Ohio Legislative Service Commission

Bill Analysis

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S.B. 25

130th General Assembly
(As Introduced)

Sens. Peterson and LaRose, Seitz, Schaffer, Uecker

BILL SUMMARY

- 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 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 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 the manner in which shared work compensation is calculated if a participating employee works for more than one employer, including the participating employee's participating employer, in a week or works 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 during the period of federal reimbursement.
- 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 Unemployment Compensation Advisory Council 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.

- Declares an emergency, but delays the bill's implementation until the U.S. Department of Labor approves the SharedWork Ohio 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] R.C. 4141.50(B) and 4141.51.

(1) Identifies the participating employees by name, Social Security number, affected unit, and normal weekly hours of work (see "**Definitions**" 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 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 SharedWork Ohio 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 defined contribution plan 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**" 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 is paid by the employer as if the employee had worked the number of hours assigned 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 may submit a modified plan to the Director. The Director must evaluate the

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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).

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 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 includes 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

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

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

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

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

shared work compensation claims. In accordance with procedures in rules 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 must attest to the hours reported and provide additional information as is requested by the Director.[10]

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 hours, the individual can satisfy the requirement if the individual was paid wages as if the individual worked the number of hours assigned under the plan. If the individual worked fewer hours than assigned and was not paid wages as if the individual had worked the hours assigned under the plan, the individual may satisfy the availability requirement 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

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

[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.

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 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]

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. If in any week a participating employee performs services for a participating employer and an employer other than the participating employer, the weekly shared work compensation amount payable to that employee is reduced by the amount by which the remuneration received from the other employer exceeds 20% of the participating employee's weekly benefit amount, as calculated under continuing law, for a period of total unemployment.

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[14] Ohio Department of Job and Family Services, Unemployment Compensation FAQ's, http://jfs.ohio.gov/unemp_comp_faq/faq_elig_definitions1.stm, accessed February 22, 2013.

[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).

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]

Amount of shared work compensation

Under the bill, the Director must pay a participating employee who is eligible for weekly 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 either the reduction percentage specified in the participating employee's participating employer's shared work plan or the percentage by which the participating employee's normal weekly hours of work were actually reduced during the workweek if the circumstances relating to the availability for work requirement and the participating employee working less hours and receiving less wages than under the plan as described under "**Eligibility**" above apply to the participating employee. 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.[19]

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.[20]

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

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

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

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

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%).[21]

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 the reduced hours established under an approved shared work plan. If in any week a participating employee reports the receipt of any of the following types of payment, the weekly shared work compensation amount payable to that employee must be reduced by the amount of those payments received for that week:

(1) Remuneration in lieu of notice;

(2) Compensation for wage loss under Ohio's Workers' Compensation Law or a similar provision under the workers' compensation law of any state or the United States;

(3) Payments in the form of retirement, or pension allowances as provided in continuing law;

(4) Unless an exception concerning military service applies, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;

(5) Vacation pay or allowance payable under the law, terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks;

(6) The determinable value of cost savings days.

Any payment of total or partial unemployment compensation benefits under the SharedWork 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

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

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.[22]

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,"[23] 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 an employer cannot be charged for any shared work compensation paid to a participating employer's participating employees. 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, a participating employer's account must be charged in accordance with the current law requirements for the allocation of benefit charges among employers.[24]

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 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.[25]

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[22] R.C. 4141.53(E), (F), (H), and (I), by reference to R.C. 4141.31(A), not in the bill.

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

[24] R.C. 4141.55 and R.C. 4141.24(D), not in the bill.

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

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.[26]

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 compensation paid under 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 Fund. 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.[27]

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 Program as soon as the U.S. Department of Labor has certified that the SharedWork Ohio 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.[28]

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

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

[28] Sections 4 and 5 of the bill.

Definitions

The following definitions apply to the bill:

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

Employment on an "intermittent basis" means employment that is not continuous but may consist of periodic intervals of weekly work and periods with 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.

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]

Background – partial unemployment benefits

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

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

(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;

(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.[30]

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."[31]

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.[32] 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).[33]

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

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

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

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

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.

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).[34]

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.[35]

If a state's fund is depleted, federal law permits a state's governor, or the governor's designee (in Ohio, the Director of Job and Family Services), 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.[36]

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.[37] 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.

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[34] 26 United States Code (U.S.C.) 3302 and 3304.

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

[36] 42 U.S.C. 1321 and 20 Code of Federal Regulations (C.F.R.) 606.4, and R.C. 4141.43(F).

[37] 20 C.F.R. 606.21(a).

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 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	02-12-13

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