

AMENDED IN SENATE MAY 29, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Committee on Insurance

March 4, 2013

An act to *amend*, repeal, and add Section 1279.5 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Committee on Insurance. Unemployment insurance: work sharing plans.

Existing law deems an individual unemployed in any week if the individual works less than his or her normal weekly hours of work for the individual's regular employer as the result of a plan by the employer, in lieu of layoff, to reduce employment and stabilize the work force by work sharing. Existing law requires that plan to have been approved by the Director of Employment Development, pursuant to prescribed requirements. Existing law requires the plan to involve the participation of at least two employees and include not less than 10 percent of the employer's regular permanent work force, as specified. Existing law requires an approved plan to expire 6 months after its effective date. Existing law provides that employees participating are eligible to receive unemployment compensation benefits in an amount equal to the percentage of reduction of the employee's wages resulting from an approved plan, as specified.

This bill would revise and recast these provisions *commencing July 1, 2014*. The bill would define a work sharing plan as a plan submitted

by an employer, for approval by the Director of Employment Development, pursuant to which the employer requests the payment of work sharing compensation to employees in an affected unit of the employer in lieu of layoffs and would establish other definitions in this regard. The bill would require that an employer wishing to participate in the work sharing program submit a signed written work sharing plan to the director for approval, and that the director develop an application form that fulfills specified requirements, and ~~develop~~ an approval process, and designate a work sharing administrator. The employer would be required to make a series of certifications and to provide for notification of employees, as specified. The bill would establish timelines for the approval or disapproval of a plan and authorize its modification pursuant to a specified process. The bill would prescribe requirements for employees to be eligible for work sharing compensation, as defined. The bill would require that work sharing compensation be charged to employers' experience rating accounts in the same manner as unemployment compensation. Among other things, the bill would prohibit employees from being eligible to receive any benefits pursuant to these provisions unless their employer agrees, in writing, and their bargaining agent agrees, in writing, pursuant to any applicable collective bargaining agreement, to voluntarily participate in the work sharing program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1279.5 of the Unemployment Insurance
 2 Code is amended to read:
 3 1279.5. (a) Notwithstanding Section 1252 or 1252.2 or any
 4 other provision of this part, for the purposes of this section an
 5 individual is "unemployed" in any week if the individual works
 6 less than his or her normal weekly hours of work for the
 7 individual's regular employer, and the director finds that the regular
 8 employer has reduced or restricted the individual's normal hours
 9 of work, or has rehired an individual previously laid off and
 10 reduced that individual's normal hours of work from those
 11 previously worked, as the result of a plan by the regular employer
 12 to, in lieu of layoff, reduce employment and stabilize the work
 13 force by a program of sharing the work remaining after a reduction

1 in total hours of work and a corresponding reduction in wages of
2 at least 10 percent. The application for approval of a plan shall
3 require the employer to briefly describe the circumstances requiring
4 the use of work sharing to avoid a layoff. Normal weekly hours
5 of work means the number of hours in a week that the employee
6 normally would work for the regular employer or 40 hours,
7 whichever is less. The plan must involve the participation of at
8 least two employees and include not less than 10 percent of the
9 employer's regular permanent work force involved in the affected
10 work unit or units in each week, or in at least one week of a
11 two-consecutive-week period. A plan approved by the director
12 shall expire six months after the effective date of the plan.

13 (b) Except as otherwise provided in this section, each individual
14 eligible under this chapter who is "unemployed" in any week shall
15 be paid with respect to that week a weekly shared work
16 unemployment compensation benefit amount equal to the
17 percentage of reduction of the individual's wages resulting from
18 an approved plan, rounded to the nearest 5 percent, multiplied by
19 the individual's weekly benefit amount.

20 (c) No individual who receives any benefits under this section
21 during any benefit year shall receive any benefits pursuant to
22 Section 1252 or 1252.2 as a partially unemployed individual with
23 respect to any week during such benefit year while in employment
24 status with the regular employer who initiated the program of
25 sharing work under this section. No benefits under this section
26 shall be payable on any type of extended claim.

27 (d) Any amount payable under this section shall be reduced by
28 the amount of any and all compensation payable for personal
29 services whether performed as an employee or an independent
30 contractor or as a juror or as a witness, except compensation
31 payable by the regular employer under a shared work plan.

32 For the purposes of this subdivision, "regular employer" may
33 include, pursuant to an approved plan, a labor organization which
34 periodically employs individuals in accordance with a collective
35 bargaining agreement.

36 (e) The benefit payment under this section, if not a multiple of
37 one dollar (\$1), shall be increased to the next higher multiple of
38 one dollar (\$1).

39 (f) Sections 1253.5 and 1279 shall not apply to any individual
40 eligible for any payment under this section.

1 (g) For the purposes of this section, an individual shall not be
2 disqualified under subdivision (c) of Section 1253 for any week
3 if both of the following conditions exist:

4 (1) The individual has not been absent from work without the
5 approval of the regular employer.

6 (2) The individual accepted all work the regular employer made
7 available to the individual during hours scheduled off due to the
8 work-sharing plan.

9 (h) Except as otherwise provided by or inconsistent with this
10 section, all provisions of this division and authorized regulations
11 apply to benefits under this section. Authorized regulations may,
12 to the extent permitted by federal law, make such distinctions and
13 requirements as may be necessary in the procedures and provisions
14 applicable to unemployed individuals to carry out the purposes of
15 this section, including regulations defining normal hours, days,
16 workweek, and wages.

17 (i) Employees shall not be eligible to receive any benefits under
18 this section unless their employer agrees, in writing, and their
19 bargaining agent pursuant to any applicable collective bargaining
20 agreement agrees, in writing, to voluntarily participate in the shared
21 work unemployment insurance benefit program created by this
22 section.

23 (j) Notwithstanding Section 1327, the department shall not be
24 required to notify an employer of additional claims which result
25 from an approved plan submitted by the employer under which
26 benefits are not paid in each week.

27 (k) The director may terminate a shared work plan for good
28 cause if the plan is not being carried out according to its terms and
29 intent.

30 (l) *This section shall remain in effect until July 1, 2014, and as*
31 *of January 1, 2015, is repealed.*

32 ~~SECTION 1. Section 1279.5 of the Unemployment Insurance~~
33 ~~Code is repealed.~~

34 SEC. 2. Section 1279.5 is added to the Unemployment
35 Insurance Code, to read:

36 1279.5. (a) As used in this section:

37 (1) "Affected unit" means a specified plant, department, shift,
38 or other definable unit that includes two or more workers and not
39 less than 10 percent of the employer's regular permanent work
40 force involved in the affected unit or units in each week, or in at

1 least one week of a two-consecutive-week period, to which an
2 approved work sharing plan applies.

3 (2) “Health and retirement benefits” means employer-provided
4 health benefits and retirement benefits under a defined benefit
5 pension plan, as defined in Section 414(j) of the Internal Revenue
6 Code, or contributions under a defined contribution plan, as defined
7 in Section 414(i) of *the* Internal Revenue Code, that are incidents
8 of employment in addition to the cash remuneration earned.

9 (3) “Work sharing compensation” means the unemployment
10 compensation benefits payable to employees in an affected unit
11 under an approved work sharing plan, as distinguished from the
12 unemployment compensation benefits otherwise payable under
13 this part.

14 (4) “Work sharing plan” means a plan submitted by an employer,
15 for approval by the director, under which the employer requests
16 the payment of work sharing compensation to employees in an
17 affected unit of the employer in lieu of layoffs.

18 (5) “Work sharing program” means the program described by
19 this section.

20 (6) “Usual weekly hours of work” means the usual hours of
21 work for ~~full-time~~ *full-* or part-time employees in the affected unit
22 when that unit is operating on its regular basis, not to exceed 40
23 hours and not including hours of overtime work.

24 (7) “Unemployment compensation” means the unemployment
25 compensation benefits payable under this part other than work
26 sharing compensation and includes amounts payable pursuant to
27 an agreement under federal law providing for compensation,
28 assistance, or allowances with respect to unemployment.

29 (b) Notwithstanding Section 1252 or 1252.2 or any other
30 provision of this part, for the purposes of this section an employee
31 is “unemployed” in any week if the employee works less than his
32 or her usual weekly hours of work for the employee’s regular
33 employer, as the result of the regular employer’s participation in
34 a work sharing plan that meets the requirements of this section
35 and has been approved by the director, pursuant to which the
36 employer, in lieu of layoff, reduces employment and stabilizes the
37 workforce.

38 (c) An employer wishing to participate in the work sharing
39 program, *on and after July 1, 2014*, shall submit a signed written
40 work sharing plan to the director for approval. The director shall

1 develop an application form to request approval of a work sharing
2 plan and an approval process that meets the requirements of this
3 section. The application shall include, but is not limited to, the
4 following:

5 (1) The affected unit covered by the plan, including the number
6 of ~~full-time~~ *full-* or part-time employees in the unit, the percentage
7 of employees in the affected unit covered by the plan, identification
8 of each individual employee in the affected unit by name, social
9 security number, and the employer's unemployment tax account
10 number and any other information required by the director to
11 identify plan participants.

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

21 (3) A requirement that the employer identify, in the application,
22 the usual weekly hours of work for employees in the affected unit
23 and the specific percentage by which their hours will be reduced
24 during all weeks covered by the plan. The percentage of reduction
25 of usual weekly hours of work for which a work sharing plan may
26 be approved shall not be less than 10 percent or more than 60
27 percent. If the plan includes any week for which the employer
28 regularly does not provide work, including, but not limited to,
29 incidences due to a holiday or plant closing, then that week shall
30 be identified in the application.

31 (4) (A) Except as provided in subparagraph (B), certification
32 by the employer, if the employer provides health and retirement
33 benefits to any employee whose usual weekly hours of work are
34 to be reduced under the plan, that the benefits will continue to be
35 provided, to the extent permitted by federal law, to employees
36 participating in the work sharing plan under the same terms and
37 conditions as though the usual weekly hours of work of these
38 employees had not been reduced or to the same extent as other
39 employees not participating in the work sharing plan. For defined
40 benefit retirement plans, to the extent permitted by federal law,

1 the hours that are reduced under the work sharing plan shall be
2 credited for purposes of participation, vesting, and accrual of
3 benefits as though the usual weekly hours of work had not been
4 reduced. The dollar amount of employer contributions to a defined
5 contribution plan that are based on a percentage of compensation
6 may be less due to the reduction in the employee's compensation.

7 (B) If a reduction in health and retirement benefits is scheduled
8 to occur during the duration of the plan and those reductions will
9 be applied equally to employees who are not participating in the
10 work sharing program, then the application shall so certify, and
11 those benefits may be reduced for those employees who are
12 participating in the work sharing plan.

13 (5) Certification by the employer that the aggregate reduction
14 in work hours is in lieu of temporary or permanent layoffs, or both.
15 The application shall include an estimate of the number of workers
16 who would have been laid off in the absence of the work sharing
17 plan.

18 (6) Agreement by the employer to do all of the following:

19 (A) Furnish reports to the director relating to the proper conduct
20 of the plan.

21 (B) Allow the director or his or her authorized representatives
22 access to all records necessary to approve or disapprove the plan
23 application.

24 (C) After approval of a plan, monitor and evaluate the plan.

25 (D) Follow any other directives the director deems necessary
26 for the department to implement the plan and that are consistent
27 with the requirements for plan applications.

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

31 (8) The effective date and duration of the plan, which shall not
32 be later than the end of the 12th full calendar month after the
33 effective date.

34 (9) Any other provision added to the application by the director
35 that the United States Secretary of Labor determines to be
36 appropriate for purposes of a work sharing plan.

37 (d) The director shall approve or disapprove a work sharing
38 plan in writing by the close of business no later than 10 working
39 days from the date the completed plan is received and communicate
40 the decision to the employer. A decision disapproving the plan

1 shall clearly identify the reasons for the disapproval. Within 20
2 days, the employer may submit a request for review of the
3 disapproved work sharing plan to the director’s work sharing
4 administrator, whom the director shall designate for this purpose.
5 After review, the work sharing administrator’s decision of approval
6 or disapproval shall be final. If disapproved, the employer may
7 submit a different work sharing plan for approval.

8 (e) The director shall work with the employer to determine the
9 effective date of a work sharing plan, which shall be specified in
10 the notice of approval to the employer. The plan shall expire on
11 the date specified in the notice of approval, which shall be either
12 the date at the end of the 12th full calendar month after its effective
13 date or an earlier date mutually agreed upon by the employer and
14 the director. However, if a work sharing plan is revoked by the
15 director under subdivision (f) of this section, the plan shall
16 terminate on the date specified in the director’s written order of
17 revocation. An employer may terminate a work sharing plan at
18 any time upon written notice to the director. An employer may
19 submit an application to renew the work sharing plan not more
20 than 10 days after a previously approved work sharing plan expires.

21 (f) The director may revoke approval of a work sharing plan
22 for good cause at any time. The revocation order shall be in writing
23 and shall specify the reasons for the revocation and the date the
24 revocation is effective. The director may periodically review the
25 operation of an employer’s work sharing plan to ensure that good
26 cause does not exist for revocation of the approval of the plan. For
27 purposes of these provisions, good cause includes, but is not limited
28 to, failure to comply with the assurances given in the plan,
29 unreasonable revision of productivity standards for the affected
30 unit, conduct or occurrences tending to defeat the intent and
31 effective operation of the work sharing plan, and violation of any
32 criteria on which approval of the plan was based.

33 (g) An employer may request a modification of an approved
34 plan by filing a written request to the director. The request shall
35 identify the specific provisions proposed to be modified and
36 provide an explanation of why the proposed modification is
37 appropriate for the work sharing plan. The director shall approve
38 or disapprove the proposed modification in writing by the close
39 of business no later than 10 working days from the date the
40 proposed modification is received and communicate the decision

1 to the employer. The director, in his or her discretion, may approve
2 a request for modification of the plan based on conditions that
3 have changed since the plan was approved, provided that the
4 modification is consistent with and supports the purposes for which
5 the plan was initially approved. A modification does not extend
6 the expiration date of the original plan, and the director shall
7 promptly notify the employer whether the plan modification has
8 been approved and, if approved, the effective date of the
9 modification, which shall not be earlier than the effective date of
10 the original work sharing plan. An employer is not required to
11 request approval of a plan modification from the director if the
12 change is not substantial, but the employer shall promptly report,
13 in writing, every change to the plan to the director. The director
14 may terminate an employer's plan if the employer fails to meet
15 this reporting requirement. If the director determines that the
16 reported change is substantial, the director shall require the
17 employer to request a modification to the plan.

18 (h) (1) An employee is eligible to receive work sharing
19 compensation with respect to any week only if the employee is
20 monetarily eligible for unemployment compensation, not otherwise
21 disqualified for unemployment compensation, and both of the
22 following are true:

23 (A) During the week, the employee is employed as a member
24 of an affected unit under an approved work sharing plan, which
25 was approved prior to that week, and the plan is in effect with
26 respect to the week for which work sharing compensation is
27 claimed.

28 (B) Notwithstanding any other provisions relating to availability
29 for work and actively seeking work, the employee is available for
30 the employee's usual hours of work with the work sharing
31 employer, which may include, for purposes of this section,
32 participating in training to enhance job skills that is approved by
33 the director, such as employer-sponsored training or training funded
34 under the federal Workforce Investment Act of 1998 (29 U.S.C.
35 Sec. 2801 et seq.).

36 (2) Notwithstanding any other provision of law, an employee
37 covered by a work sharing plan is deemed unemployed in any
38 week during the duration of that plan if the employee's
39 remuneration as an employee in an affected unit is reduced based

1 on a reduction of the employee’s usual weekly hours of work under
2 an approved work sharing plan.

3 (i) For the purposes of this section, an employee shall not be
4 disqualified under subdivision (c) of Section 1253 for any week
5 if both of the following conditions exist:

6 (1) The employee has not been absent from work without the
7 approval of the regular employer.

8 (2) The employee accepted all work the regular employer made
9 available to the individual during hours scheduled off due to the
10 work sharing plan.

11 (j) The work sharing weekly compensation amount shall be the
12 product of the regular weekly unemployment compensation amount
13 for a week of total unemployment multiplied by the percentage of
14 reduction in the individual’s usual weekly hours of work, ~~rounded~~
15 ~~to the nearest 5 percent.~~

16 (k) (1) Provisions applicable to unemployment compensation
17 shall apply to employees in a work sharing plan to the extent that
18 they are not inconsistent with work sharing program provisions.
19 An employee who files an initial claim for work sharing
20 compensation shall receive a monetary determination. An employee
21 may be eligible for work sharing compensation or unemployment
22 compensation, as appropriate, except that an employee shall not
23 be eligible for combined benefits in any benefit year in an amount
24 more than the maximum entitlement established for regular
25 unemployment compensation, nor shall an employee be paid work
26 sharing benefits for more than 52 weeks under a work sharing
27 plan.

28 (2) An employee who is not provided any work during a week
29 by the work sharing employer, or any other employer, and who is
30 otherwise eligible for unemployment compensation, shall be
31 eligible for the amount of regular unemployment compensation to
32 which he or she would otherwise be eligible.

33 (3) An employee who is not provided any work by the work
34 sharing employer during a week, but who works for another
35 employer and is otherwise eligible, may be paid unemployment
36 compensation for that week subject to the disqualifying income
37 and other provisions applicable to claims for regular unemployment
38 compensation.

39 (4) The work sharing compensation paid to an employee shall
40 be deducted from the maximum entitlement amount of regular

1 unemployment compensation established for that employee's
2 benefit year.

3 (5) An employee who has received all of the work sharing
4 compensation or combined unemployment compensation and work
5 sharing compensation available in a benefit year shall be considered
6 an exhaustee for purposes of extended benefits and, if otherwise
7 eligible under those provisions, shall be eligible to receive extended
8 benefits.

9 (6) No employee who receives any benefits under this section
10 during any benefit year shall receive any benefits pursuant to
11 Section 1252 or 1252.2 as a partially unemployed individual with
12 respect to any week during a benefit year while in employment
13 status with the regular employer who initiated the work sharing
14 plan under this section.

15 (7) Sections 1253.5 and 1279 shall not apply to any individual
16 eligible for any payment under this section.

17 (l) Any amount payable under this section shall be reduced by
18 the amount of any and all compensation payable for personal
19 services, whether performed as an employee or an independent
20 contractor or as a juror or as a witness, except compensation
21 payable by the regular employer under a work sharing plan. For
22 the purposes of this subdivision, "regular employer" may include,
23 pursuant to an approved plan, a labor organization that periodically
24 employs individuals in accordance with a collective bargaining
25 agreement.

26 (m) Work sharing compensation shall be charged to employers'
27 experience rating accounts in the same manner as unemployment
28 compensation is charged under this part. Employers liable for
29 payments in lieu of contributions shall have work sharing
30 compensation attributed to service in their employ in the same
31 manner as unemployment compensation is attributed.

32 (n) The benefit payment under this section, if not a multiple of
33 one dollar (\$1), shall be increased to the next higher multiple of
34 one dollar (\$1).

35 (o) Except as otherwise provided by or inconsistent with this
36 section, all provisions of this division and authorized regulations
37 apply to benefits under this section. Authorized regulations may,
38 to the extent permitted by federal law, make those distinctions and
39 requirements as may be necessary in the procedures and provisions
40 applicable to unemployed individuals to carry out the purposes of

1 this section, including, but not limited to, regulations defining
2 normal hours, days, workweeks, and wages.

3 (p) Employees shall not be eligible to receive any benefits under
4 this section unless their employer agrees, in writing, and their
5 bargaining agent pursuant to any applicable collective bargaining
6 agreement agrees, in writing, to voluntarily participate in the work
7 sharing program created by this section.

8 (q) Notwithstanding Section 1327, the department shall not be
9 required to notify an employer of additional claims that result from
10 an approved plan submitted by the employer under which benefits
11 are not paid in each week.

12 ~~(r) (1) This section shall be implemented commencing on~~
13 ~~January 1, 2014, unless the department determines that~~
14 ~~implementation by that date is not feasible, in which case the~~
15 ~~department shall implement this section no later than July 1, 2014.~~

16 ~~(2) A work sharing plan that is in effect when this section is~~
17 ~~implemented shall continue in effect and be subject to the law~~
18 ~~applicable when the plan was approved, but shall not be renewed.~~
19 ~~Upon expiration or termination of the plan, this section shall apply.~~

20 (r) *This section shall become operative on July 1, 2014.*