

2020 Second Extraordinary Session

HOUSE BILL NO. 93

BY REPRESENTATIVE WILLARD

EMPLOYMENT: Creates a work-sharing program (Item #8)

1 AN ACT

2 To enact Part XI of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 23:1750.1 through 1750.12, relative to unemployment
4 compensation; to create a work-sharing program; to provide for definitions; to
5 provide for criteria for plan approval; to provide for approval and rejection of a plan;
6 to provide for the effective date and duration of a plan; to provide for revocation of
7 approval; to provide for modification of a plan; to provide for eligibility; to provide
8 for benefits; to require annual reporting; to provide for severability; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part XI of Chapter 11 of Title 23 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 23:1750.1 through 1750.12, is hereby enacted to read as follows:

13 PART XI. WORK-SHARING PROGRAM

14 §1750.1. Definitions

15 For the purpose of this Part, the following terms have the meanings ascribed
16 to them:

17 (1) "Administrator" means the secretary of the Louisiana Workforce
18 Commission, or any subordinate delegated responsibility for approving applications
19 for participation in a work-sharing plan.

1 (2) "Affected unit" means a specified plant, department, shift, or other
2 definable unit which includes two or more workers to which an approved work-
3 sharing plan applies.

4 (3) "Health and retirement benefits" means employer-provided health
5 benefits and retirement benefits under a defined benefit pension plan as defined in
6 26 U.S.C. §414(j) of the Internal Revenue Code or contributions under a defined
7 contribution plan as defined in 26 U.S.C. §414(i) of the Internal Revenue Code,
8 which are incidents of employment in addition to the cash remuneration earned.

9 (4) "Participating employee" means an employee who works a reduced
10 number of hours under an approved work-sharing plan.

11 (5) "Participating employer" means an employer who has an approved
12 work-sharing plan in effect.

13 (6) "Unemployment insurance" means the unemployment benefits payable
14 under the state unemployment insurance law other than work-sharing and includes
15 any amounts payable pursuant to an agreement under any federal law providing for
16 compensation, assistance, or allowances with respect to unemployment.

17 (7) "Usual weekly hours of work" means the usual hours of work for full-
18 time or part-time employees in the affected unit when that unit is operating on its
19 regular basis, not to exceed forty hours and not including hours of overtime work.

20 (8) "Work-sharing benefits" means unemployment benefits payable to
21 employees in an affected unit under an approved work-sharing plan, as distinguished
22 from the unemployment benefits otherwise payable under the unemployment
23 insurance provisions of this state.

24 (9) "Work-sharing plan" means a plan submitted by an employer, for
25 approval by the administrator, under which the employer requests the payment of
26 work-sharing benefits to workers in an affected unit of the employer to avert layoffs.
27 §1750.2. Criteria for workshare plan approval

28 An employer wishing to participate in the work-sharing program shall submit
29 a signed written work-sharing plan to the administrator for approval. The

1 administrator shall develop an application form to request approval of a short-time
2 compensation plan and an approval process. The application shall include:

3 (1) The affected unit covered by the plan, including the number of full-time
4 or part-time workers in such unit, the percentage of workers in the affected unit
5 covered by the plan, identification of each individual employee in the affected unit
6 by name, social security number, and the employer's unemployment tax account
7 number and any other information required by the administrator to identify plan
8 participants.

9 (2) Certification by the employer that he has obtained the written approval
10 of any applicable collective bargaining representative and has notified all affected
11 employees who are not in a collective bargaining unit of the proposed work-sharing
12 plan.

13 (3) A description of how workers in the affected unit will be notified of the
14 employer's participation in the work-sharing plan if such application is approved,
15 including how the employer will notify those workers in a collective bargaining unit
16 as well as any workers in the affected unit who are not in a collective bargaining
17 unit. If the employer will not provide advance notice to workers in the affected unit,
18 the employer shall explain in a statement in the application why it is not feasible to
19 provide such notice.

20 (4) A requirement that the employer identify the usual weekly hours of work
21 for employees in the affected unit and the specific percentage by which their hours
22 will be reduced during all weeks covered by the plan. An application shall specify
23 the percentage of reduction for which a work-sharing application may be approved
24 which shall be not less than ten percent and not more than sixty percent. If the plan
25 includes any week for which the employer regularly provides no work due to a
26 holiday or other work-related circumstances outside the employee's control, then
27 such week shall be identified in the application.

28 (5) Certification by the employer that, if the employer provides health
29 benefits and retirement benefits under defined pension plans as defined in 26 U.S.C.

1 §414(j) of the Internal Revenue Code or contributions under a defined contribution
2 plan as defined in 26 U.S.C. §414(i) of the Internal Revenue Code to any employee
3 whose usual weekly hours of work are reduced under the program, such benefits will
4 continue to be provided to employees participating in the work-sharing program
5 under the same terms and conditions as though the usual weekly hours of work of
6 such employee had not been reduced or to the same extent as other employees not
7 participating in the work-sharing program. For defined benefit retirement plans, the
8 hours that are reduced under the work-sharing plan shall be credited for purposes of
9 participation, vesting, and accrual of benefits as though the usual weekly hours of
10 work had not been reduced. The dollar amount of employer contributions to a
11 defined contribution plan that are based on a percentage of compensation may be less
12 due to the reduction in the employee's compensation. Notwithstanding the above,
13 an application may contain the required certification when a reduction in health and
14 retirement benefits scheduled to occur during the duration of the plan will be
15 applicable equally to employees who are not participating in the short-time
16 compensation program and to those employees who are participating.

17 (6) Certification by the employer that the aggregate reduction in work hours
18 is in lieu of layoffs, whether temporary or permanent, or both, of regularly employed
19 employees in the affected unit. The application shall include an estimate of the
20 number of workers who would have been laid off in the absence of the short-time
21 compensation plan.

22 (7) Agreement by the employer to:

23 (a) Furnish reports to the administrator relating to the proper conduct of the
24 plan.

25 (b) Allow the administrator or his authorized representatives access to all
26 records necessary to approve or disapprove the plan application, and after approval
27 of a plan, to monitor and evaluate the plan.

1 (c) Follow any other directives the administrator deems necessary for the
2 employer to implement the plan and which are consistent with the requirements for
3 plan applications.

4 (8) Certification by the employer that he has filed all quarterly reports and
5 other reports required under the state unemployment insurance law and has paid all
6 quarterly contributions, reimbursements in lieu of contributions, interest and
7 penalties due through the date of the employer's application.

8 (9) Certification by the employer that participation in the work-sharing plan
9 and its implementation is consistent with the employer's obligations under applicable
10 federal and state laws.

11 (10) The effective date and duration of the plan that shall expire not later
12 than the end of the sixth full calendar month after the effective date.

13 (11) Any other provision added to the application by the administrator that
14 the United States Department of Labor determines to be appropriate for the purpose
15 of administering the work-sharing program.

16 §1750.3. Approval or disapproval of the plan

17 The administrator shall approve or disapprove a work-sharing plan in writing
18 within thirty days of its receipt and promptly communicate the decision to the
19 employer. A decision disapproving the plan shall clearly identify the reasons for the
20 disapproval. The disapproval shall be final, but the employer shall be allowed to
21 submit another work-sharing plan for approval not earlier than fifteen days from the
22 date of the disapproval.

23 §1750.4. Effective date and duration of the plan

24 A work-sharing plan shall be effective on the date that is mutually agreed
25 upon by the employer and the administrator, which shall be specified in the notice
26 of approval to the employer. The plan shall expire on the date specified in the notice
27 of approval, which shall be either the date at the end of the sixth full calendar month
28 after its effective date or an earlier date mutually agreed upon by the employer and
29 the administrator. However, if a work-sharing plan is revoked by the director

1 pursuant to R.S. 23:1750.5, the plan shall terminate on the date specified in the
2 administrator's written order of revocation. The employer may terminate a work-
3 sharing plan at any time upon written notice to the administrator. Upon receipt of
4 such notice from the employer, the administrator shall promptly notify each member
5 of the affected unit of the termination date. An employer may submit a new
6 application to participate in another work-sharing plan at any time after the
7 expiration or termination date.

8 §1750.5. Revocation of approval

9 The administrator may revoke approval of a work-sharing plan for good
10 cause at any time, including upon the request of an affected unit's employee. The
11 revocation order shall be in writing and specify the reasons for the revocation and the
12 date the revocation is effective. The administrator may periodically review the
13 operation of each employer's work-sharing plan to assure that no good cause exists
14 for revocation of the approval of the plan. Good cause includes, but is not limited
15 to, failure to comply with the assurances given in the plan, unreasonable revision of
16 productivity standards for the affected unit, conduct or occurrences tending to defeat
17 the intent and effective operation of the plan, and violation of any criteria on which
18 approval of the plan was based.

19 §1750.6. Modification of an approved plan

20 An employer may request a modification of an approved plan by filing a
21 written request to the administrator. The request shall identify the specific
22 provisions proposed to be modified and provide an explanation of why the proposed
23 modification is appropriate for the work-sharing plan. The administrator shall
24 approve or disapprove the proposed modification in writing within ten working days
25 of receipt and promptly communicate the decision to the employer. The
26 administrator, in his discretion, may approve a request for modification of the plan
27 based on conditions that have changed since the plan was approved, provided that
28 the modification is consistent with and supports the purposes for which the plan was
29 initially approved. A modification does not extend the expiration date of the original

1 plan, and the administrator shall promptly notify the employer whether the plan
2 modification has been approved and, if approved, the effective date of modification.
3 The employer is not required to request approval of a plan modification from the
4 administrator if the change is not substantial, but the employer shall report every
5 change to the plan to the administrator promptly in writing. The administrator may
6 terminate an employer's plan if the employer fails to meet this reporting requirement.
7 If the administrator determines that the reported change is substantial, the
8 administrator shall require the employer to request a modification to the plan.

9 §1750.7. Eligibility for work-sharing compensation

10 An employee is eligible to receive work-sharing compensation benefits with
11 respect to any week only if, in addition to monetary entitlement and not being
12 disqualified for unemployment compensation, the administrator finds that:

13 (1) During the week, the employee is employed as a member of an affected
14 unit under an approved work-sharing plan which was approved prior to that week,
15 and the plan is in effect with respect to the week for which such benefits are claimed.

16 (2) Notwithstanding any other provisions of this Chapter relating to
17 availability for work and actively seeking work, the employee is available for the
18 employee's usual hours of work with the work-sharing employer, which may include,
19 for purposes of this Section, participating in training to enhance job skills that is
20 approved by the administrator such as employer-sponsored training or training
21 funded under the Workforce Innovation and Opportunity Act of 2014.

22 (3) Notwithstanding any other provisions of this Chapter, an employee
23 covered by an approved work-sharing plan is deemed unemployed in any week
24 during the duration of such a plan, if the employee's remuneration as an employee
25 in an affected unit is reduced based on a reduction of the employee's usual weekly
26 hours of work under an approved work-sharing plan.

27 §1750.8. Benefits

28 A. An employee's work-sharing unemployment compensation weekly benefit
29 amount shall be the product of the regular weekly unemployment compensation

1 amount multiplied by the percentage of reduction in the employee's usual weekly
2 hours of work.

3 B. An employee may be eligible for work-sharing unemployment
4 compensation benefits or unemployment compensation, as appropriate, except that
5 no employee shall be eligible for combined benefits in any benefit year in an amount
6 more than the maximum entitlement established for regular unemployment
7 compensation, nor shall an employee be paid work-sharing unemployment
8 compensation benefits for more than fifty-two weeks under an approved work-
9 sharing plan.

10 C. The work-sharing unemployment compensation benefits paid to an
11 employee shall be deducted from the maximum entitlement amount of regular
12 unemployment insurance established for that employee's benefit year.

13 D. Provisions applicable to an unemployment compensation claimant shall
14 apply to a work-sharing claimant to the extent that such provisions are not
15 inconsistent with the work-sharing provisions in this Part. An employee who files
16 an initial claim for work-sharing benefits shall receive a monetary determination.

17 E. An employee who is not provided any work during a week by the work-
18 sharing employer, or any other employer, and who is otherwise eligible for
19 unemployment compensation shall be eligible for the amount of regular
20 unemployment compensation benefits to which he would otherwise be eligible.

21 F. An employee who is not provided any work by the work-sharing employer
22 during a week, but who works for another employer and is otherwise eligible may
23 be paid unemployment compensation for that week subject to the disqualifying
24 income provisions of the provision of state unemployment compensation laws
25 relating to partial unemployment compensation benefits.

26 §1750.9. Charging work-sharing unemployment compensation

27 A. Except as provided in Subsection B of this Section, work-sharing benefits
28 shall be charged to an employer's experience rating account in the same manner as
29 unemployment compensation is charged pursuant to this Chapter. An employer who

1 is liable for payments in lieu of contributions shall have work-sharing benefits
2 attributed to service in his employ in the same manner as unemployment
3 compensation is attributed.

4 B. If federal funding is available to the state for the purpose of full
5 reimbursement for the cost of funding work-sharing benefits paid by the Louisiana
6 Workforce Commission pursuant to Section 2162 of the Layoff Prevention Act of
7 2012 and an approved work-sharing plan under this Chapter, those benefits shall not
8 be charged or billed to a participating employer.

9 §1750.10. Extended benefits

10 An employee who has received all of the work-sharing benefits or combined
11 unemployment compensation and work-sharing unemployment compensation
12 benefits available in a benefit year shall be considered an exhaustee for purposes of
13 extended benefits, as provided for under this Chapter, and, if otherwise eligible, shall
14 be eligible to receive extended benefits.

15 §1750.11. Annual reporting

16 The Louisiana Workforce Commission shall provide to the legislature a
17 report on or before June thirteenth annually. The report shall include all of the
18 following:

19 (1) The number of participating employers.

20 (2) The number of participating employees.

21 (3) The number of employees in an affected unit participating in a work-
22 sharing program.

23 (4) The number of work-sharing programs revoked by the administrator and
24 the reasons for such revocation.

25 §1750.12. Severability

26 If any provisions of this Part would otherwise cause the United States
27 Department of Labor to withhold the approval required to implement a work-sharing
28 program under Section 3304(a)(4)(e) of the Federal Unemployment Tax Act, 26

1 U.S.C. §3304, and Section 303(a)(5) of the Social Security Act, 42 U.S.C. §303, that
2 provision shall not be applicable.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 93 Engrossed

2020 Second Extraordinary Session

Willard

Abstract: Enacts a work-sharing program.

Proposed law defines terms for the purposes of proposed law.

Proposed law provides that an employer wishing to participate in the work-sharing program shall submit a signed written work-sharing plan to the administrator for approval.

Proposed law provides that the administrator shall develop an application form to request approval of a work-sharing plan and an approval process.

Proposed law provides that the administrator shall approve or disapprove a work-sharing plan in writing within 30 days of its receipt and promptly communicate the decision to the employer. Proposed law further provides that a decision disapproving the plan shall state the reasons for the disapproval.

Proposed law provides that disapproval is final; however, the employer will be allowed to submit another work-sharing plan for approval not earlier than 15 days from the date of the disapproval.

Proposed law provides that a work-sharing plan shall be effective on the date that is mutually agreed upon by the employer and the administrator, which must be specified in the notice of approval to the employer.

Proposed law provides that the plan expires on the date specified in the notice of approval, which shall be either the date at the end of the 6th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and administrator.

Proposed law provides that an employer may terminate a work-sharing plan at any time upon written notice to the administrator.

Proposed law provides that the administrator may revoke approval of a work-sharing plan for good cause at any time, including upon the request of an affected unit's employee. Proposed law further provides that such a revocation must be in writing, specify the reasons for revocation, and the date the revocation is effective.

Proposed law provides that an employer may request a modification of an approved plan by filing a written request to the administrator. Proposed law further requires that the request must identify the specific provisions proposed to be modified and contain an explanation for the modification.

Proposed law requires the administrator to approve or disapprove the proposed modification in writing within 10 working days of receipt and promptly communicate his decision to the employer.

Proposed law provides that the administrator may terminate an employer's plan if the employer fails to meet this reporting requirement.

Proposed law provides that if the administrator determines that the reported change is substantial, the administrator shall require the employer to request a modification to the plan.

Proposed law provides that an employee's work-sharing unemployment compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount multiplied by the percentage of reduction in the employee's usual weekly hours of work.

Proposed law provides that an employee may be eligible for work-sharing unemployment compensation benefits or unemployment compensation, as appropriate. Proposed law further provides that no employee shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an employee be paid work-sharing unemployment compensation benefits for more than 52 weeks under an approved work-sharing plan.

Proposed law provides that except as otherwise provided in proposed law, work-sharing benefits shall be charged to an employer's experience rating account.

Proposed law provides that if federal funding is available to the state for the purpose of full reimbursement for the cost of funding work-sharing benefits paid by the agency pursuant to Section 2162 of the Layoff Prevention Act of 2012 and an approved work-sharing plan under proposed law, those benefits shall not be charged or billed to a participating employer.

Proposed law provides that an employee who has received all of the work-sharing benefits or combined unemployment compensation and work-sharing unemployment compensation benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible, shall be eligible to receive extended benefits.

Proposed law provides that the Louisiana Workforce Commission shall provide to the legislature a report on or before June 30th annually. Proposed law further provides that the report shall include: the number of participating employers and employees, the number of employees in an affected unit participating in a work-sharing program, and the number of work-sharing programs revoked by the administrator and the reasons for such revocation.

Proposed law provides that if any provisions under proposed law would otherwise cause the United States Department of Labor to withhold the approval required to implement a work-sharing program under 26 U.S.C. §3304(a)(4)(e) of the Federal Unemployment Tax Act and 42 U.S.C. §303(a)(5) of the Social Security Act, that provision shall not be applicable.

(Adds R.S. 23:1750.1-1750.12)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Labor and Industrial Relations to the original bill:

1. Make technical changes.
2. Delete that an employer no longer has to certify that he will not hire a new employee or transfer an employee in an affected unit.
3. Delete that an employer no longer has to certify that he will not layoff a participating employee.

4. Delete that a work-sharing employer will not be subject to partial unemployment compensation benefits under the same provisions of law as regular unemployment compensation benefits.
5. Delete that wages earned by an employee from other than the work-sharing employer will not be disregarded.
6. Require an annual report by the Louisiana Workforce Commission to be provided to the legislature.
7. Changes the expiration of the plan from 12 months to 6 months.