



Ohio Legislative Service Commission

Bill Analysis

Julie A. Rishel

H.B. 432

128th General Assembly
(As Introduced)

Reps. Pryor, Brown, Dodd, Domenick, Dyer, Hagan, Stewart, Weddington

BILL SUMMARY

- Creates the Shared Work Unemployment Compensation Program.
- Allows an employer who wishes to participate in the Program to submit a shared work plan to the Director of Job and Family Services for approval.
- Lists requirements that an employer must satisfy to have an approved shared work plan, including that the plan must reduce the normal weekly hours of work for an employee in the affected unit identified in the plan by at least 10% but not more than 40%.
- Specifies that a shared work plan takes effect on the date the Director approves the plan and expires on the last day of the 12th calendar month beginning after the effective date of the plan.
- Prohibits an employer that traditionally has used part-time employees or a seasonal employer from implementing a shared work plan to subsidize the employer's employees.
- Lists eligibility requirements for employees to receive shared work benefits.
- Limits the amount of shared work benefits an employee may receive to 26 weeks, regardless of whether the employee has exhausted the employee's total benefit amount for the employee's benefit year.

CONTENT AND OPERATION

Background--partial unemployment benefits

Under continuing law, an individual must satisfy all of the following to be eligible for unemployment compensation benefits:

- (1) Have worked in "covered employment"¹ for at least 20 "qualifying weeks"² within the individual's "base period"³;
- (2) Have had an average weekly wage of 27½% of the statewide average weekly wage within the base period currently, a minimum of \$213⁴;
- (3) Have become unemployed for a reason that is not a disqualifying reason⁵;
- (4) Be able to, available for, and actively seeking work;
- (5) Be a United States citizen or legal alien (R.C. 4141.01(R)(1) and 4141.29).

Under continuing law, an individual is "partially unemployed" in any week if, due to involuntary loss of work, the total remuneration payable to the individual for such week is less than the individual's weekly benefit amount (R.C. 4141.01(N)). Benefits are payable to each partially unemployed individual otherwise eligible on account of each week of involuntary partial unemployment after the specified waiting

¹ "Covered employment" generally encompasses almost all employment except for certain exclusions including employment involving full-time students, family businesses, churches, casual labor, and work for some nonprofit organizations. Exclusions are defined in R.C. 4141.01(B)(3).

² A "qualifying week" is any calendar week in an individual's base period with respect to which an individual earns or is paid remuneration in employment subject to Ohio's Unemployment Compensation Law (R.C. Chapter 4141.) (R.C. 4141.01(O)(1)).

³ The "base period" is the first four of the last five completed calendar quarters that precede the week in which the initial claim is filed. Employers report wage information on a quarterly basis. The most recent quarter is not utilized in determining eligibility in order to allow lag time for reporting. This rule may be modified, however, for individuals who have insufficient qualifying weeks in the normal base period. For such individuals, the four most recently completed calendar quarters are utilized in determining eligibility. This period is referred to as an "alternate base period." (R.C. 4141.01(Q).)

⁴ Ohio Department of Job and Family Services, available at http://jfs.ohio.gov/unemp_comp_faq/index.stm (visited February 4, 2010).

⁵ Disqualifying reasons include unemployment due to a labor dispute, quitting work without just cause or being discharged with just cause, commitment to a penal institution, quitting to marry, or because of other domestic obligations (R.C. 4141.29).

period. Those benefits are in an amount equal to the individual's weekly benefit amount less that part of the remuneration payable to the individual with respect to such week that is in excess of 20% of the individual's weekly benefit amount (and the resulting amount rounded to the next lower multiple of one dollar). (R.C. 4141.30(C).)

Shared Work Unemployment Compensation Program

The bill creates the Shared Work Unemployment Compensation Program. Under the bill, an employer who wishes to participate in the Program must submit a plan to the Director of Job and Family Services that satisfies the requirements listed in the bill (see "**Plan requirements and approval**" below). (R.C. 4141.50.) A "shared work plan" is a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in the employees' normal weekly hours of work (R.C. 4141.01(KK)). If an employee the employer covers under the plan is subject to a collective bargaining agreement, the employer must have the employee's collective bargaining agent approve the plan in writing, and the employer must submit that approval to the Director with the employer's proposed plan. (R.C. 4141.50.)

The bill prohibits an employer that traditionally has used part-time employees from implementing a shared work plan to subsidize the employer's employees. Additionally, a seasonal employer⁶ must not implement a shared work plan to subsidize the seasonal employer's employees during the off-season. (R.C. 4141.51(B).)

Plan requirements and approval

The bill requires the Director to approve a shared work plan submitted under the bill if all of the following are satisfied:

- (1) The employer identifies a specific affected unit in the plan to which the plan will apply.
- (2) The employer identifies in the plan the employees in the affected unit by name and social security number.
- (3) The employer includes a provision in the plan that reduces the normal weekly hours of work for an employee in the affected unit identified in the plan by at least 10% but not more than 40%.

⁶ A "seasonal employer" is an employer determined by the Director to be an employer whose operations and business, with the exception of certain administrative and maintenance operations, are substantially all in a seasonal industry (R.C. 4141.51(B), by reference to R.C. 4141.33, not in the bill).

(4) The employer states in the plan that the plan applies to at least 10% of the employees within the affected unit.

(5) The employer states in the plan that the participating employer will continue to provide fringe benefits on the same basis as the fringe benefits were provided before the reduction in work hours to implement the plan and that, in no event, will the level of any health benefit provided be reduced due to the reduction in hours.

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

(7) The employer agrees in writing in the plan to furnish the Director reports relating to the operation of the plan as the Director requests in accordance with the bill. (R.C. 4141.51(A).)

The bill defines "affected unit" to mean a group of two or more employees, including a department or shift, designated by an employer to participate in a shared work plan. "Normal weekly hours of work," under the bill, means the number of hours in a week that an employee normally works for an employer or an average of 40 hours per week over a two-week pay period, whichever is less. (R.C. 4141.01(E) and (G).)

Not later than 30 days after the Director receives the plan, the Director must approve or deny a shared work plan and must send a written notice to the employer stating whether the Director approved or denied the plan. If the Director denies approval of a shared work plan, the Director must state the reasons for denying approval in the written notice sent to the employer. (R.C. 4141.51(C).)

A shared work plan approved under the bill takes effect on the date the Director approves the plan and expires on the last day of the 12th calendar month beginning after the plan's effective date. The bill permits the Director to terminate any approved shared work plan for good cause if the plan is not being executed according to the terms and intent of the Shared Work Unemployment Compensation Program. (R.C. 4141.52.)

Upon request of the Director, a participating employer must monitor and evaluate the operation of the participating employer's shared work plan and report the participating employer's findings to the Director (R.C. 4141.54).

Modifying an approved shared work plan

The bill permits a participating employer to modify an approved shared work plan to meet changed conditions regarding the participating employer's business if the

modification conforms to the basic provisions of the plan as approved by the Director. Before implementing the proposed change, the participating employer must report the proposed change in writing to the Director. If the Director determines that the proposed change will result in a substantial modification of the approved plan, the Director must reevaluate the proposed modified plan to determine whether the plan continues to satisfy the requirements listed in (1) to (6) under "**Plan requirements and approval**" above. The Director must approve or deny the modification in accordance with the requirements described under "**Plan requirements and approval**" above. If the Director determines that the proposed change does not result in a substantial modification to the approved plan, the Director must approve the proposed change unless the Director determines that the modification does not conform to the basic provisions of the approved plan. Approval of a modified plan does not affect the plan's original expiration date determined under the bill (see "**Plan requirements and approval**" above). (R.C. 4141.53.)

Eligibility and receipt of benefits

Notwithstanding the requirements in continuing law regarding the eligibility for and receipt of unemployment compensation benefits (R.C. 4141.01 and R.C. 4141.29, 4141.30, or 4141.31, not in the bill), an individual is unemployed for purposes of the Unemployment Compensation Law (R.C. Chapter 4141.) in a week during which the individual is a participating employee under a shared work plan approved under the bill that is in effect for that week. An individual is eligible to receive shared work benefits for a week in which the individual satisfies all of the following:

- (1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before that week and is in effect for that week.
- (2) The individual is able to work and is available for full-time work with the participating employer.
- (3) The individual's normal weekly hours of work have been reduced by at least 10% but not more than 40% and the individual receives a corresponding reduction in wages. (R.C. 4141.55(A) and (B).)

Notwithstanding the requirements in continuing law regarding requirements to receive unemployment compensation benefits as described under "**Background--partial unemployment benefits**," above, the bill prohibits the Director from denying shared work benefits for a week to an otherwise eligible participating employee because the employee is unavailable for work other than as required under (2) immediately above, is not actively searching for work, or refuses to apply for or to accept work with an employer other than the participating employee's participating employer (R.C.

4141.55(C)). Under the bill, the Director must pay a participating employee who is eligible for a weekly shared work benefit in an amount equal to the participating employee's regular weekly benefit amount for a period of total unemployment as described in continuing law multiplied by the nearest full percentage of reduction of the participating employee's wages under the participating employee's participating employer's shared work plan. The Director must round the amount of a shared work benefit that is not a multiple of one dollar to the next highest dollar amount. (R.C. 4141.55(D).)

Under continuing law, the total benefits to which an individual is entitled in any benefit year, whether for partial or total unemployment, or both, cannot exceed the lesser of the following two amounts:

(1) An amount equal to 26 times the individual's weekly benefit amount determined in accordance with continuing law;

(2) An amount computed by taking the sum of 20 times the individual's weekly benefit amount for the first 20 base period qualifying weeks plus one times the weekly benefit amount for each additional qualifying week beyond the first 20 qualifying weeks in the individual's base period (R.C. 4141.30(D), not in the bill).

Under the bill, a participating employee is not entitled to receive shared work benefits and regular unemployment compensation benefits that exceed the maximum total benefits payable to the participating employee in a benefit year. Instead, a participating employee must receive shared work benefits for a maximum of 26 weeks regardless of whether the participating employee has received the total maximum benefits payable for the participating employee's benefit year. An individual who receives shared work benefits is not entitled to receive benefits for partial unemployment for any week during which the individual works as a participating employee. The bill prohibits the Director from paying an individual shared work benefits for a week during which the individual performs paid work for the individual's participating employer that exceeds the reduced hours established under a shared work plan. The bill specifies that an individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under continuing law and is entitled to receive extended benefits under the Unemployment Compensation Law if the individual is otherwise eligible to receive benefits. (R.C. 4141.55(E) and (F).)

Definitions

The following definitions apply to the bill:

"Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer (R.C. 4141.01(FF)).

"Participating employee" means an employee who works a reduced number of hours under an approved shared work plan (R.C. 4141.01(HH)).

"Participating employer" means an employer who has a shared work plan (R.C. 4141.01(II)).

"Shared work benefit" means an unemployment compensation benefit that is payable to a participating employee (R.C. 4141.01(JJ)).

COMMENT

Unemployment compensation is funded through a federal-state partnership. If an employer pays contributions into an "approved" state system, the employer receives almost a 90% credit on the employer's federal unemployment tax. "Approval" requires adherence to strict federal law and voluminous U.S. Department of Labor regulations.

Federal law requires each state to establish a state unemployment compensation fund that is used to pay unemployment benefits in order for employers in that state to receive the tax credit under the Federal Unemployment Tax Act (FUTA).⁷

It appears that, under the federal-state partnership, a state must find some way to pay unemployment benefits. FUTA generally allows states to determine the amount of unemployment benefits they will pay. However, for a state system to comply with FUTA, it would appear that the state has to be able to pay whatever unemployment benefit amount the state establishes.⁸

If a state's fund is depleted, federal law permits a state's governor, or the governor's designee, to apply to the U.S. Secretary of Labor to receive a three-month "advance" for the payment of unemployment benefits if the amount of funds in a state's account in the federal Unemployment Trust Fund is insufficient to pay those benefits.⁹

⁷ 26 U.S.C. §§ 3302 and 3304.

⁸ See 26 U.S.C. § 3304, which requires a state to establish an unemployment compensation fund and to use that fund, with some exceptions, only for the purpose of paying unemployment benefits.

⁹ 42 U.S.C. § 1321 and 20 C.F.R. § 606.4. Ohio's Unemployment Compensation Law allows the Director of Job and Family Services to apply for an advance to the Unemployment Compensation Fund and to do all things necessary or required to obtain, and to arrange for the repayment of, an advance (R.C. 4141.43(F)).

If a state has received a federal advance, the state is more restricted than usual when it comes to making changes to its unemployment compensation system. Essentially, a state cannot take any action, whether legislative, administrative, or judicial, that results or will result in either (1) a reduction in the state's unemployment tax effort or (2) a decrease in the net solvency of the state's unemployment compensation system. The former actions include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable, including surtaxes. The latter comprises actions that result or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits.¹⁰ If a state does take such action, the state may not be able to limit or avoid the reduction in FUTA tax credit that is used to repay the advance.

Since Ohio has received an advance from the federal government, and if that advance remains outstanding after specified deadlines have passed, the General Assembly may, in a practical manner, be limited in the unemployment legislation it enacts. According to the U.S. Department of Labor, when a state is borrowing to pay benefits, the Department is most concerned with state actions that "diminish funding goals" such as a decrease in the contribution rate paid by employers or the taxable wage base. The Department would view a shared work unemployment compensation program as a "payment of benefits" and not as an action that affects the state's funding goals.

HISTORY

ACTION	DATE
Introduced	02-01-10

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¹⁰ 20 C.F.R. § 606.21(a).