Ohio Legislative Service Commission

Bill Analysis

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(As Reported by S. Commerce and Labor)

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BILL SUMMARY

SharedWork Ohio

- Creates the SharedWork Ohio Program.
- Requires 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 the employer's shared work plan approved.
- Specifies that a shared work plan takes effect on the date the Director approves the plan and expires at the end of the 52nd calendar week after the plan's effective date.
- Lists eligibility requirements for employees to receive shared work compensation.
- Prohibits a participating employee from being paid shared work compensation in an amount that exceeds 26 times the amount of unemployment compensation benefits payable to the employee for a week of total unemployment.
- Prescribes eligibility and the manner in which shared work compensation is calculated if a participating employee works for more than one employer, including

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

the participating employee's participating employer, in a week or works more or fewer hours than prescribed in the plan in a week.

- Requires an employer's account to be charged as under continuing law for shared work compensation except for amounts that are reimbursed by the federal government.

- Requires a participating employer to file shared work compensation claims and requires a participating employee to attest to the hours worked specified in the claim.

- Requires the Director to prepare and submit a report evaluating the utilization and effectiveness of the Program and the impact of the Program on the Unemployment Compensation Fund no later than three years after the bill's effective date.

Unemployment Compensation Law changes

- Requires an additional penalty to be assessed against an individual who obtains unemployment compensation benefits through fraudulent misrepresentation.

- Requires an employer's account to be charged in the event the employer engages in a pattern of failing to timely or adequately respond to requests for information regarding a claim, thus resulting in an improper overpayment.

- Declares an emergency, but delays the bill's implementation of the SharedWork Ohio Program until the U.S. Department of Labor approves the Program.

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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 an employer submits a plan in which the employer does all of the following:

(1) Identifies the participating employees by name, Social Security number, affected unit, and normal weekly hours of work (see "**Definitions – SharedWork Ohio**" below);

(2) Describes the manner in which the employer will implement the requirements of the SharedWork Ohio Program, including a proposed reduction percentage of between 10% and 50%, and any temporary closure of the employer's business for equipment maintenance or other similar circumstances that the employer knows may occur during the plan's effective period;

(3) Includes a plan for giving advance notice, if feasible, to an employee whose normal weekly hours of work are to be reduced and, if advance notice is not feasible, an explanation of why it is not feasible;

(4) Includes a certification by the employer that the aggregate reduction in the number of hours worked by the employer's employees is in lieu of layoffs and includes an estimate of the number of layoffs that would have occurred absent the ability to participate in the Program;

(5) Includes a certification by the employer that if the employer provides health benefits and retirement benefits under a defined benefit plan or contributions under a

[1] R.C. 4141.50(B) and 4141.51.

defined contribution plan as defined in federal law to any employee whose normal weekly hours of work are 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 employee's normal weekly hours of work had not been reduced or to the same extent as other employees not participating in the Program;

(6) Permits eligible employees to participate, as appropriate, in training to enhance job skills approved by the Director, including employer-sponsored training or worker training funded under the federal Workforce Investment Act of 1998;

(7) Includes 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) Includes an attestation by the employer that 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;

(9) Includes a certification by the employer that the employer will promptly notify the Director of any change in the business that includes a sale or transfer of all or part of the business, and that the employer will notify any successor in interest to the business prior to a transfer of all or part of the business, of the existence of an approved shared work plan;

(10) Includes a certification by the employer that, as of the date the plan is submitted, the employer is current on all reports, contributions, reimbursements, interest, and penalties due under Ohio's Unemployment Compensation Law;

(11) Includes an assurance from the employer that the employer will remain current on all reporting and payments of contributions, reimbursements, interest, and penalties due under Ohio's Unemployment Compensation Law;

(12) Includes a certification by the employer that none of the participating employees are employed on a seasonal, temporary, or intermittent basis (see "**Definitions – SharedWork Ohio**" below);

(13) Includes an assurance that the employer will not reduce a participating employee's normal weekly hours of work by more than the reduction percentage specified in the plan, except in the event of a temporary closure for equipment maintenance or when the employee takes approved time off during the week with pay,

and the combined work hours and paid leave hours equal the number of hours the employee would have worked under the plan.[2]

Not later than 30 days after the Director receives a shared work plan, the Director must approve or deny the 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.[3] A decision by the Director to approve or disapprove a proposed shared work plan may not be appealed pursuant to the Ohio's Unemployment Compensation Law. An employer who has submitted a shared work plan that is disapproved may submit another plan for review by the Director.[4]

Effective date of the plan

A shared work plan approved under the bill takes effect with respect to the week following the date the Director approves the plan and expires at the end of the 52nd calendar week after the plan's approval.[5]

Modification of an approved plan

A participating employer who wishes to modify an existing approved shared work plan must submit a modified plan to the Director. The Director must evaluate the modified plan and may approve the modified plan so long as the plan meets the requirements for approval (see "**Plan requirements and approval**" above). If approved, a modified plan supersedes the previously approved shared work plan effective beginning with the week following the date the Director approves the modified plan. The bill prohibits the Director from approving a modified plan that fails to satisfy the approval requirements. A decision by the Director to approve or disapprove a proposed modified shared work plan may not be appealed under the appeals provisions of Ohio's Unemployment Compensation Law.[6]

Termination of an approved plan

A participating employer may choose to terminate a shared work plan by providing written notice to the Director. Upon receipt of the notice, the Director must

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

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

[4] R.C. 4141.52(E) and (F).

[5] R.C. 4141.52(A).

[6] R.C. 4141.52(B) and (E).

terminate the plan and inform the employer and each of the employer's participating employees, in writing, of the week with respect to which the termination is effective.[7]

The Director may terminate an approved shared work plan for good cause, which means any of the following circumstances:

(1) The approved shared work plan is not being executed according to the terms and conditions stated in the plan.

(2) The participating employer fails to comply with any assurances given in the participating employer's approved shared work plan.

(3) The participating employer, or a participating employee of the participating employer, violates any criteria on which approval of the shared work plan was based.[8]

A decision by the Director to terminate an approved shared work plan may not be appealed under the appeal provisions of Ohio's Unemployment Compensation Law.[9]

Payment of shared work compensation

Filing a claim

Under the bill the Director must establish a schedule of consecutive two-week periods within the effective period of each approved shared work plan for the filing of shared work compensation claims. In accordance with procedures prescribed by the Director, at the end of each scheduled period, a participating employer must file claims on behalf of the participating employer's participating employees. A participating employee, in accordance with procedures prescribed by the Director, must attest to the hours reported, report any other hours worked for an employer who is not the participating employer, and provide additional information as is requested by the Director.[10]

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[7] R.C. 4141.52(D).

[8] R.C. 4141.52(C).

[9] R.C. 4141.52(E).

[10] R.C. 4141.54(B).

Eligibility

The bill authorizes the payment of shared work compensation from the Unemployment Compensation Fund.[11] For an individual to be eligible to receive shared work compensation for a week the individual must satisfy several requirements.

First, the individual must be employed by a participating employer and subject to a shared work plan that was approved before that week and is in effect for that week.

Second, the individual must be available for work and be actively seeking work by being available for the individual's normal weekly hours of work. An individual who works the number of hours assigned to the individual under an approved shared work plan meets the availability for work requirement. If the individual worked fewer than the assigned number of hours, the individual is considered available if the individual takes approved time off during the week with pay, and the combined work hours and paid leave hours equal the number of hours the individual would have worked under the plan. If the individual worked fewer hours than assigned and the individual does not take approved time off with pay during that week, the individual is considered available if the reduction in hours below plan levels was not the fault of the individual and was not more than 50% of the individual's normal weekly hours of work.[12] The Director must determine fault for purposes of this provision in the same manner that the Director makes determinations for benefit rights and determines claims for unemployment compensation benefits under continuing law.[13]

Third, the individual's normal weekly hours of work with the participating employer have been reduced by at least 10% but not more than 50%.

Fourth, the individual has been employed by an employer or employers subject to Ohio's Unemployment Compensation Law in at least 20 qualifying weeks in the individual's base period and has earned or been paid at an average weekly wage of at least 27.5% of the statewide average weekly wage for those weeks (for 2013, $230[14]). This requirement is similar to the qualifying wage requirements that an individual must satisfy to receive unemployment compensation benefits except that, for purposes of the SharedWork Program and unless another benefit year applies to the individual, a participating employee's "benefit year" is the 52-week period beginning with the first

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[11] R.C. 4141.09(A).

[12] R.C. 4141.53(A)(1) and (2) and (B).

[13] R.C. 4141.53(C)(3), by reference to R.C. 4141.28 and 4141.281, not in the bill.

[14] Ohio Department of Job and Family Services, Unemployment Compensation FAQ's, http://jfs.ohio.gov/unemp_comp_faq/faq_elig_definitions1.stm, accessed June 7, 2013.

day of that week with respect to which the employee's participating employer first files a claim on behalf of the participating employee pursuant to the bill.[15]

Fifth, the individual has been subject to a shared work plan for at least one week prior to the week for which the compensation is to be paid, or otherwise satisfies the waiting period requirement for unemployment compensation benefits for the individual's benefit year.

Sixth, the individual otherwise satisfies the requirements of the Unemployment Compensation Law and is not otherwise disqualified from receiving unemployment compensation benefits.[16]

Regardless of any provision in Unemployment Compensation Law to the contrary, a participating employee who satisfies the availability requirement described above is not required to be totally or partially unemployed within the meaning of Ohio's Unemployment Compensation Law, is not required to file a claim for unemployment compensation benefits pursuant to continuing law, and is not required to meet ability to work, availability for work, and work search requirements that would otherwise be applicable to the participating employee, to receive shared work compensation under the SharedWork Ohio Program.[17]

Partial and additional employment

Except as provided below, a participating employee is not eligible to receive benefits for being partially unemployed for any week during which the individual works as a participating employee.

A participating employee who performs no services during a week for the participating employer and who is otherwise eligible may be paid benefits for being totally or partially unemployed for that week. Additionally, a participating employee whose normal weekly hours of work are reduced by more than 50% and who is otherwise eligible may be paid benefits for partial unemployment for that week.[18]

If an individual works for a participating employer and another employer during the weeks the individual is covered by an approved shared work plan, and if the combined number of hours the individual works for both the participating employer

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[15] R.C. 4141.53(A)(3) and (4) and (J).

[16] R.C. 4141.53(A)(5) and (6) and R.C. Chapter 4141.

[17] R.C. 4141.54(A).

[18] R.C. 4141.53(H).

and the other employer in a week exceeds the amount of the individual's normal weekly hours of work reduced by 10%, the individual is not eligible for shared work compensation. If the combined number of hours the individual works in a week for both employers equals the amount of the individual's normal weekly hours of work reduced between 10% and 50%, the Director must pay the individual, if the individual is otherwise eligible, shared work compensation in an amount equal to the individual's weekly benefit amount for a period of total unemployment, calculated under continuing law, multiplied by the percentage by which the individual's normal weekly hours of work were reduced during the week when factoring in both the amount of hours worked for the other employer and the amount of hours worked for the participating employer.[19]

Amount of shared work compensation

Under the bill, the Director must pay a participating employee who is eligible for weekly shared work compensation and works the number of hours required by the shared work plan applicable to the employee 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 reduction percentage specified in the participating employee's participating employer's shared work plan.

The Director must pay a participating employee who does not work the number of hours required by the shared work plan applicable to the employee modified shared work compensation 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 percentage by which the participating employee's normal weekly hours of work were actually reduced during the workweek if the participating employee did not take approved paid leave during the week, the participating employee's normal weekly hours of work were not reduced by more than 50% or less than 10%, and the increase or decrease in hours outside of the plan's reduction percentage was not the fault of the employee. The Director must determine fault in the same manner that the Director makes determinations for benefit rights and determines claims for unemployment compensation benefits under continuing law. The Director must round the amount of shared work compensation that is not a multiple of one dollar to the next lower multiple of one dollar. The bill prohibits any shared work compensation from being payable during the one-week waiting period required under the bill.[20]

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[19] R.C. 4141.53(D).

[20] R.C. 4141.53(C).

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.[21]

Under the bill, a participating employee is not entitled to receive shared work compensation and unemployment compensation benefits that, when combined, 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 compensation during the employee's benefit year in an amount that exceeds 26 times the amount of the employee's weekly benefit amount for a period of total unemployment under continuing law. Thus, it appears that under the bill a participating employee may receive shared work compensation for a maximum of 52 weeks (if the participating employee's hours are reduced by 50%).[22]

The bill prohibits the Director from paying an individual shared work compensation for a week during which the individual performs paid work for the individual's participating employer that exceeds or falls below the reduced hours established under an approved shared work plan unless the individual meets the requirements for modified shared work compensation as outlined above.

Any payment of total or partial unemployment compensation benefits under the SharedWork Ohio Program is not a payment of shared work compensation under an approved plan but must be calculated against the maximum total benefits payable to the participating employee in a benefit year.

The bill specifies that an individual who has received all of the shared work compensation and unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under continuing law and is entitled

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

[22] R.C. 4141.53(E).

to receive extended benefits under the Unemployment Compensation Law if the individual is otherwise eligible to receive those benefits.[23]

Charges for shared work compensation

Under the bill, if the state is eligible for and receives reimbursement for shared work compensation paid under the SharedWork Ohio Program from the federal government pursuant to the federal "Layoff Prevention Act of 2012,"[24] notwithstanding the current law requirements for charging employer accounts and if permitted under that Act, during the time period in which the state is fully or partially reimbursed the account of an employer cannot be charged for the portion of any shared work compensation paid to a participating employer's participating employees for which the state receives reimbursement. If the federal government does not provide full reimbursement for shared work compensation, the portion of shared work compensation paid to that individual that is not reimbursed must be charged in accordance with the current law requirements for the allocation of benefit charges among employers.

Beginning with the week for which 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, any shared work compensation paid to an individual must be charged in accordance with the current law requirements for the allocation of benefit charges among employers.[25]

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 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 doing any act prohibited by the law, or failing to perform any duty lawfully enjoined, within the time prescribed by the Director for which no penalty has been specifically provided, or failing 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

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[23] R.C. 4141.53(F), (G), and (I).

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

[25] R.C. 4141.55 and, by reference, R.C. 4141.24(D).

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.[26]

Rulemaking

The bill allows 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.[27]

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 Governor, the President and Minority Leader of the Senate, and the Speaker and the Minority Leader of the House of Representatives 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 compensation paid under the Program during the immediately preceding year, and any other information the Director considers to be relevant.

The Director, under the bill, also must prepare and submit a report evaluating the utilization and effectiveness of the SharedWork Ohio Program and the impact of the Program on the Unemployment Compensation Fund. The Director must base the report upon the information contained in the reports the Director prepares as described immediately above. The Director 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.[28]

Definitions – SharedWork Ohio

The following definitions apply to the bill with respect to the SharedWork Ohio Program:

"Affected unit" means an organizational unit of two or more employees that is designated by a participating employer in a shared work plan.

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

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

[28] R.C. 4141.56 and Section 3.

Employment on an "intermittent basis" means employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work.

"Normal weekly hours of work" means the normal hours of work each week for an employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including any overtime worked.

"Participating employee" means an employee whose normal weekly hours of work are reduced by the reduction percentage under an approved shared work plan.

"Reduction percentage" means the percentage by which each participating employee's normal weekly hours of work are reduced under an approved shared work plan; the reduction percentage must be between 10 and 50%.

Employment on a "seasonal basis" means employment in which individuals are hired primarily to perform services in an industry that, because of climatic conditions or because of the seasonal nature of the industry, it is customary to operate only during regularly recurring periods of 40 weeks or less in any consecutive 52 weeks.

"Shared work compensation" means the pro rata share of unemployment compensation benefits that are payable to a participating employee under an approved shared work plan, but does not include unemployment compensation benefits otherwise payable to an individual for total or partial unemployment.

Employment on a "temporary basis" means employment where an employee is expected to remain in a position for only a limited period of time or is hired by a temporary agency to fill a gap in the employer's workforce.[29]

Unemployment Compensation Law changes

Fraud penalty

In addition to the continuing law penalties described below with respect to any fraudulent misrepresentation that has been made by an applicant for or a recipient of benefits with the object of obtaining benefits to which the applicant or recipient was not entitled, the bill requires that, for findings made on or after October 21, 2013, the Director must, by order, assess a mandatory penalty on that person in an amount equal to 25% of the total amount of benefits rejected or canceled under continuing law. The first 60% of this penalty must be deposited into the Unemployment Compensation Fund, and the remainder of each penalty collected must be deposited into the

[29] R.C. 4141.50(A).

Unemployment Compensation Special Administrative Fund. The bill applies the current six year statute of limitations applicable to collections of fraudulent benefits and interest on those benefits to this penalty.[30]

Under continuing law, if the Director finds that any fraudulent misrepresentation has been made by an applicant for or a recipient of unemployment benefits with the object of obtaining unemployment benefits to which the applicant or recipient was not entitled, in addition to any other penalty or forfeiture under the Unemployment Compensation Law, the Director must do all of the following:

- Within four years after the end of the benefit year in which the fraudulent misrepresentation was made, reject or cancel the individual's entire weekly claim for benefits that was fraudulently claimed, or the individual's entire benefit rights if the misrepresentation was in connection with the filing of the individual's application for determination of benefit rights;

- By order declare that, for each application for benefit rights and for each weekly claim canceled, the individual is ineligible for two otherwise valid weekly claims for benefits claimed within six years subsequent to the discovery of the misrepresentation;

- By order require that the total amount of unemployment benefits rejected or canceled be repaid to the Director before the individual may become eligible for further benefits and withhold any unpaid sums from future benefit payments accruing and otherwise payable to the individual;

- Assess, if the benefits are not repaid within 30 days after the Director's order becomes final, interest on the amount remaining at a rate of 14% per annum, compounded monthly.

Continuing law permits the Director to take action to collect benefits that have been fraudulently obtained from the Director, interest, and court costs, through attachment proceedings under Ohio's Attachment Law and garnishment proceedings under Ohio's Garnishment Law.[31]

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[30] R.C. 4141.35(A), with conforming changes in R.C. 4141.09 and 4141.11.

[31] R.C. 4141.35(A).

Employer action and improperly paid benefits

Continuing law allows for unemployment compensation benefits that have been paid to a claimant and are subsequently found not to be due to the claimant to be charged to the mutualized account in the Unemployment Compensation Fund, rather than to the account of a contributing employer (most private sector employers) under certain circumstances. If these improperly paid benefits are not charged to the mutualized account and are instead charged to an employer's account, the employer's account may be credited for any benefits that are recovered by the Director from the claimant.

Under the bill, however, an employer's account cannot be credited and the mutualized account cannot be charged for benefits that have been paid to a claimant and are subsequently found not to be due to the claimant, if it is determined by the Director, on or after October 21, 2013, that both of the following have occurred:

- The benefits were paid because the claimant's employer, or any employee, officer, or agent of that employer, failed to respond timely or adequately to a request for information regarding a determination of benefit rights or claims for benefits under continuing law.

- The claimant's employer, or any employee, officer, or agent of that employer, on behalf of the employer, previously established a pattern of failing to respond timely or adequately within the same calendar year period.

A response is considered "timely" if the response is received by the Director within the continuing law time period (ten working days after the request is sent). It is considered "adequate" if the employer or the employer's employee, officer, or agent provided answers to all questions raised by the Director or participated in a fact-finding interview if requested by the Director. A "pattern of failing" is established after the third instance of benefits being paid because the claimant's employer or the employer's employee, officer, or agent failed to respond timely or adequately to a request for information regarding a determination of benefit rights or claims for benefits within a calendar year period.

If the mutualized account is not charged, the account of the employer whose failure to timely or adequately respond to a request for information caused the erroneous payment must be charged for the improperly paid benefits. The appeal

provisions found in the Unemployment Compensation Law apply to all determinations made under this provision.[32]

Treasury Offset Program

The bill exempts federal tax refund offsets made under the Treasury Offset Program from the current law order of crediting employer accounts upon receipt of collections for overpayments. Under the Treasury Offset Program, an individual's federal tax refund can be reduced by the amount the individual owes for specified government debt, including unemployment fraud debt. That program requires the oldest debt to be repaid first. Ohio law, with respect to overpayments, requires the Director to apply the repayment to the mutualized account, except that the Director must credit the repayment to the accounts of the individual's base period employers that previously have not been credited for the amount of improperly paid benefits charged against their accounts based on the proportion of benefits charged against the accounts. Under the bill, the first employer in the individual's base period would be fully credited first, followed by any additional base period employers.[33]

Emergency clause and Program implementation

The bill is declared to be an emergency measure, making it go into immediate effect. However, under the bill, the Department of Job and Family Services may implement the SharedWork Ohio Program as soon as the U.S. Department of Labor has certified that the Program complies with the federal law. The federal Layoff Prevention Act of 2012 permits a state to receive federal funding to create a program under which an employer reduces the hours worked by the employer's employees in lieu of laying off those employees.[34]

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 $230;

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[32] R.C. 4141.24(D)(3), by reference to R.C. 4141.28, 4141.281, and 4141.282, not in the bill.

[33] R.C. 4141.35(D), by reference to 31 Code of Federal Regulations (C.F.R.) 285.8.

[34] Sections 4 and 5 of the bill.

(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.[35]

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."[36]

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 that week is less than the individual's weekly benefit amount.[37] 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).[38]

COMMENT

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

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

[36] R.C. 4141.01(O)(1), (Q), and (R), not in the bill.

[37] R.C. 4141.01(N), not in the bill.

[38] 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).[39]

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.[40]

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.[41]

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 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.[42] 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 U.S. Department of Labor has stated, with respect to similar versions of this

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[39] 26 United States Code (U.S.C.) 3302 and 3304.

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

[41] 42 U.S.C. 1321 and 20 C.F.R. 606.4, and R.C. 4141.43(F), not in the bill.

[42] 20 C.F.R. 606.21(a).

legislation, 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	02-06-13
Reported, H. Commerce, Labor & Technology	03-21-13
Passed House (97-0)	04-10-13
Reported, S. Commerce & Labor	---

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