

Act No. 216
Public Acts of 2012
Approved by the Governor
June 27, 2012
Filed with the Secretary of State
June 28, 2012
EFFECTIVE DATE: January 1, 2013

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Caswell, Jones, Brandenburg, Colbeck, Nofs and Kahn

ENROLLED SENATE BILL No. 1094

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act," (MCL 421.1 to 421.75) by adding sections 28b, 28c, 28d, 28e, 28f, 28g, 28h, 28i, 28j, 28k, 28l, and 28m.

The People of the State of Michigan enact:

Sec. 28b. As used in this section and sections 28c to 28m:

(a) "Affected unit" means a department, shift, or other organizational unit of 2 or more employees that is designated by an employer to participate in a shared-work plan.

(b) "Approved shared-work plan" means an employer's shared-work plan that meets the requirements of section 28d and that the unemployment agency approves in writing.

(c) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan or defined contribution plan, a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.

(d) "Normal weekly hours of work" means the established standard work times and number of hours in the workweek for the position or, if standard work times and number of hours have not been established for the position, the work times and average number of hours per week actually worked by the employee in that position over the most recent 3 months before the employer files the application for designation as a participating employer.

(e) "Participating employee" means an employee in the affected unit whose hours of work are reduced by the reduction percentage under the shared-work plan. Participating employee does not include a seasonal worker as defined in section 27(o)(9)(e) or a worker employed on a temporary or intermittent basis.

(f) “Participating employer” means an employer that has a shared-work plan in effect.

(g) “Reduction percentage” means the percentage by which each participating employee’s normal weekly hours of work are reduced under a shared-work plan in accordance with section 28d(2).

(h) “Shared-work plan” means a plan for reducing unemployment under which employees of an affected unit share a reduced workload through reduction in their normal weekly hours of work.

Sec. 28c. (1) An employer that meets all of the following requirements may apply to the unemployment agency for approval of a shared-work plan:

(a) The employer has filed all quarterly reports and other reports required under this act and has paid all obligation assessments, contributions, reimbursements in lieu of contributions, interest, and penalties due through the date of the employer’s application.

(b) If the employer is a contributing employer, the employer’s reserve in the employer’s experience account as of the most recent computation date preceding the date of the employer’s application is a positive number.

(c) The employer has paid wages for the 12 consecutive calendar quarters preceding the date of the employer’s application.

(2) An application under this section shall be made in the manner prescribed by the unemployment agency and contain all of the following:

(a) The employer’s assurance that it will provide reports to the unemployment agency relating to the operation of its shared-work plan at the times and in the manner prescribed by the unemployment agency and containing all information required by the unemployment agency.

(b) The employer’s assurance that it will not hire new employees in, or transfer employees to, the affected unit during the effective period of the shared-work plan.

(c) The employer’s assurance that it will not lay off participating employees during the effective period of the shared-work plan, or reduce participating employees’ hours of work by more than the reduction percentage during the effective period of the shared-work plan, except in cases of holidays, designated vacation periods, equipment maintenance, or similar circumstances.

(d) The employer’s certification that it has obtained the approval of any applicable collective bargaining unit representative and has notified all affected employees who are not in a collective bargaining unit of the proposed shared-work plan.

(e) A list of the week or weeks within the requested effective period of the plan during which participating employees are anticipated to work fewer hours than the number of hours determined under section 28d(1)(e) due to circumstances listed in subdivision (c).

(f) The employer’s certification that the implementation of a shared-work plan is in lieu of temporary layoffs that would affect at least 15% of the employees in the affected unit and would result in an equivalent reduction in work hours.

(g) The employer’s assurance that it will abide by all terms and conditions of sections 28b to 28m.

(h) The employer’s certification that, to the best of his or her knowledge, participation in the shared-work plan is consistent with the employer’s obligations under federal law and the law of this state.

(i) Any other relevant information required by the unemployment agency.

(3) An employer may apply to the unemployment agency for approval of more than 1 shared-work plan.

(4) An employer shall not apply for and the unemployment agency shall not approve a shared-work plan that begins more than 5 years after the effective date of the amendatory act that added this section.

Sec. 28d. (1) The unemployment agency shall approve a shared-work plan only if the plan meets all of the following requirements:

(a) The shared-work plan applies to 1 affected unit.

(b) All employees in the affected unit are participating employees, except that the following employees shall not be participating employees:

(i) An employee who has been employed in the affected unit for less than 3 months before the date the employer applies for approval of the shared-work plan.

(ii) An employee whose hours of work per week determined under subdivision (e) are 40 or more hours.

(c) There are no fewer than 2 participating employees, determined without regard to corporate officers.

(d) The participating employees are identified by name and social security number.

(e) The number of hours a participating employee will work each week during the effective period of the shared-work plan is the number of the employee’s normal weekly hours of work reduced by the reduction percentage.

(f) The plan includes an estimate of the number of employees who would have been laid off if the plan were not implemented.

(g) The plan indicates the manner in which the employer will give advance notice, if feasible, to an employee whose hours of work per week under the plan will be reduced.

(h) As a result of a decrease in the number of hours worked by each participating employee, there is a corresponding reduction in wages.

(i) The shared-work plan does not affect the fringe benefits of any participating employee.

(j) The specified effective period of the shared-work plan is 52 consecutive weeks or less and the benefits payable under the shared-work plan will not exceed 20 times the weekly benefit amount for each participating employee, calculated without regard to any existing benefit year.

(k) The reduction percentage satisfies the requirements of subsection (2).

(2) The reduction percentage under an approved shared-work plan shall meet all of the following requirements:

(a) The reduction percentage shall be no less than 15% and no more than 45%.

(b) The reduction percentage shall be the same for all participating employees.

(c) The reduction percentage shall not change during the period of the shared-work plan unless the plan is modified in accordance with section 28i.

Sec. 28e. The unemployment agency shall approve or disapprove a shared-work plan no later than 15 days after the date the unemployment agency receives an employer's shared-work plan application that meets the requirements of sections 28c and 28d. The unemployment agency's decision shall be expressed in writing and, if the shared-work plan is disapproved, shall include the reasons for the disapproval.

Sec. 28f. (1) A shared-work plan is effective for the number of consecutive weeks indicated in the employer's application, or a lesser number of weeks as approved by the unemployment agency, unless sooner terminated in accordance with section 28j.

(2) The effective period of the shared-work plan shall begin with the first calendar week following the date on which the unemployment agency approves the plan.

Sec. 28g. (1) Compensation shall be payable to a participating employee for a week within the effective period of an approved shared-work plan during which the employee works the number of hours determined under section 28d(1)(e) for the participating employer on the same terms, in the same amount, and subject to the same conditions that would apply to the participating employee without regard to sections 28b to 28m, except as follows:

(a) A participating employee shall not be required to be unemployed within the meaning of section 48 or file claims for compensation under section 32.

(b) The benefit rate otherwise payable as prescribed in section 27 shall be modified so that a participating employee shall be paid compensation in an amount equal to the product of his or her weekly benefit rate and the reduction percentage, rounded to the next lower whole dollar amount.

(c) Weeks that a participating employee participates in a shared-work plan are not weeks of unemployment for purposes of establishing limits on the duration of receipt of unemployment benefits under this act, but the dollar amount of benefits received under the shared-work plan applies toward the maximum amount of benefits payable.

(d) The unemployment agency shall not deny compensation to a participating employee for any week during the effective period of the shared-work plan by applying any provision of this act relating to active search for work or refusal to apply for or accept work other than work offered by the participating employer.

(e) A participating employee satisfies the availability and seeking work requirements of section 28 if the employee is available for work during the employee's normal work week with the participating employer.

(f) A participating employee may participate in a training program to enhance the employee's job skills without becoming ineligible for benefits under the approved shared-work plan, if the training is sponsored by the employer or provided under the workforce investment act of 1998 and the employee's participation is approved by the unemployment agency.

(2) For purposes of subsection (1), if a participating employee works fewer hours than the number of hours determined under section 28d(1)(e) for the participating employer during a week within the effective period of the approved shared-work plan, but receives remuneration as if the employee had worked the number of hours determined under section 28d(1)(e), the employee is considered to have worked the number of hours determined under section 28d(1)(e) during that week.

(3) A participating employee's eligibility for compensation for a week within the effective period of an approved shared-work plan shall be determined without regard to sections 28b to 28m if the employee receives remuneration for

the week from the participating employer that is greater than or less than the amount due for the number of hours determined under section 28d(1)(e).

Sec. 28h. (1) The unemployment agency shall establish a schedule of consecutive 2-week periods within the effective period of the shared-work plan. The unemployment agency may, as necessary, include 1-week periods in the schedule and revise the schedule. At the end of each scheduled period, the participating employer shall file claims for compensation for the week or weeks within the period on behalf of the participating employees. The claims shall be filed no later than the last day of the week immediately following the period, unless an extension of time is granted by the unemployment agency for good cause. The claims shall be filed in the manner prescribed by the unemployment agency and shall contain all information required by the unemployment agency to determine the eligibility of the participating employees for compensation.

(2) The benefits under a shared-work plan shall be funded as follows:

(a) If federal funding is available to this state for the purpose of full reimbursement for the cost of funding benefits paid by the unemployment agency pursuant to section 2162 of the layoff prevention act of 2012 and an approved shared-work plan under this act, those benefits shall not be charged or expensed to a participating employer. However, the unemployment agency shall not use that federal funding as a reimbursement for compensation paid to a claimant under a shared-work plan if the claimant is employed by the participating employer on a seasonal, temporary, or intermittent basis. In that case, benefits shall be charged to the participating contributing employer's chargeable benefits account or reimbursing payments in lieu of contributions shall be required from the participating reimbursing employer.

(b) If federal funding is available to this state for the purpose of partial reimbursement for the cost of funding benefits paid by the unemployment agency pursuant to an agreement entered into between this state and the United States department of labor pursuant to section 2163 of the layoff prevention act of 2012, any approved shared-work plan shall provide that the employer shall make a reimbursing payment in lieu of contributions to this state equal to 1/2 of the benefits paid under the employer's approved shared-work plan. That payment shall be deposited into this state's unemployment compensation fund. Benefit payments or deposits made under this subdivision shall not be used for purposes of calculating an employer's contribution rate under section 19. The unemployment agency shall not use federal funding under this subsection as a reimbursement for compensation paid to a claimant under a shared-work plan if the claimant is employed by the participating employer on a seasonal, temporary, or intermittent basis. In that case, benefit payments shall be funded by the employer as reimbursing payments in lieu of contribution.

(c) If full or partial federal funding is not available as provided in subdivision (a) or (b), the benefits paid by the unemployment agency pursuant to an approved shared-work plan under this act shall be charged to the participating contributing employer's chargeable benefits account or reimbursing payments in lieu of contributions shall be required from the participating reimbursing employer.

Sec. 28i. An employer may apply to the unemployment agency for approval to modify a shared-work plan to meet changed conditions. The unemployment agency shall reevaluate the plan and may approve the modified plan if it meets the requirements for approval under section 28e. If the modifications cause the shared-work plan to fail to meet the requirements for approval, the unemployment agency shall disapprove the proposed modifications.

Sec. 28j. (1) The unemployment agency may terminate a shared-work plan for good cause.

(2) For purposes of subsection (1), good cause includes any of the following:

(a) The plan is not being executed according to its approved terms and conditions.

(b) The participating employer fails to comply with the assurances given in the plan.

(c) The participating employer or a participating employee violates any criteria on which approval of the plan was based.

(3) The employer may terminate a shared-work plan by written notice to the unemployment agency.

Sec. 28k. The decision to approve or disapprove a shared-work plan, to approve or disapprove a modification of a shared-work plan, or to terminate a shared-work plan is at the unemployment agency's discretion. Those decisions are not subject to the appeal provisions of this act.

Sec. 28l. In addition to other reports required by law, the unemployment agency shall submit to the governor, the secretary of the senate, and the clerk of the house of representatives for referral to the chair and minority vice-chair of the appropriate committees an annual report regarding shared-work plans under sections 28b to 28m. The report shall include the number of approved shared-work plans, the number of participating employers, the number of participating employees, the amount of compensation and aid to participating employees, and any other information that the unemployment agency determines is relevant to assess the impact of shared-work plans on the unemployment compensation fund. The first report shall be submitted on or before the first day of March following the first complete

calendar year during which sections 28b to 28m are in effect, and subsequent reports shall be submitted on or before the first day of March of each subsequent year.

Sec. 28m. (1) Notwithstanding any other provision of this act, if any provision of sections 28b to 28l would otherwise cause the United States department of labor to withhold the approval required to implement a shared-work program under section 3304(a)(4)(e) of the federal unemployment tax act, 26 USC 3304, and section 303(a)(5) of the social security act, 42 USC 503, that provision does not apply.

(2) When the provisions of this section or sections 28b to 28l are approved or disapproved by the United States department of labor, the unemployment agency shall transmit to the secretary of the senate and the clerk of the house of representatives notice of the approval or disapproval.

Enacting section 1. This amendatory act takes effect January 1, 2013.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

.....
Governor