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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
BENEFITS

Introduced By: Representatives Maldonado, Blazejewski, Edwards, Coughlin, and
Barros

Date Introduced: February 16, 2017

Referred To: House Labor

(Dept. of Labor and Training)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-44-69 of the General Laws in Chapter 28-44 entitled
2 "Employment Security - Benefits" is hereby amended to read as follows:

3 **28-44-69. Work-sharing benefits.**

4 (a) Definitions. As used in this section, unless the context clearly requires otherwise:

5 (1) "Affected unit" means a specified plant, department, shift, or other definable unit
6 consisting of two (2) or more employees to which an approved work-sharing plan applies.

7 (2) "Eligible employee" means an individual who usually works for the employer
8 submitting a work-sharing plan.

9 (3) "Eligible employer" means any employer who has had contributions credited to his or
10 her account and benefits have been chargeable to this account, or who has elected to reimburse
11 the fund in lieu of paying contributions, and who is not delinquent in the payment of
12 contributions or reimbursements as required by chapters 42 -- 44, inclusive of this title.

13 (4) "Fringe benefits" include, but are not limited to, health insurance, retirement benefits,
14 paid vacation and holidays, sick leave, and similar advantages that are incidents of employment.

15 (5) "Intermittent employment" means employment that is not continuous but may consist
16 of periodic intervals of weekly work and intervals of no weekly work.

17 (6) "Seasonal employment" means employment with an employer who displays a twenty
18 percent (20%) difference between its highest level of employment and its lowest level of

1 employment each year for the three (3) previous calendar years as reported to the department of
2 labor and training, or as shown in the information that is available and satisfactory to the director.

3 (7) "Temporary employment" means employment where an employee is expected to
4 remain in a position for only a limited period of time and/or is hired by a temporary agency to fill
5 a gap in an employer's workforce.

6 (8) "Usual weekly hours of work" means the normal hours of work each week for an
7 employee in an affected unit when that unit is operating on a full-time basis, not to exceed forty
8 (40) hours and not including overtime.

9 (9) "Work-sharing benefits" means benefits payable to employees in an affected unit
10 under an approved work-sharing plan.

11 (10) "Work-sharing employer" means an employer with an approved work-sharing plan
12 in effect.

13 (11) "Work-sharing plan" means a plan submitted by an employer under which there is a
14 reduction in the number of hours worked by the employees in the affected unit in lieu of layoffs
15 of some of the employees.

16 (b) (1) Criteria for approval of a work-sharing plan. An employer wishing to participate
17 in the work-sharing program shall submit a signed, written, work-sharing plan to the director for
18 approval. The director shall approve a work-sharing plan only if the following requirements are
19 met:

20 (i) The plan identifies the affected unit, or units, and specifies the effective date of the
21 plan;

22 (ii) The employees in the affected unit, or units, are identified by name; social security
23 number; the usual weekly hours of work; proposed wage and hour reduction; and any other
24 information that the director shall require;

25 (iii) The plan certifies that the reduction in the usual weekly hours of work is in lieu of
26 layoffs that would have affected at least 10 percent (10%) of the employees in the affected unit,
27 or units, to which the plan applies and that would have resulted in an equivalent reduction in work
28 hours;

29 (iv) The usual weekly hours of work for employees in the affected unit, or units, are
30 reduced by not less than 10 percent (10%) and not more than 50 percent (50%) ~~and the reduction~~
31 ~~in hours in each affected unit is spread equally among employees in the affected unit;~~

32 (v) If the employer provides health benefits and/or retirement benefits under a defined-
33 benefit plan as defined in 26 U.S.C. § 414(j) of the Internal Revenue Code or contributions under
34 a defined-contribution plan as defined in 26 U.S.C. § 414(i) of the Internal Revenue Code to any

1 employee whose workweek is reduced under the program, the employer certifies that such
2 benefits will continue to be provided to employees participating in the work-sharing program
3 under the same terms and conditions as though the workweek of such employee had not been
4 reduced or to the same extent as other employees not participating in the work-sharing program;

5 (vi) In the case of employees represented by a collective bargaining agent or union, the
6 plan is approved in writing by the collective bargaining agents or unions that cover the affected
7 employees. In the absence of any collective bargaining agent or union, the plan must contain a
8 certification by the employer that the proposed plan, or a summary of the plan, has been made
9 available to each employee in the affected unit;

10 (vii) The plan will not serve as a subsidy of seasonal employment during the off season,
11 nor as a subsidy for temporary or intermittent employment;

12 (viii) The employer agrees to furnish reports relating to the proper conduct of the plan
13 and agrees to allow the director, or his or her authorized representatives, access to all records
14 necessary to verify the plan prior to approval and, after approval, to monitor and evaluate
15 application of the plan;

16 (ix) The employer describes the manner in which the requirements of this section will be
17 implemented (including a plan for giving notice, where feasible, to an employee whose
18 workweek is to be reduced) together with an estimate of the number of layoffs that would have
19 occurred absent the ability to participate in the work-sharing program and such other information
20 as the director of the department of labor and training determines is appropriate;

21 (x) The employer attests that the terms of the employer's written plan and implementation
22 are consistent with the employer's obligations under applicable federal and state laws; and

23 (xi) In addition to the matters previously specified in this section, the director shall take
24 into account any other factors that may be pertinent to proper implementation of the plan.

25 (c) Approval or rejection of the plan. The director shall approve or reject a plan in
26 writing. The reasons for rejection shall be final and not subject to appeal. The employer shall be
27 allowed to submit another plan for consideration and that determination will be made based upon
28 the new data submitted by the interested employer.

29 (d) Effective date and duration of the plan. ~~A plan shall be effective on the date specified~~
30 ~~in the plan, or on the first Sunday following the date on which the plan is approved by the~~
31 ~~director, whichever is later.~~ A worksharing plan shall be effective on the date that is mutually
32 agreed upon by the employer and the director, which shall be specified in the notice of approval
33 sent to the employer. It shall expire at the end of the twelfth, full-calendar month after its
34 effective date, or on the date specified in the plan if that date is earlier; provided that the plan is

1 not previously revoked by the director. If a plan is revoked by the director, it shall terminate on
2 the date specified in the director's written order of revocation.

3 (e) Revocation of approval. The director may revoke approval of a work-sharing plan for
4 good cause. The revocation order shall be in writing and shall specify the date the revocation is
5 effective and the reasons for it. The revocation order shall be final and not subject to appeal.

6 (1) Good cause shall include, but not be limited to: (i) Failure to comply with assurances
7 given in the plan; (ii) Unreasonable revision of productivity standards for the affected unit; (iii)
8 Conduct or occurrences tending to defeat the intent and effective operation of the plan; and (iv)
9 Violation of any criteria on which approval of the plan was based.

10 (2) The action may be taken at any time by the director on his or her own motion; on the
11 motion of any of the affected unit's employees; or on the motion of the collective bargaining
12 agent or agents. The director shall review the operation of each qualified employer plan at least
13 once during the period the plan is in effect to assure its compliance with the work-sharing
14 requirements.

15 (f) Modification of the plan. An operational approved, work-sharing plan may be
16 modified by the employer with the consent of the collective bargaining agent or agents, if any, if
17 the modification is not substantial and is in conformity with the plan approved by the director,
18 provided the modifications are reported promptly to the director by the employer. If the hours of
19 work are increased or decreased substantially beyond the level in the original plan, or any other
20 conditions are changed substantially, the director shall approve or disapprove the modifications
21 without changing the expiration date of the original plan. If the substantial modifications do not
22 meet the requirements for approval, the director shall disallow that portion of the plan in writing.
23 The decision of the director shall be final and not subject to appeal.

24 (g) Eligibility for work-sharing benefits. An individual is eligible to receive work-sharing
25 benefits, subsequent to serving a waiting period as prescribed by the director, with respect to any
26 week only if, in addition to meeting other conditions of eligibility for regular benefits under this
27 title that are not inconsistent with this section, the director finds that:

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

31 (2) The individual is able to work and is available for the normal work week with the
32 work-sharing employer.

33 (3) Notwithstanding any other provisions of this chapter to the contrary, an individual is
34 deemed unemployed in any week for which remuneration is payable to him or her as an employee

1 in an affected unit for less than his or her normal weekly hours of work as specified under the
2 approved work-sharing plan in effect for the week.

3 (4) Notwithstanding any other provisions of this title to the contrary, an individual shall
4 not be denied work-sharing benefits for any week by reason of the application of provisions
5 relating to the availability for work and active search for work with an employer other than the
6 work-sharing employer.

7 (5) Notwithstanding any other provisions of this title to the contrary, eligible employees
8 may participate, as appropriate, in training (including employer-sponsored training or worker
9 training funded under the Workforce Investment Act of 1998) to enhance job skills if such
10 program has been approved by the state agency.

11 (h) (1) Work-sharing benefits. The work-sharing weekly benefit amount shall be the
12 product of the regular, weekly benefit rate, including any dependents' allowances, multiplied by
13 the percentage reduction in the individual's usual weekly hours of work as specified in the
14 approved plan. If the work-sharing, weekly benefit amount is not an exact multiple of one dollar
15 (\$1.00), then the weekly benefit amount shall be rounded down to the next, lower multiple of one
16 dollar (\$1.00).

17 (2) An individual may be eligible for work-sharing benefits or regular unemployment
18 compensation, as appropriate, except that no individual shall be eligible for combined benefits in
19 any benefit year in an amount more than the maximum entitlement established for unemployment
20 compensation, nor shall an individual be paid work-sharing benefits for more than fifty-two (52)
21 weeks, whether or not consecutive, in any benefit year pursuant to an approved work-sharing
22 plan.

23 (3) The work-sharing benefits paid shall be deducted from the maximum-entitlement
24 amount established for that individual's benefit year.

25 (4) If an employer approves time off and the worker has performed some work during the
26 week, the individual is eligible for work-sharing benefits based on the combined work and paid
27 leave hours for that week. If the employer does not grant time off, the question of availability
28 must be investigated.

29 (5) If an employee was sick and consequently did not work all the hours offered by the
30 work-sharing employer in a given week, the employee will be denied work-sharing benefits for
31 that week.

32 (6) Claims for work-sharing benefits shall be filed in the same manner as claims for
33 unemployment compensation or as prescribed in regulations by the director.

34 (7) Provisions applicable to unemployment compensation claimants shall apply to work-

1 sharing claimants to the extent that they are not inconsistent with the established work-sharing
2 provisions. An individual who files an initial claim for work-sharing benefits shall be provided, if
3 eligible for benefits, a monetary determination of entitlement to work-sharing benefits and shall
4 serve a waiting week.

5 (8) If an individual works in the same week for an employer other than the work-sharing
6 employer, the individual's work-sharing benefits shall be computed in the same manner as if the
7 individual worked solely with the work-sharing employer. If the individual is not able to work, or
8 is not available for the normal work week with the work-sharing employer, then no work-sharing
9 benefits shall be payable to that individual for that week.

10 (9) An individual who performs no services during a week for the work-sharing employer
11 and is otherwise eligible shall be paid the full, weekly unemployment compensation amount. That
12 week shall not be counted as a week with respect to which work-sharing benefits were received.

13 (10) An individual who does not work for the work-sharing employer during a week, but
14 works for another employer and is otherwise eligible, shall be paid benefits for that week under
15 the partial unemployment compensation provisions of this chapter. That week shall not be
16 counted as a week with respect to which work-sharing benefits were received.

17 (11) Nothing in the section shall preclude an otherwise eligible individual from receiving
18 total or partial unemployment benefits when the individual's work-sharing benefits have been
19 exhausted.

20 (i) Benefit charges. Work-sharing benefits shall be charged to employer accounts in the
21 same manner as regular benefits in accordance with the provisions of §§ 28-43-3 and 28-43-29.
22 Notwithstanding the above, any work-sharing benefits paid on or after July 1, 2013, that are
23 eligible for federal reimbursement, shall not be chargeable to employer accounts and employers
24 liable for payments in lieu of contributions shall not be responsible for reimbursing the
25 employment security fund for any benefits paid to their employees on or after July 1, 2013, that
26 are reimbursed by the federal government.

27 (j) Extended benefits. An individual who has received all of the unemployment
28 compensation or combined unemployment compensation and work-sharing benefits available in a
29 benefit year shall be considered an exhaustee for purposes of extended benefits, as provided
30 under the provisions of § 28-44-62, and, if otherwise eligible under those provisions, shall be
31 eligible to receive extended benefits.

32 (k) Severability. If any provision of this section, or its application to any person or
33 circumstance, is held invalid under federal law, the remainder of the section and the application
34 of that provision to other persons or circumstances shall not be affected by that invalidity.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
BENEFITS

1 This act would amend our worksharing law by allowing employers more flexibility in the
2 reduction of work hours among its employees and by allowing more leeway on the start date of
3 an adopted worksharing plan.

4 This act would take effect upon passage.

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