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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
BENEFITS

Introduced By: Senators Lynch, Gallo, McCaffrey, and Lombardo

Date Introduced: February 28, 2013

Referred To: Senate Labor

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.** -- (a) *Definitions.* As used in this section, unless the
4 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 ~~thirty (30) hours or~~
8 ~~more per week~~ for the employer submitting a work-sharing plan.

9 (3) "Eligible employer" means any ~~private~~ employer who has had contributions credited
10 to his or her account and benefits have been chargeable to this account, or who has elected to
11 reimburse 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 of this title.

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

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

18 (6) "Seasonal employment" means employment with an employer who displays a

1 twenty percent (20%) difference between its highest level of employment and its lowest level of
2 employment each year for the three (3) previous calendar years as reported to the department of
3 labor and training, or as shown in the information which is available and satisfactory to the
4 director.

5 (7) ~~"Temporary layoffs" for this purpose means the separation of workers in the~~
6 ~~affected unit for an indefinite period expected to last for at least two (2) months but less than six~~
7 ~~(6) months.~~ "Temporary employment" means employment where an employee is expected to
8 remain in a position for only a limited period of time and/or is hired by a temporary agency to fill
9 a gap in an employer's workforce.

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

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

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

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

20 (b) *Criteria for approval of a work-sharing plan.* An employer wishing to participate in
21 the work-sharing program shall submit a signed written work-sharing plan to the director for
22 approval. The director shall approve a work-sharing plan only if the following requirements are
23 met:

24 (i) The plan identifies the affected unit or units and specifies the effective date of the
25 plan;

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

29 (iii) The plan certifies that the reduction in the usual weekly hours of work is in lieu of
30 ~~temporary~~ layoffs which would have affected at least 10 percent (10%) of the employees in the
31 affected unit or units to which the plan applies and which would have resulted in an equivalent
32 reduction in work hours;

33 (iv) The usual weekly hours of work for employees in the affected unit or units are
34 reduced by not less than 10 percent (10%) and not more than 50 percent (50%), and the reduction

1 in hours in each affected unit are spread equally among employees in the affected unit;

2 (v) ~~The plan specifies the manner in which the fringe benefits of the participating~~
3 ~~employees will be affected~~ If the employer provides health benefits and/or retirement benefits
4 under a defined benefit plan (as defined in section 414(j) of the internal revenue code) or
5 contributions under a defined contribution plan (as defined in section 414(i) of the internal
6 revenue code) to any employee whose workweek is reduced under the program, the employer
7 certifies that such benefits will continue to be provided to employees participating in the work-
8 sharing program under the same terms and conditions as though the workweek of such employee
9 had not been reduced or to the same extent as other employees not participating in the work-
10 sharing program;

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

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

18 (viii) The employer agrees to furnish reports relating to the proper conduct of the plan
19 and agrees to allow the director or his or her authorized representatives access to all records
20 necessary to verify the plan prior to approval and, after approval, to monitor and evaluate
21 application of the plan.

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

27 (x) The employer attests that the terms of the employer's written plan and
28 implementation are consistent with the employer's obligations under applicable federal and state
29 laws.

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

32 (c) *Approval or rejection of the plan.* The director shall approve or reject a plan in
33 writing. The reasons for rejection shall be final and not subject to appeal. The employer shall be
34 allowed to submit another plan for consideration and that determination will be made based upon

1 the new data submitted by the interested employer.

2 (d) *Effective date and duration of the plan.* A plan shall be effective on the date specified
3 in the plan or on the first Sunday following the date on which the plan is approved by the director,
4 whichever is later. It shall expire at the end of the twelfth (12th) full calendar month after its
5 effective date or on the date specified in the plan if that date is earlier; provided, that the plan is
6 not previously revoked by the director. If a plan is revoked by the director, it shall terminate on
7 the date specified in the director's written order of revocation.

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

11 (2) Good cause shall include, but not be limited to, failure to comply with assurances
12 given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or
13 occurrences tending to defeat the intent and effective operation of the plan, and violation of any
14 criteria on which approval of the plan was based.

15 (3) The action may be taken at any time by the director on his or her own motion, on the
16 motion of any of the affected unit's employees or on the motion of the collective bargaining agent
17 or agents. The director shall review the operation of each qualified employer plan at least once
18 during the period the plan is in effect to assure its compliance with the work-sharing
19 requirements.

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

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

33 (i) During the week, the individual is employed as a member of an affected unit under an
34 approved work-sharing plan that was approved prior to that week, and the plan is in effect with

1 respect to the week for which work-sharing benefits are claimed;

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

4 (2) Notwithstanding any other provisions of this chapter to the contrary, an individual is
5 deemed unemployed in any week for which remuneration is payable to him or her as an employee
6 in an affected unit for less than his or her normal weekly hours of work as specified under the
7 approved work-sharing plan in effect for the week.

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

12 (4) Notwithstanding any other provisions of this title to the contrary, eligible employees
13 may participate, as appropriate, in training (including employer-sponsored training or worker
14 training funded under the workforce investment act of 1998) to enhance job skills if such program
15 has been approved by the state agency.

16 (h) *Work-sharing benefits.* The work-sharing weekly benefit amount shall be the product
17 of the regular weekly benefit rate, including any dependents' allowances, multiplied by the
18 percentage reduction in the individual's usual weekly hours of work as specified in the approved
19 plan. If the work-sharing weekly benefit amount is not an exact multiple of one dollar (\$1.00)
20 then the weekly benefit amount shall be rounded down to the next lower multiple of one dollar
21 (\$1.00).

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

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

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

34 (5) If an employee was sick and consequently did not work all the hours offered by the

1 work-sharing employer in a given week, the employee will be denied work-sharing benefits for
2 that week.

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

5 (7) Provisions applicable to unemployment compensation claimants shall apply to work-
6 sharing claimants to the extent that they are not inconsistent with the established work-sharing
7 provisions. An individual who files an initial claim for work-sharing benefits shall be provided, if
8 eligible for benefits, a monetary determination of entitlement to work-sharing benefits and shall
9 serve a waiting week.

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

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

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

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

25 (i) *Benefit charges.* ~~Notwithstanding any provisions of this title to the contrary, work-~~
26 ~~sharing~~ Work-sharing benefits shall be charged to the account of the work-sharing employer.
27 Employers liable for payments in lieu of contributions shall be responsible for reimbursing the
28 employment security fund for the full amount of work-sharing benefits paid to their employees
29 under an approved work-sharing plan. Notwithstanding the above, any work-sharing benefits paid
30 on or after July 1, 2013 which are eligible for federal reimbursement shall not be chargeable to
31 employer accounts and employers liable for payments in lieu of contributions shall not be
32 responsible for reimbursing the employment security fund for any benefits paid to their
33 employees on or after July 1, 2013 that are reimbursed by the federal government.

34 (j) *Extended benefits.* An individual who has received all of the unemployment

1 compensation or combined unemployment compensation and work-sharing benefits available in a
2 benefit year shall be considered an exhaustee for purposes of extended benefits, as provided
3 under the provisions of § 28-44-62, and, if otherwise eligible under those provisions, shall be
4 eligible to receive extended benefits.

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

8 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 -
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1 This act would update the language in Rhode Island's work-sharing statute to comply
2 with the provisions of subtitle D of title II of the Federal Middle Class Tax Relief and Job
3 Creation Act of 2012 (public law 112-96).

4 This act would take effect upon passage.

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