

AMENDED IN SENATE JUNE 19, 2013

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,~~ *amend* 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 *limit the application of these provisions to work sharing plans that become effective before July 1, 2014. The bill would prohibit the renewal of those work sharing plans on or after July 1, 2014.*

This bill would also revise and recast these provisions commencing as applied to work sharing plans that become effective on or after July 1, 2014. The In this regard, 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 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

1 individual's regular employer, and the director finds that the regular
2 employer has reduced or restricted the individual's normal hours
3 of work, or has rehired an individual previously laid off and
4 reduced that individual's normal hours of work from those
5 previously worked, as the result of a plan by the regular employer
6 to, in lieu of layoff, reduce employment and stabilize the work
7 force by a program of sharing the work remaining after a reduction
8 in total hours of work and a corresponding reduction in wages of
9 at least 10 percent. The application for approval of a plan shall
10 require the employer to briefly describe the circumstances requiring
11 the use of work sharing to avoid a layoff. Normal weekly hours
12 of work means the number of hours in a week that the employee
13 normally would work for the regular employer or 40 hours,
14 whichever is less. The plan must involve the participation of at
15 least two employees and include not less than 10 percent of the
16 employer's regular permanent work force involved in the affected
17 work unit or units in each week, or in at least one week of a
18 two-consecutive-week period. A plan approved by the director
19 shall expire six months after the effective date of the plan.

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

27 (c) No individual who receives any benefits under this section
28 during any benefit year shall receive any benefits pursuant to
29 Section 1252 or 1252.2 as a partially unemployed individual with
30 respect to any week during such benefit year while in employment
31 status with the regular employer who initiated the program of
32 sharing work under this section. No benefits under this section
33 shall be payable on any type of extended claim.

34 (d) Any amount payable under this section shall be reduced by
35 the amount of any and all compensation payable for personal
36 services whether performed as an employee or an independent
37 contractor or as a juror or as a witness, except compensation
38 payable by the regular employer under a shared workplan.

39 For the purposes of this subdivision, "regular employer" may
40 include, pursuant to an approved plan, a labor organization which

1 periodically employs individuals in accordance with a collective
 2 bargaining agreement.

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

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

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

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

13 (2) The individual accepted all work the regular employer made
 14 available to the individual during hours scheduled off due to the
 15 ~~work-sharing~~ *work sharing* plan.

16 (h) Except as otherwise provided by or inconsistent with this
 17 section, all provisions of this division and authorized regulations
 18 apply to benefits under this section. Authorized regulations may,
 19 to the extent permitted by federal law, make such distinctions and
 20 requirements as may be necessary in the procedures and provisions
 21 applicable to unemployed individuals to carry out the purposes of
 22 this section, including regulations defining normal hours, days,
 23 workweek, and wages.

24 (i) Employees shall not be eligible to receive any benefits under
 25 this section unless their employer agrees, in writing, and their
 26 bargaining agent pursuant to any applicable collective bargaining
 27 agreement agrees, in writing, to voluntarily participate in the shared
 28 work unemployment insurance benefit program created by this
 29 section.

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

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

37 (l) This section shall ~~remain in effect until July 1, 2014, and as~~
 38 ~~of January 1, 2015, is repealed.~~ *apply to work sharing plans that*
 39 *become effective before July 1, 2014. No work sharing plan that*
 40 *becomes effective before July 1, 2014, shall be renewed on or after*

1 *July 1, 2014. Any work sharing plan that is entered into on or after*
2 *July 1, 2014, shall be subject to Section 1279.5 as added by*
3 *Assembly Bill 1392 of the 2013–14 Regular Session.*

4 SEC. 2. Section 1279.5 is added to the Unemployment
5 Insurance Code, to read:

6 1279.5. (a) As used in this section:

7 (1) “Affected unit” means a specified plant, department, shift,
8 or other definable unit that includes two or more workers and not
9 less than 10 percent of the employer’s regular permanent work
10 force involved in the affected unit or units in each week, or in at
11 least one week of a two-consecutive-week period, to which an
12 approved work sharing plan applies.

13 (2) “Health and retirement benefits” means employer-provided
14 health benefits and retirement benefits under a defined benefit
15 pension plan, as defined in Section 414(j) of the Internal Revenue
16 Code, or contributions under a defined contribution plan, as defined
17 in Section 414(i) of the Internal Revenue Code, that are incidents
18 of employment in addition to the cash remuneration earned.

19 (3) “Work sharing compensation” means the unemployment
20 compensation benefits payable to employees in an affected unit
21 under an approved work sharing plan, as distinguished from the
22 unemployment compensation benefits otherwise payable under
23 this part.

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

28 (5) “Work sharing program” means the program described by
29 this section.

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

34 (7) “Unemployment compensation” means the unemployment
35 compensation benefits payable under this part other than work
36 sharing compensation and includes amounts payable pursuant to
37 an agreement under federal law providing for compensation,
38 assistance, or allowances with respect to unemployment.

39 (b) Notwithstanding Section 1252 or 1252.2 or any other
40 provision of this part, for the purposes of this section an employee

1 is “unemployed” in any week if the employee works less than his
2 or her usual weekly hours of work for the employee’s regular
3 employer, as the result of the regular employer’s participation in
4 a work sharing plan that meets the requirements of this section
5 and has been approved by the director, pursuant to which the
6 employer, in lieu of layoff, reduces employment and stabilizes the
7 workforce.

8 (c) An employer wishing to participate in the work sharing
9 program, on and after July 1, 2014, shall submit a signed written
10 work sharing plan to the director for approval. The director shall
11 develop an application form to request approval of a work sharing
12 plan and an approval process that meets the requirements of this
13 section. The application shall include, but is not limited to, the
14 following:

15 (1) The affected unit covered by the plan, including the number
16 of full- or part-time employees in the unit, the percentage of
17 employees in the affected unit covered by the plan, identification
18 of each individual employee in the affected unit by name, social
19 security number, and the employer’s unemployment tax account
20 number and any other information required by the director to
21 identify plan participants.

22 (2) A description of how employees in the affected unit will be
23 notified of the employer’s participation in the work sharing plan
24 if the application is approved, including how the employer will
25 notify those employees in a collective bargaining unit as well as
26 any employees in the affected unit who are not in a collective
27 bargaining unit. If the employer does not intend to provide advance
28 notice to employees in the affected unit, the employer shall explain
29 in a statement in the application why it is not feasible to provide
30 that notice.

31 (3) A requirement that the employer identify, in the application,
32 the usual weekly hours of work for employees in the affected unit
33 and the specific percentage by which their hours will be reduced
34 during all weeks covered by the plan. The percentage of reduction
35 of usual weekly hours of work for which a work sharing plan may
36 be approved shall not be less than 10 percent or more than 60
37 percent. If the plan includes any week for which the employer
38 regularly does not provide work, including, but not limited to,
39 incidences due to a holiday or plant closing, then that week shall
40 be identified in the application.

1 (4) (A) Except as provided in subparagraph (B), certification
2 by the employer, if the employer provides health and retirement
3 benefits to any employee whose usual weekly hours of work are
4 to be reduced under the plan, that the benefits will continue to be
5 provided, to the extent permitted by federal law, to employees
6 participating in the work sharing plan under the same terms and
7 conditions as though the usual weekly hours of work of these
8 employees had not been reduced or to the same extent as other
9 employees not participating in the work sharing plan. For defined
10 benefit retirement plans, to the extent permitted by federal law,
11 the hours that are reduced under the work sharing plan shall be
12 credited for purposes of participation, vesting, and accrual of
13 benefits as though the usual weekly hours of work had not been
14 reduced. The dollar amount of employer contributions to a defined
15 contribution plan that are based on a percentage of compensation
16 may be less due to the reduction in the employee's compensation.

17 (B) If a reduction in health and retirement benefits is scheduled
18 to occur during the duration of the plan and those reductions will
19 be applied equally to employees who are not participating in the
20 work sharing program, then the application shall so certify, and
21 those benefits may be reduced for those employees who are
22 participating in the work sharing plan.

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

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

29 (A) Furnish reports to the director relating to the proper conduct
30 of the plan.

31 (B) Allow the director or his or her authorized representatives
32 access to all records necessary to approve or disapprove the plan
33 application.

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

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

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

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

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

7 (d) The director shall approve or disapprove a work sharing
8 plan in writing by the close of business no later than 10 working
9 days from the date the completed plan is received and communicate
10 the decision to the employer. A decision disapproving the plan
11 shall clearly identify the reasons for the disapproval. Within 20
12 days, the employer may submit a request for review of the
13 disapproved work sharing plan to the director's work sharing
14 administrator, whom the director shall designate for this purpose.
15 After review, the work sharing administrator's decision of approval
16 or disapproval shall be final. If disapproved, the employer may
17 submit a different work sharing plan for approval.

18 (e) The director shall work with the employer to determine the
19 effective date of a work sharing plan, which shall be specified in
20 the notice of approval to the employer. The plan shall expire on
21 the date specified in the notice of approval, which shall be either
22 the date at the end of the 12th full calendar month after its effective
23 date or an earlier date mutually agreed upon by the employer and
24 the director. However, if a work sharing plan is revoked by the
25 director under subdivision (f) of this section, the plan shall
26 terminate on the date specified in the director's written order of
27 revocation. An employer may terminate a work sharing plan at
28 any time upon written notice to the director. An employer may
29 submit an application to renew the work sharing plan not more
30 than 10 days after a previously approved work sharing plan expires.

31 (f) The director may revoke approval of a work sharing plan
32 for good cause at any time. The revocation order shall be in writing
33 and shall specify the reasons for the revocation and the date the
34 revocation is effective. The director may periodically review the
35 operation of an employer's work sharing plan to ensure that good
36 cause does not exist for revocation of the approval of the plan. For
37 purposes of these provisions, good cause includes, but is not limited
38 to, failure to comply with the assurances given in the plan,
39 unreasonable revision of productivity standards for the affected
40 unit, conduct or occurrences tending to defeat the intent and

1 effective operation of the work sharing plan, and violation of any
2 criteria on which approval of the plan was based.

3 (g) An employer may request a modification of an approved
4 plan by filing a written request to the director. The request shall
5 identify the specific provisions proposed to be modified and
6 provide an explanation of why the proposed modification is
7 appropriate for the work sharing plan. The director shall approve
8 or disapprove the proposed modification in writing by the close
9 of business no later than 10 working days from the date the
10 proposed modification is received and communicate the decision
11 to the employer. The director, in his or her discretion, may approve
12 a request for modification of the plan based on conditions that
13 have changed since the plan was approved, provided that the
14 modification is consistent with and supports the purposes for which
15 the plan was initially approved. A modification does not extend
16 the expiration date of the original plan, and the director shall
17 promptly notify the employer whether the plan modification has
18 been approved and, if approved, the effective date of the
19 modification, which shall not be earlier than the effective date of
20 the original work sharing plan. An employer is not required to
21 request approval of a plan modification from the director if the
22 change is not substantial, but the employer shall promptly report,
23 in writing, every change to the plan to the director. The director
24 may terminate an employer's plan if the employer fails to meet
25 this reporting requirement. If the director determines that the
26 reported change is substantial, the director shall require the
27 employer to request a modification to the plan.

28 (h) (1) An employee is eligible to receive work sharing
29 compensation with respect to any week only if the employee is
30 monetarily eligible for unemployment compensation, not otherwise
31 disqualified for unemployment compensation, and both of the
32 following are true:

33 (A) During the week, the employee is employed as a member
34 of an affected unit under an approved work sharing plan, which
35 was approved prior to that week, and the plan is in effect with
36 respect to the week for which work sharing compensation is
37 claimed.

38 (B) Notwithstanding any other provisions relating to availability
39 for work and actively seeking work, the employee is available for
40 the employee's usual hours of work with the work sharing

1 employer, which may include, for purposes of this section,
2 participating in training to enhance job skills that is approved by
3 the director, such as employer-sponsored training or training funded
4 under the federal Workforce Investment Act of 1998 (29 U.S.C.
5 Sec. 2801 et seq.).

6 (2) Notwithstanding any other provision of law, an employee
7 covered by a work sharing plan is deemed unemployed in any
8 week during the duration of that plan if the employee's
9 remuneration as an employee in an affected unit is reduced based
10 on a reduction of the employee's usual weekly hours of work under
11 an approved work sharing plan.

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

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

17 (2) The employee accepted all work the regular employer made
18 available to the individual during hours scheduled off due to the
19 work sharing plan.

20 (j) The work sharing weekly compensation amount shall be the
21 product of the regular weekly unemployment compensation amount
22 for a week of total unemployment multiplied by the percentage of
23 reduction in the individual's usual weekly hours of work.

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

36 (2) An employee who is not provided any work during a week
37 by the work sharing employer, or any other employer, and who is
38 otherwise eligible for unemployment compensation, shall be
39 eligible for the amount of regular unemployment compensation to
40 which he or she would otherwise be eligible.

1 (3) An employee who is not provided any work by the work
2 sharing employer during a week, but who works for another
3 employer and is otherwise eligible, may be paid unemployment
4 compensation for that week subject to the disqualifying income
5 and other provisions applicable to claims for regular unemployment
6 compensation.

7 (4) The work sharing compensation paid to an employee shall
8 be deducted from the maximum entitlement amount of regular
9 unemployment compensation established for that employee's
10 benefit year.

11 (5) An employee who has received all of the work sharing
12 compensation or combined unemployment compensation and work
13 sharing compensation available in a benefit year shall be considered
14 an exhaustee for purposes of extended benefits and, if otherwise
15 eligible under those provisions, shall be eligible to receive extended
16 benefits.

17 (6) No employee who receives any benefits under this section
18 during any benefit year shall receive any benefits pursuant to
19 Section 1252 or 1252.2 as a partially unemployed individual with
20 respect to any week during a benefit year while in employment
21 status with the regular employer who initiated the work sharing
22 plan under this section.

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

25 (l) Any amount payable under this section shall be reduced by
26 the amount of any and all compensation payable for personal
27 services, whether performed as an employee or an independent
28 contractor or as a juror or as a witness, except compensation
29 payable by the regular employer under a work sharing plan. For
30 the purposes of this subdivision, "regular employer" may include,
31 pursuant to an approved plan, a labor organization that periodically
32 employs individuals in accordance with a collective bargaining
33 agreement.

34 (m) Work sharing compensation shall be charged to employers'
35 experience rating accounts in the same manner as unemployment
36 compensation is charged under this part. Employers liable for
37 payments in lieu of contributions shall have work sharing
38 compensation attributed to service in their employ in the same
39 manner as unemployment compensation is attributed.

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

4 (o) Except as otherwise provided by or inconsistent with this
5 section, all provisions of this division and authorized regulations
6 apply to benefits under this section. Authorized regulations may,
7 to the extent permitted by federal law, make those distinctions and
8 requirements as may be necessary in the procedures and provisions
9 applicable to unemployed individuals to carry out the purposes of
10 this section, including, but not limited to, regulations defining
11 normal hours, days, workweeks, and wages.

12 (p) Employees shall not be eligible to receive any benefits under
13 this section unless their employer agrees, in writing, and their
14 bargaining agent pursuant to any applicable collective bargaining
15 agreement agrees, in writing, to voluntarily participate in the work
16 sharing program created by this section.

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

21 (r) This section shall become operative on July 1, 2014. *This*
22 *section shall apply to work sharing plans that become effective on*
23 *or after July 1, 2014.*