Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 484*

129th General Assembly
(As Reported by H. Commerce, Labor and Technology)

Reps. Duffey, Kozlowski, Newbold, Terhar, Johnson, R. Hagan, Foley, Young, Grossman, Blessing, Schuring, Peterson, Wachtmann, Baker, Sprague, C. Hagan, Brenner, Stebelton, Stinziano, Antonio

BILL SUMMARY

- Creates the SharedWork Ohio 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.
- 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.
- Lists eligibility requirements for employees to receive shared work benefits.
- Prohibits a participating employee from being paid shared work benefits in an amount that exceeds 26 times the amount of regular compensation payable to the employee for a week of total unemployment.
- Requires any shared work benefits paid to an individual to be charged only to the account of the participating employer under whose shared work plan the individual is a participating employee.
- Requires the Unemployment Compensation Advisory Council to prepare and submit a report evaluating the utilization and effectiveness of the Program and the

* This analysis was prepared before the report of the House Commerce, Labor and Technology Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

impact of the Program on the Unemployment Compensation Fund no later than three years after the bill's effective date.

CONTENT AND OPERATION

SharedWork Ohio Program

The bill creates the "SharedWork Ohio" Program, under which an employer who participates in the program reduces the number of hours worked by the employer's employees in lieu of layoffs. 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).[1]

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 in the plan the participating employees by name and Social Security number.

(2) The employer describes in the plan the manner in which the employer will implement the requirements of the SharedWork Ohio Program.

(3) The employer includes in the plan a plan for giving advance notice, if feasible, to an employee whose workweek is to be reduced.

(4) The employer includes with the plan an estimate of the number of layoffs that would have occurred absent the ability to participate in the SharedWork Ohio Program.

(5) The employer certifies in the plan that if the participating employer provides health benefits and retirement benefits under a defined benefit plan or contributions under a defined contribution plan to any employee whose workweek is reduced under the Program that those benefits will continue to be provided to a participating employee under the same terms and conditions as though the workweek of the employee had not been reduced or to the same extent as other employees not participating in the program.

[1] R.C. 4141.50.

(6) The employer, in the plan, permits eligible employees to participate in employer-sponsored training to enhance job skills or worker training funded under the federal Workforce Investment Act of 1998.

(7) The employer includes in the plan any other information as required by the U.S. Secretary of Labor or the Director under the rules the Director adopts under the bill.

(8) The terms of the written plan submitted by the employer and implementation of that plan are consistent with the employer's obligations under the applicable federal and state laws.[2]

The bill prohibits an employer from including in the employer's shared work plan any employee employed by the employer on a seasonal, temporary, or intermittent basis.[3]

The bill prohibits the Director from approving a shared work plan submitted by an employer who is assigned the maximum unemployment contribution rate calculated in accordance with continuing law. 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.[4]

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.[5]

Eligibility and receipt of benefits

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 by a participating employer and is subject to a shared work plan that was approved before that week and is in effect for that week.

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[2] R.C. 4141.51(A).

[3] R.C. 4141.51(B).

[4] R.C. 4141.51(C).

[5] R.C. 4141.52.

(2) The individual is available for work and is actively seeking suitable work by being available for the individual's workweek as required by the rules adopted by the Director under the bill.

(3) The individual's workweek has been reduced by at least 10% but not more than 50%.

(4) The individual otherwise satisfies the requirements of the Unemployment Compensation Law.[6]

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 lower multiple of one dollar.[7]

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.[8]

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. The bill prohibits a participating employee from being paid shared work benefits during the employee's benefit year in an amount that exceeds 26 times the amount of regular compensation payable to the employee for a week of total unemployment. Thus, it appears that under

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[6] R.C. 4141.53(A) and R.C. Chapter 4141.

[7] R.C. 4141.53(B).

[8] R.C. 4141.30(D), not in the bill.

the bill a participating employee may receive shared work benefits for a maximum of 52 weeks (if the participating employee's hours are reduced by 50%).

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 those benefits.[9]

Charges for shared work benefits

Under the bill, if the state is eligible for and receives reimbursement for shared work benefits paid under the SharedWork Ohio Program from the federal government pursuant to the federal "Layoff Prevention Act of 2012,"[10] notwithstanding the current law requirements for charging employer accounts and if permitted under that Act, during the time period in which the state is reimbursed the account of a participating employer cannot be charged for any shared work benefits paid to the participating employer's participating employees. Beginning on the date the federal government no longer provides reimbursement, or if the state does not receive reimbursement or the federal government requires an employer's account to be charged, a participating employer's account must be charged as described below.

Notwithstanding the current law requirements for the allocation of benefit charges among employers, the bill requires any shared work benefits paid to an individual to be charged only to the account of the participating employer under whose shared work plan the individual is a participating employee. Current law requires a proportionate share of unemployment compensation benefits paid to an individual to be charged the account of each employer who employed the individual during the individual's base period.[11]

Under the bill, if an individual exhausts the shared work benefits the individual receives and during the same benefit year the individual receives those benefits the

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[9] R.C. 4141.53(C) and (D).

[10] Pub. L. No. 112-96, 126 Stat. 156.

[11] R.C. 4141.24(D), not in the bill.

individual becomes eligible for regular benefits by a separation of employment from the participating employer under whose shared work plan the individual was a participating employee, only the participating employer's account must be charged for any regular benefits the individual receives for the remainder of the individual's benefit year resulting directly from that separation from employment.[12]

Enforcement of the SharedWork Ohio Program

The bill requires the Director to enforce the requirements of the SharedWork Ohio Program in the same manner as the Director enforces the requirements of the Unemployment Compensation Law, including under the law that establishes prohibitions for violations not otherwise specified in the law. That law prohibits any employer, employee, or other person from violating the Unemployment Compensation Law, or do any act prohibited by the law, or fail to perform any duty lawfully enjoined, within the time prescribed by the Director for which no penalty has been specifically provided, or fail to obey any lawful order given or made by the Director or any judgment or decree made by any court in connection with the law. Every day during which any person or corporation, or any officer, agent, or employee thereof, fails to comply with any director's order or to perform any duty enjoined by the law constitutes a separate violation of such order or of the law. Whoever violates this prohibition must be fined not more than $500 for a first offense; for each subsequence offense such person must be fined not less than $25 or more than $1,000.[13]

Rulemaking

The bill requires the Director to adopt rules as the Director determines necessary to implement any guidance issued by the United States Secretary of Labor with respect to the SharedWork Ohio program. These rules are adopted pursuant to the Administrative Procedure Act.[14]

Reports and recommendations

The bill requires the Director, beginning one year after the bill's effective date and every year thereafter, to prepare and submit a report to the Unemployment Compensation Advisory Council that discusses the utilization of the SharedWork Ohio Program. The Director must include in that report the number of employers and employees participating in the program, the amount of shared work benefits paid under

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[12] R.C. 4141.54.

[13] R.C. 4141.51(D), by reference to R.C. 4141.40 and 4141.99, not in the bill.

[14] R.C. 4141.50 and R.C. 5101.09(A), not in the bill.

the program during the immediately preceding year, and any other information the Director considers to be relevant.

The Council, under the bill, must prepare and submit a report evaluating the utilization and effectiveness of the utilization and effectiveness of the SharedWork Ohio Program and the impact of the Program on the Unemployment Compensation Fun. The Council must base the report upon the information the Council receives from the Director as described immediately above. The Council must submit the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and the Minority Leader of the House of Representatives not later than three years after the bill's effective date.[15]

Definitions

The following definitions apply to the bill:

"Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.[16]

"Participating employer" means an employer who has a shared work plan.[17]

"Shared work benefit" means an unemployment compensation benefit that is payable to a participating employee.[18]

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" for at least 20 "qualifying weeks" within the individual's "base period";

(2) Have had an average weekly wage of 27½% of the statewide average weekly wage within the base period currently, a minimum of $222[19];

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[15] R.C. 4141.55 and Section 3.

[16] R.C. 4141.01(EE).

[17] R.C. 4141.01(FF).

[18] R.C. 4141.01(GG).

[19] Ohio Department of Job and Family Services, http://jfs.ohio.gov/unemp_comp_faq/ index.stm (accessed March 28, 2012).

(3) Have become unemployed for a reason that is not a disqualifying reason;

(4) Be able to, available for, and actively seeking work;

(5) Be a United States citizen or legal alien.[20]

A "qualifying week" generally is any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to the Unemployment Compensation Law. An individual's "base period" is the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year (generally the 52-week beginning with the first day of the week with respect to which the individual first files a valid application for determination of benefit rights), except that if an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period is the four most recently completed calendar quarters preceding the first day of the individual's benefit year, which is referred to as the "alternate base period."[21]

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.[22] Benefits are payable to each partially unemployed individual otherwise eligible on account of each week of involuntary partial unemployment after the specified waiting 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).[23]

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.

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[20] R.C. 4141.01(R)(1) and R.C. 4141.29 not in the bill.

[21] R.C. 4141.01(O)(1), (Q), and (R).

[22] R.C. 4141.01(N).

[23] R.C. 4141.30(C) not in the bill.

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).[24]

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.[25]

If a state's fund is depleted, federal law permits a state's governor, or the governor's designee (in Ohio, the Director), 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.[26]

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.[27] 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 has stated, with respect to similar versions of this legislation,

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[24] 26 United States Code (U.S.C.) 3302 and 3304.

[25] See 26 U.S.C. 3304.

[26] 42 U.S.C. 1321 and 20, Code of Federal Regulations (C.F.R.) 606.4, and R.C. 4141.43(F).

[27] 20 C.F.R. 606.21(a).

that it 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	03-14-12
Reported, H. Commerce, Labor and Technology	---

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