

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 677 Session of 2011

INTRODUCED BY TARTAGLIONE, HUGHES, GREENLEAF, FONTANA, COSTA,
YUDICHAK, BREWSTER AND FARNESE, MARCH 28, 2011

REFERRED TO LABOR AND INDUSTRY, MARCH 28, 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:

22 ARTICLE XIII

23 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" or "approved plan." An
7 employer's shared-work plan which meets the requirements of
8 section 1303 and which the 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 weekly hours of work are reduced under
20 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 illness, holidays, vacation or similar circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

1 Section 1305. Effective period of plan.

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

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

10 Section 1306. Criteria for compensation.

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

18 (b) Additional criteria.--

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

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

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

28 (ii) remuneration earned from an employer other than
29 the participating employer and remuneration from self-
30 employment that is not disqualifying under section

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

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

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

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

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

27 (2) To the extent that a participating employee receives
28 remuneration for a week from the participating employer for
29 hours in excess of the number of hours determined under
30 section 1303(a) (5), the employee will be deemed to have

1 worked more hours than the number of hours determined under
2 section 1303(a)(5) for that week.

3 Section 1307. Modification of plan.

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

11 Section 1308. Termination of plan.

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

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

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

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

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

23 (c) Periodic review.--The department shall have the
24 discretion to review shared work plans, on a periodic basis, to
25 ensure that employers are meeting program requirements and
26 guidelines.

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

29 Section 1309. Department discretion.

30 The decision to approve or disapprove a shared-work plan, to

1 approve or disapprove a modification of a shared-work plan or to
2 terminate a shared-work plan will be made within the
3 department's discretion. Such decisions are not subject to the
4 appeal provisions of Article V.

5 Section 1310. Publication of notice.

6 The department shall transmit to the Legislative Reference
7 Bureau for publication in the Pennsylvania Bulletin notice that
8 the provision of this article have been approved by the
9 Department of Labor as required under section 3304(a)(4)(E) of
10 the Federal Unemployment Tax Act (Public Law 86-778, 26 U.S.C. §
11 3304(a)(4)(E)) and section 303(a)(5) of the Social Security Act
12 (49 Stat. 620, 42 U.S.C. § 503(a)(5)).

13 Section 1311. Report.

14 An annual report shall be submitted by the department to the
15 Governor, the chairman and minority chairman of the Labor and
16 Industry Committee of the Senate and the chairman and minority
17 chairman of the Labor and Industry Committee of the House of
18 Representatives regarding shared work plans under this article.
19 The report shall include the number of approved shared work
20 plans, the number of participating employers, the number of
21 participating employees, the amount of compensation paid to
22 participating employees and any other information that the
23 department determines is relevant to assess the impact of this
24 article on the Unemployment Compensation Fund. The first report
25 shall be submitted on the first day of March following the first
26 complete calendar year during which this article is in effect,
27 and subsequent reports shall be submitted on the first day of
28 March of each year thereafter.

29 Section 1312. Severability.

30 Notwithstanding any other section of this act, if any

1 provision or provisions of this article cause the Department of
2 Labor to withhold approval of this article as required under
3 section 3304(a)(4)(E) of the Federal Unemployment Tax Act (26
4 U.S.C. 3304(a)(4)(E) and section 303(a)(5) of the Social
5 Security Act, (42 U.S.C. § 503(a)(5)), the department is
6 authorized to permanently suspend the provision or provisions.
7 Section 1313. Expiration.

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

9 Section 2. This act shall take effect when notice is
10 published in the Pennsylvania Bulletin under section 1310 of the
11 act, or July 1, 2011, whichever is later.