benefits;

18 (2) supplemental Federal unemployment compensation;

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

20 or

21 (4) partial unemployment benefits as provided under
22 Article IV.

23 (g) Unemployment Compensation Fund.--All shared work
24 benefits under this article shall be payable from the
25 Unemployment Compensation Fund under Article VI.

26 Section 1311. Allocation of shared work benefit charges.

27 Shared work unemployment compensation shall be charged to the
28 employer's experience rated account in the same manner as
29 unemployment compensation is charged under Article III.
30 Employers liable for reimbursements in lieu of contributions

1 shall have shared work unemployment compensation attributed to
2 service in their employ in the same manner as unemployment
3 compensation is attributed.

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