

Assembly Bill No. 1392

CHAPTER 141

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

[Approved by Governor August 26, 2013. Filed with
Secretary of State August 26, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, 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 as applied to work sharing plans that become effective on or after July 1, 2014. 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.

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

SECTION 1. Section 1279.5 of the Unemployment Insurance Code is amended to read:

1279.5. (a) Notwithstanding Section 1252 or 1252.2 or any other provision of this part, for the purposes of this section an individual is "unemployed" in any week if the individual works less than his or her normal weekly hours of work for the individual's regular employer, and the director finds that the regular employer has reduced or restricted the individual's normal hours of work, or has rehired an individual previously laid off and reduced that individual's normal hours of work from those previously worked, as the result of a plan by the regular employer to, in lieu of layoff, reduce employment and stabilize the work force by a program of sharing the work remaining after a reduction in total hours of work and a corresponding reduction in wages of at least 10 percent. The application for approval of a plan shall require the employer to briefly describe the circumstances requiring the use of work sharing to avoid a layoff. Normal weekly hours of work means the number of hours in a week that the employee normally would work for the regular employer or 40 hours, whichever is less. The plan must involve the participation of at least two employees and include not less than 10 percent of the employer's regular permanent work force involved in the affected work unit or units in each week, or in at least one week of a two-consecutive-week period. A plan approved by the director shall expire six months after the effective date of the plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) This section shall apply to work sharing plans that become effective before July 1, 2014. No work sharing plan that becomes effective before July 1, 2014, shall be renewed on or after July 1, 2014. Any work sharing plan that is entered into on or after July 1, 2014, shall be subject to Section 1279.5 as added by Assembly Bill 1392 of the 2013–14 Regular Session.

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

1279.5. (a) As used in this section:

(1) “Affected unit” means a specified plant, department, shift, or other definable unit that includes two or more workers and not less than 10 percent

of the employer's regular permanent work force involved in the affected unit or units in each week, or in at least one week of a two-consecutive-week period, to which an approved work sharing plan applies.

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

(3) "Work sharing compensation" means the unemployment compensation benefits payable to employees in an affected unit under an approved work sharing plan, as distinguished from the unemployment compensation benefits otherwise payable under this part.

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

(5) "Work sharing program" means the program described by this section.

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

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

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

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

(1) The affected unit covered by the plan, including the number of full- or part-time employees in the unit, the percentage of employees 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 director to identify plan participants.

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

(3) A requirement that the employer identify, in the application, 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. The percentage of reduction of usual weekly hours of work for which a work sharing plan may be approved shall not be less than 10 percent or more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including, but not limited to, incidences due to a holiday or plant closing, then that week shall be identified in the application.

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

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

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

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

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

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

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

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

(7) 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.

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

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

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

(e) The director shall work with the employer to determine the effective date of a work sharing plan, 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 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the director. However, if a work sharing plan is revoked by the director under subdivision (f) of this section, the plan shall terminate on the date specified in the director's written order of revocation. An employer may terminate a work sharing plan at any time upon written notice to the director. An employer may submit an application to renew the work sharing plan not more than 10 days after a previously approved work sharing plan expires.

(f) The director may revoke approval of a work sharing plan for good cause at any time. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective. The director may periodically review the operation of an employer's work sharing plan to ensure that good cause does not exist for revocation of the approval of the plan. For purposes of these provisions, 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 work sharing plan, and violation of any criteria on which approval of the plan was based.

(g) An employer may request a modification of an approved plan by filing a written request to the director. 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 director shall approve or disapprove the proposed modification in writing by the close of business no later than 10 working days from the date the proposed modification is received and communicate the decision to the employer. The director, in his or her 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 director shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification, which shall not be earlier than the effective date of the original work sharing plan. An employer is not required to request approval of a plan modification from the director if the change is not substantial, but the employer shall promptly report, in writing, every change to the plan to the director. The director may terminate an employer's plan if the employer fails to meet this reporting requirement. If the director determines that the reported change is substantial, the director shall require the employer to request a modification to the plan.

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

(A) 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 work sharing compensation is claimed.

(B) Notwithstanding any other provisions 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 director, such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.).

(2) Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that 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.

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

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

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

(j) The work sharing weekly compensation amount shall be the product of the regular weekly unemployment compensation amount for a week of

total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(k) (1) Provisions applicable to unemployment compensation shall apply to employees in a work sharing plan to the extent that they are not inconsistent with work sharing program provisions. An employee who files an initial claim for work sharing compensation shall receive a monetary determination. An employee may be eligible for work sharing compensation or unemployment compensation, as appropriate, except that an employee shall not 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 benefits for more than 52 weeks under a work sharing plan.

(2) 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 to which he or she would otherwise be eligible.

(3) 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 and other provisions applicable to claims for regular unemployment compensation.

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

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

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

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

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

(m) Work sharing compensation shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under this part. Employers liable for payments in

lieu of contributions shall have work sharing compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

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

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

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

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

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