2020 Second Extraordinary Session

HOUSE BILL NO. 93

BY REPRESENTATIVE WILLARD

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

AN ACT

To enact Part XI of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:1750.1 through 1750.11, relative to unemployment compensation; to create a work-sharing program; to provide for definitions; to provide for criteria for plan approval; to provide for approval and rejection of a plan; to provide for the effective date and duration of a plan; to provide for revocation of approval; to provide for modification of a plan; to provide for eligibility; to provide for benefits; to provide for severability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XI of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:1750.1 through 1750.11, is hereby enacted to read as follows:

PART XI. WORK-SHARING PROGRAM

§1750.1. Definitions

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

(1) "Administrator" means the secretary of the Louisiana Workforce Commission, or any subordinate delegated responsibility for approving applications for participation in a work-sharing plan.
"Affected unit" means a specified plant, department, shift, or other
definable unit which includes two or more workers to which an approved work- 
sharing plan applies.

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

"Participating employee" means an employee who works a reduced 
number of hours under an approved work-sharing plan.

"Participating employer" means an employer who has an approved work- 
sharing plan in effect.

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

"Work-sharing plan" means a plan submitted by an employer, for 
approval by the administrator, under which the employer requests the payment of 
work-sharing benefits to workers in an affected unit of the employer to avert layoffs.

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

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

§1750.2. Criteria for workshare plan approval
An employer wishing to participate in the work-sharing program shall submit a signed written work-sharing plan to the administrator for approval. The administrator shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

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

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

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

4. A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a work-sharing application may be approved which shall be not less than ten percent and not more than sixty percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other work-related circumstances outside the employee's control, then such week shall be identified in the application.
(5) Certification by the employer that, if the employer provides health benefits and retirement benefits under defined pension plans as defined in 26 U.S.C. §414(j) of the Internal Revenue Code or contributions under a defined contribution plan as defined in 26 U.S.C. §414(i) of the Internal Revenue Code to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the work-sharing program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the work-sharing program. For defined benefit retirement plans, the hours that are reduced under the work-sharing plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation. Notwithstanding the above, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating.

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

(7) Agreement by the employer to:

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

(b) Allow the administrator or his authorized representatives access to all records necessary to approve or disapprove the plan application, and after approval of a plan, to monitor and evaluate the plan.
(c) Follow any other directives the administrator deems necessary for the employer to implement the plan and which are consistent with the requirements for plan applications.

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

(9) Certification by the employer that he will not hire a new employee in, or transfer an employee to, the affected unit during the effective period of the work-sharing plan.

(10) Certification by the employer that it will not lay off a participating employee during the effective period of the work-sharing plan, or reduce a participating employee's hours of work by more than the reduction percentage during the effective period of the work-sharing plan, except in the case of holidays, designated vacation periods, equipment maintenance, or similar work-related circumstances.

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

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

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

§1750.3. Approval or disapproval of the plan

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

§1750.4. Effective date and duration of the plan

A work-sharing plan shall be effective on the date that is mutually agreed upon by the employer and the administrator, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the administrator. However, if a work-sharing plan is revoked by the director under R.S. 23:1750.4, the plan shall terminate on the date specified in the administrator's written order of revocation. The employer may terminate a work-sharing plan at any time upon written notice to the administrator. Upon receipt of such notice from the employer, the administrator shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another work-sharing plan at any time after the expiration or termination date.

§1750.5. Revocation of approval

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. The revocation order shall be in writing and specify the reasons for the revocation and the date the revocation is effective. The administrator may periodically review the operation of each employer's work-sharing plan to assure that no good cause exists for revocation of the approval of the plan. Good cause includes, but is not limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

§1750.6. Modification of an approved plan
An employer may request a modification of an approved plan by filing a written request to the administrator. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the work-sharing plan. The administrator shall approve or disapprove the proposed modification in writing within ten working days of receipt and promptly communicate the decision to the employer. The administrator, in his discretion, may approve a request for modification of the plan based on conditions that have changed since the plan was approved, provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the administrator must promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of modification.

The employer is not required to request approval of a plan modification from the administrator if the change is not substantial, but the employer shall report every change to the plan to the administrator promptly in writing. The administrator may terminate an employer's plan if the employer fails to meet this reporting requirement.

If the administrator determines that the reported change is substantial, the administrator shall require the employer to request a modification to the plan.

§1750.7. Eligibility for work-sharing compensation

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

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

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

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

§1750.8. Benefits

A. 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.

B. An employee may be eligible for work-sharing unemployment
compensation benefits or unemployment compensation, as appropriate, except 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 fifty-two weeks under an approved work-
sharing plan.

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

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

E. An employee who is eligible for work-sharing unemployment
compensation benefits shall not be subject to the provisions of law related to regular
unemployment compensation as it relates to partial unemployment compensation
benefits. Wages earned by an employee from other than the work-sharing employer
during the week of work-sharing eligibility shall be disregarded in the calculation of
the employee's weekly work-sharing benefit.

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

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

§1750.9. Charging work-sharing unemployment compensation

A. Except as provided in Subsection B of this Section, work-sharing benefits
shall be charged to the employers' experience rating accounts in the same manner as
unemployment compensation is charged pursuant to this Chapter. Employers liable
for payments in lieu of contributions shall have work-sharing benefits attributed to
service in his employ in the same manner as unemployment compensation is
attributed.

B. 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 Louisiana
Workforce Commission pursuant to Section 2162 of the Layoff Prevention Act of
2012 and an approved work-sharing plan under this Chapter, those benefits shall not
be charged or billed to a participating employer.

§1750.10. Extended benefits

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, as provided for under this Chapter, and, if otherwise eligible, shall be eligible to receive extended benefits.

§1750.11. Severability

If any provisions of this Part would otherwise cause the United States Department of Labor to withhold the approval required to implement a work-sharing program under Section 3304(a)(4)(e) of the Federal Unemployment Tax Act, 26 U.S.C. §3304, and Section 303(a)(5) of the Social Security Act, 42 U.S.C. §303, that 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 Original 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 administrative, 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 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and administrator.

Proposed law provides that the 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 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 the employers' experience rating accounts.

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 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. 23:1750.1-1750.11)