

SENATE BILL 958

By Yarbro

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 50, relative to work share programs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 7, is amended by adding the following as a new part:

50-7-901. Part definitions.

As used in this part:

(1) "Affected group" means two (2) or more employees designated by an employer to participate in a shared work plan;

(2) "Approved plan" means an employer's voluntary written plan for reducing unemployment under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced, which plan meets the requirements of § 50-7-904, and which plan has been approved in writing by the administrator;

(3) "Fringe benefits" includes advantages, such as health insurance for hospital, medical, dental, and other services; retirement benefits under defined benefit pension plans as defined in the federal Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. § 1001 et seq.); and paid vacation and holidays, sick leave, or other compensable time that are incidents of employment in addition to the cash remuneration earned;

(4) "Normal weekly hours of work" means the normal hours of work for full-time and permanent part-time employees in the affected group when their

employing unit is operating on its normal, full-time basis, not to exceed forty (40) hours and not including overtime;

(5) "Shared work benefits" means the unemployment compensation benefits payable to employees in an affected group under an approved plan as distinguished from the unemployment benefits otherwise payable under other parts of this chapter;

(6) "Shared work employer" means:

(A) An employer with a shared work plan in effect; or

(B) An individual who, or an employing unit that, succeeds to or acquires an organization, trade, or business with a shared work plan and adopts the plan if the individual or employing unit ratifies, in writing, the previously approved plan; and

(7) "Subgroup" means a group of employees that constitutes at least ten percent (10%) of the employees in an affected group.

50-7-902. Applicability.

(a) Except as otherwise provided in this part, provisions of this chapter that are applicable to unemployment benefits claimants apply to shared work benefits claimants.

(b) An individual who files an initial claim for shared work benefits must be provided, if eligible, a monetary determination of entitlement to shared work benefits by the administrator and must serve a waiting period of one (1) week.

50-7-903. Construction.

This part does not preclude an otherwise eligible claimant from drawing total or partial unemployment benefits when the claimant has exhausted the claimant's shared work benefits.

50-7-904. Participation – Approval criteria.

(a) An employer wishing to participate in a shared work program shall submit a signed written shared work benefits plan to the administrator for approval.

(b) The administrator shall approve a shared work benefits plan only if the following criteria are met:

(1) The plan:

(A) Applies to and identifies the specified affected group; and

(B) Includes an estimate of the number of layoffs that might occur absent participation in the shared work program;

(2) The employees in the affected group or groups are identified by name, social security number, and other information required by the administrator;

(3) The usual weekly hours of work for employees in the affected group or groups are reduced by not less than ten percent (10%) and not more than forty percent (40%);

(4) Health benefits and retirement benefits under defined benefit pension plans, as defined in the federal Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. § 1001 et seq.), and other fringe benefits will continue to be provided to employees in the affected group or groups as though their work weeks had not been reduced. However, if the employer reduces the level of benefits under this subdivision (b)(4) for employees who are not in the shared work group, then the level of benefits may be reduced by a like amount for the employer's shared work employees;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of all layoffs that would have affected at least ten percent (10%) of the

employees in the affected group or groups to which the plan applies and that would have resulted in an equivalent reduction in work hours;

(6) During the previous four (4) months, the workforce in the affected group has not been reduced by temporary layoffs of more than ten percent (10%) of the workers;

(7)

(A) The plan applies to at least ten percent (10%) of the employees in the affected group; and

(B)

(i) If the plan applies to all employees in the affected group, then the plan provides equal treatment to all employees of the group; and

(ii) If the affected group is divided into subgroups, then the plan provides equal treatment to employees within each subgroup;

(8) In the case of employees represented by an exclusive bargaining representative:

(A) The plan is approved in writing by the collective bargaining agent. If the certification of an exclusive bargaining representative has been appealed, then the bargaining representative is considered to be the exclusive bargaining representative for work sharing plan purposes;

(B) The plan must contain a certification by the employer that the employer has made the proposed plan available to:

(i) Each employee in the affected group for inspection; or

(ii) If applicable, to the exclusive bargaining

representative; and

(C) The plan must include:

(i) A description of how the plan was made available; and

(ii) If advance notice of the plan was not feasible, an explanation of why advance notice was not feasible;

(9) The plan includes a certified statement by the employer that the terms and implementation of the shared work plan are consistent with obligations the employer has under applicable federal and state laws. An employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the administrator receives written notice from the shared work employer that the employee has joined;

(10) On the most recent computation date preceding the date of submission of the shared work plan for approval, the total of all contributions paid on the employing unit's own behalf and credited to its account for all previous periods equaled or exceeded the regular benefits charged to its account for all previous periods;

(11) The plan does not serve as a subsidy of seasonal employment during the off-season nor as a subsidy of temporary part-time employment or intermittent employment; and

(12) The employer agrees to:

(A) Furnish reports relating to the proper conduct of the plan;

(B) Allow the administrator or the administrator's authorized representatives access to all records necessary to verify the plan before approval; and

(C) Allow the administrator to monitor and evaluate application of the plan after approval.

50-7-905. Written approval or rejection.

(a) The administrator shall approve or reject a plan in writing within thirty (30) days of receipt.

(b) Only one (1) plan may be approved for any one (1) employer during a twelve-month period.

(c) The reason for rejection is final and non-appealable, but the employer may submit another plan for approval no earlier than fifteen (15) days from the date of the last rejection.

50-7-906. Affected date – Termination.

(a) A plan is effective on the date specified in the plan or on a date mutually agreed upon by the employer and the administrator, but no earlier than the date of approval of the plan by the administrator.

(b)

(1) A plan expires at the end of the twelfth full calendar month after its effective date or on the date specified in the plan if the date is earlier, as long as the plan is not previously revoked by the administrator.

(2) If a plan is revoked by the administrator, then the plan terminates on the date specified in the administrator's written order of revocation.

50-7-907. Approval revocation.

(a)

(1) The administrator may revoke approval of a plan for good cause.

(2) The revocation order must be in writing and specify the date the revocation is effective and the reasons for revocation.

(3) Good cause includes failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected group, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of criteria on which approval of the plan was based.

(b) The administrator may take the revocation action at any time on the administrator's own motion, on the motion of any of the affected group's employees, or on the motion of the appropriate collective bargaining agent.

(c) The administrator shall review the operation of each qualified employer plan at least once during the twelve-month period that the plan is in effect to assure its compliance with this part.

(d) Revocation of a plan for good cause by the administrator precludes approval of a subsequent plan submitted by the revoked plan employer during the twelve-month period beginning on the date of the revocation order.

50-7-908. Operational plan – Modification.

(a) The employer may modify an operational and approved shared work plan with the agreement of employee representatives if the modification is not substantial and is in conformity with the plan approved by the administrator, but the employer must promptly report the modifications to the administrator.

(b)

(1) If the hours of work are increased or decreased substantially beyond the level in the original plan or if any other conditions are changed substantially, then the administrator shall approve or disapprove the modifications without changing the expiration date of the original plan.

(2) If the substantial modifications do not meet the requirements for approval, then the administrator shall disallow that portion of the plan in writing as specified in § 50-7-907.

50-7-909. Eligibility for compensation.

(a) An individual is eligible to receive shared work benefits with respect to any week only if, in addition to monetary entitlement, the administrator finds that:

(1) During the week, the individual is employed as a member of an affected group under an approved shared work benefits plan that was approved before that week, and the plan is in effect with respect to the week for which the benefits are claimed; and

(2) During the week, the individual is able to work and is available for the normal work week with the shared work employer. However, an otherwise eligible individual shall not be denied benefits with respect to any week in which the individual is in training to enhance job skills, including employer-sponsored training and worker training funded by this state, if the training has been approved by the administrator.

(b) Notwithstanding other provisions of this chapter to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to the individual as an employee in an affected group for ninety percent (90%) or less than the individual's normal weekly hours of work as specified under the approved shared work benefits plan in effect for the week.

(c) Notwithstanding other provisions of this chapter to the contrary, an individual shall not be denied shared work benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the shared work employer.

50-7-910. Benefits – Amount.

(a) The shared work weekly benefit amount is the product of the regular weekly unemployment benefits amount multiplied by the percentage of reduction of at least ten percent (10%) in the individual's usual weekly hours of work.

(b) An individual may be eligible for shared work benefits or unemployment benefits, as appropriate, except that no individual is eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for unemployment benefits, nor is an individual eligible to be paid shared work benefits for more than twenty-five (25) weeks, whether or not consecutive, in any benefit year pursuant to a shared work plan.

(c) The shared work benefits paid an individual are deducted from the maximum entitlement amount established for that individual's benefit year.

(d) Claims for shared work benefits are filed in the same manner as claims for unemployment benefits or as prescribed in rules by the administrator.

50-7-911. Entitlement to benefits.

(a) If an individual works in the same week for an employer other than the shared work employer, and the individual's combined hours of work for both employers are greater than ninety percent (90%) of the normal hours of work with the shared work employer, then the individual is not entitled to benefits under the shared work provisions of this part or the unemployment benefits provisions of this chapter.

(b)

(1) If an individual works in the same week for both the shared work employer and another employer and the individual's combined hours of work for both employers are equal to or less than ninety percent (90%) of the usual hours of work for the shared work employer, then the benefit amount payable for that

week is the weekly unemployment benefits amount reduced by the same percentage that the combined hours are of the usual hours of work.

(2) A week for which benefits are paid under this section counts as a week of shared work benefits.

(c) If an individual, with the approval of the employer, did not work during any portion of the workweek, other than the reduced portion covered by the shared work plan, then the individual is not disqualified for the absence or deemed ineligible for shared work benefits for that reason alone.

(d) An individual who performs no services during a week for the shared work employer and is otherwise eligible is paid the full weekly unemployment benefit amount. Such week is not counted as a week with respect to which shared work benefits were received.

(e) An individual who does not work for the shared work employer during a week, but works for another employer and is otherwise eligible, is paid benefits for that week under the partial unemployment benefits provisions of this chapter. Such week is not counted as a week with respect to which shared work benefits were received.

50-7-912. Shared work benefits.

(a) Shared work benefits are charged to the employer's experience rating accounts in the same manner as unemployment benefits are charged under this chapter.

(b) Employers liable for payments in lieu of contributions must have shared work benefits attributed to service in their employ in the same manner as unemployment benefits are attributed.

50-7-913. Extended benefits.

An individual who has received all of the combined unemployment benefits and shared work benefits available in a benefit year is considered an exhaustee for purposes

of extended benefits, as provided under § 50-7-305, and, if otherwise eligible under that section, is eligible to receive extended benefits.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. For the purpose of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2021, the public welfare requiring it.