

HOUSE BILL No. 1151

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-4.

Synopsis: Work sharing unemployment benefit. Establishes a work sharing unemployment insurance program. Requires an employer to submit a work sharing plan for approval by the commissioner of the department of workforce development. Establishes the work sharing benefit as equal to the employee's unemployment benefit reduced by a percentage that is equivalent to the number of hours by which the employee's work hours are reduced.

Effective: July 1, 2012.

**Sullivan, Gutwein, DeLaney,
Steuerwald**

January 9, 2012, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1151



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-4-15-1, AS AMENDED BY P.L.175-2009,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 1. (a) With respect to benefit periods established
4 on and after July 6, 1980, an individual who has voluntarily left the
5 individual's most recent employment without good cause in connection
6 with the work or who was discharged from the individual's most recent
7 employment for just cause is ineligible for waiting period or benefit
8 rights for the week in which the disqualifying separation occurred and
9 until the individual has earned remuneration in employment equal to
10 or exceeding the weekly benefit amount of the individual's claim in
11 each of eight (8) weeks. If the qualification amount has not been earned
12 at the expiration of an individual's benefit period, the unearned amount
13 shall be carried forward to an extended benefit period or to the benefit
14 period of a subsequent claim.

15 (b) When it has been determined that an individual has been
16 separated from employment under disqualifying conditions as outlined
17 in this section, the maximum benefit amount of the individual's current



1 claim, as initially determined, shall be reduced by an amount
2 determined as follows:

3 (1) For the first separation from employment under disqualifying
4 conditions, the maximum benefit amount of the individual's
5 current claim is equal to the result of:

6 (A) the maximum benefit amount of the individual's current
7 claim, as initially determined; multiplied by

8 (B) seventy-five percent (75%);

9 rounded (if not already a multiple of one dollar (\$1)) to the next
10 higher dollar.

11 (2) For the second separation from employment under
12 disqualifying conditions, the maximum benefit amount of the
13 individual's current claim is equal to the result of:

14 (A) the maximum benefit amount of the individual's current
15 claim determined under subdivision (1); multiplied by

16 (B) eighty-five percent (85%);

17 rounded (if not already a multiple of one dollar (\$1)) to the next
18 higher dollar.

19 (3) For the third and any subsequent separation from employment
20 under disqualifying conditions, the maximum benefit amount of
21 the individual's current claim is equal to the result of:

22 (A) the maximum benefit amount of the individual's current
23 claim determined under subdivision (2); multiplied by

24 (B) ninety percent (90%);

25 rounded (if not already a multiple of one dollar (\$1)) to the next
26 higher dollar.

27 (c) The disqualifications provided in this section shall be subject to
28 the following modifications:

29 (1) An individual shall not be subject to disqualification because
30 of separation from the individual's employment if:

31 (A) the individual left to accept with another employer
32 previously secured permanent full-time work which offered
33 reasonable expectation of continued covered employment and
34 betterment of wages or working conditions and thereafter was
35 employed on said job;

36 (B) having been simultaneously employed by two (2)
37 employers, the individual leaves one (1) such employer
38 voluntarily without good cause in connection with the work
39 but remains in employment with the second employer with a
40 reasonable expectation of continued employment; or

41 (C) the individual left to accept recall made by a base period
42 employer.

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- 1 (2) An individual whose unemployment is the result of medically
2 substantiated physical disability and who is involuntarily
3 unemployed after having made reasonable efforts to maintain the
4 employment relationship shall not be subject to disqualification
5 under this section for such separation.
- 6 (3) An individual who left work to enter the armed forces of the
7 United States shall not be subject to disqualification under this
8 section for such leaving of work.
- 9 (4) An individual whose employment is terminated under the
10 compulsory retirement provision of a collective bargaining
11 agreement to which the employer is a party, or under any other
12 plan, system, or program, public or private, providing for
13 compulsory retirement and who is otherwise eligible shall not be
14 deemed to have left the individual's work voluntarily without
15 good cause in connection with the work. However, if such
16 individual subsequently becomes reemployed and thereafter
17 voluntarily leaves work without good cause in connection with the
18 work, the individual shall be deemed ineligible as outlined in this
19 section.
- 20 (5) An otherwise eligible individual shall not be denied benefits
21 for any week because the individual is in training approved under
22 Section 236(a)(1) of the Trade Act of 1974, nor shall the
23 individual be denied benefits by reason of leaving work to enter
24 such training, provided the work left is not suitable employment,
25 or because of the application to any week in training of provisions
26 in this law (or any applicable federal unemployment
27 compensation law), relating to availability for work, active search
28 for work, or refusal to accept work. For purposes of this
29 subdivision, the term "suitable employment" means with respect
30 to an individual, work of a substantially equal or higher skill level
31 than the individual's past adversely affected employment (as
32 defined for purposes of the Trade Act of 1974), and wages for
33 such work at not less than eighty percent (80%) of the individual's
34 average weekly wage as determined for the purposes of the Trade
35 Act of 1974.
- 36 (6) An individual is not subject to disqualification because of
37 separation from the individual's employment if:
- 38 (A) the employment was outside the individual's labor market;
39 (B) the individual left to accept previously secured full-time
40 work with an employer in the individual's labor market; and
41 (C) the individual actually became employed with the
42 employer in the individual's labor market.

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1 (7) An individual who, but for the voluntary separation to move
 2 to another labor market to join a spouse who had moved to that
 3 labor market, shall not be disqualified for that voluntary
 4 separation, if the individual is otherwise eligible for benefits.
 5 Benefits paid to the spouse whose eligibility is established under
 6 this subdivision shall not be charged against the employer from
 7 whom the spouse voluntarily separated.

8 (8) An individual shall not be subject to disqualification if the
 9 individual voluntarily left employment or was discharged due to
 10 circumstances directly caused by domestic or family violence (as
 11 defined in IC 31-9-2-42). An individual who may be entitled to
 12 benefits based on this modification may apply to the office of the
 13 attorney general under IC 5-26.5 to have an address designated by
 14 the office of the attorney general to serve as the individual's
 15 address for purposes of this article.

16 **(9) An individual who is an affected employee (as defined in**
 17 **IC 22-4-44-1(1)) and is subject to the work sharing**
 18 **unemployment insurance program under IC 22-4-44 is not**
 19 **disqualified for participating in the work sharing**
 20 **unemployment insurance program.**

21 As used in this subsection, "labor market" means the area surrounding
 22 an individual's permanent residence, outside which the individual
 23 cannot reasonably commute on a daily basis. In determining whether
 24 an individual can reasonably commute under this subdivision, the
 25 department shall consider the nature of the individual's job.

26 (d) "Discharge for just cause" as used in this section is defined to
 27 include but not be limited to:

28 (1) separation initiated by an employer for falsification of an
 29 employment application to obtain employment through
 30 subterfuge;

31 (2) knowing violation of a reasonable and uniformly enforced rule
 32 of an employer, including a rule regarding attendance;

33 (3) if an employer does not have a rule regarding attendance, an
 34 individual's unsatisfactory attendance, if the individual cannot
 35 show good cause for absences or tardiness;

36 (4) damaging the employer's property through willful negligence;

37 (5) refusing to obey instructions;

38 (6) reporting to work under the influence of alcohol or drugs or
 39 consuming alcohol or drugs on employer's premises during
 40 working hours;

41 (7) conduct endangering safety of self or coworkers;

42 (8) incarceration in jail following conviction of a misdemeanor or

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1 felony by a court of competent jurisdiction; or

2 (9) any breach of duty in connection with work which is
3 reasonably owed an employer by an employee.

4 (e) To verify that domestic or family violence has occurred, an
5 individual who applies for benefits under subsection (c)(8) shall
6 provide one (1) of the following:

7 (1) A report of a law enforcement agency (as defined in
8 IC 10-13-3-10).

9 (2) A protection order issued under IC 34-26-5.

10 (3) A foreign protection order (as defined in IC 34-6-2-48.5).

11 (4) An affidavit from a domestic violence service provider
12 verifying services provided to the individual by the domestic
13 violence service provider.

14 SECTION 2. IC 22-4-44 IS ADDED TO THE INDIANA CODE AS
15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2012]:

17 **Chapter 44. Work Sharing**

18 **Sec. 1. The following definitions apply throughout this chapter:**

19 (1) "Affected employee" means an individual:

20 (A) who has been continuously on the payroll of an affected
21 unit for at least three (3) months; and

22 (B) who works at least thirty (30) normal weekly work
23 hours for the affected unit before a reduction under an
24 approved work sharing plan.

25 (2) "Affected unit" means a specific plant, department, shift,
26 or other definable unit of an employing unit:

27 (A) that has at least two (2) employees; and

28 (B) to which an approved work sharing plan applies.

29 (3) "Approved work sharing plan" means a plan that satisfies
30 the purpose set forth in section 2 of this chapter and has the
31 approval of the commissioner.

32 (4) "Commissioner" refers to the commissioner of workforce
33 development appointed under IC 22-4.1-3-1.

34 (5) "Intermittent employment" means periodic intervals that
35 are not continuous during which an individual works for an
36 employing unit.

37 (6) "Normal weekly work hours" means the lesser of the
38 following:

39 (A) The number of hours that an employee in the affected
40 unit works when the unit is operating on its normal
41 full-time basis.

42 (B) Forty (40) hours.

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- 1 (7) "Part-time employment" means that an individual works
 2 in a position for an employing unit in which the number of
 3 scheduled work hours are fewer than the normal weekly work
 4 hours for the position.
 5 (8) "Payments in lieu of contributions" has the meaning set
 6 forth in IC 22-4-2-32.
 7 (9) "Seasonal employment" has the meaning set forth in
 8 IC 22-4-8-4.
 9 (10) "Work sharing benefit" means a benefit payable to an
 10 affected employee for work performed under an approved
 11 work sharing plan, but does not include benefits that are
 12 otherwise payable under this article.
 13 (11) "Work sharing employer" means an employing unit for
 14 which a work sharing plan has been approved.
 15 (12) "Work sharing plan" means a plan of an employing unit
 16 under which:
 17 (A) normal weekly work hours of the affected employees
 18 are reduced in lieu of a layoff of a part or all of the affected
 19 employees; and
 20 (B) the affected employees share the work that remains
 21 after the reduction.
 22 **Sec. 2. The work sharing unemployment insurance program**
 23 **seeks to:**
 24 (1) preserve the jobs of employees and the work force of an
 25 employer during lowered economic activity by reduction in
 26 work hours or workdays rather than by a layoff of some
 27 employees while other employees continue their normal
 28 weekly work hours or workdays; and
 29 (2) ameliorate the adverse effect of reduction in business
 30 activity by providing benefits for the part of the normal
 31 weekly work hours or workdays in which an employee does
 32 not work.
 33 **Sec. 3. (a) An employing unit that meets all of the following**
 34 **requirements is eligible to participate in the work sharing**
 35 **unemployment insurance program established by this chapter:**
 36 (1) The employing unit is subject to this article for wages paid
 37 during a calendar year.
 38 (2) The employing unit's contribution rate for the calendar
 39 year or payments in lieu of contributions are determined
 40 under IC 22-4-10, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3.
 41 (3) The employing unit is not delinquent as determined under
 42 IC 22-4-11-2.

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1 (b) An employing unit that:

2 (1) meets the eligibility requirements under subsection (a);
3 and

4 (2) wishes to participate in the work sharing unemployment
5 insurance program established by this chapter;

6 shall submit to the commissioner a written work sharing plan.

7 Sec. 4. (a) Within fifteen (15) days after receipt of a work
8 sharing plan, the commissioner shall give written approval or
9 disapproval of the plan to the employing unit.

10 (b) The decision of the commissioner to disapprove a work
11 sharing plan is final and may not be appealed.

12 (c) An employing unit may submit a new work sharing plan not
13 less than fifteen (15) days after disapproval of a work sharing plan.

14 Sec. 5. The commissioner shall approve a work sharing plan
15 that meets the following requirements:

16 (1) The work sharing plan must apply to:

17 (A) at least ten percent (10%) of the employees in an
18 affected unit; or

19 (B) at least two (2) employees in an affected unit.

20 (2) The normal weekly work hours of the affected employees
21 in the affected unit shall be reduced by at least ten percent
22 (10%), but the reduction may not exceed fifty percent (50%).
23 The reduction in normal weekly work hours must be spread
24 equally among the affected employees.

25 Sec. 6. (a) A work sharing plan must:

26 (1) identify the affected unit or units to which the work
27 sharing plan applies;

28 (2) state:

29 (A) the reason or reasons resulting in the reduction in
30 normal weekly work hours under section 5(2) of this
31 chapter; and

32 (B) the expected duration of the reduction in normal
33 weekly work hours under section 5(2) of this chapter;

34 (3) specify the effective date of the work sharing plan;

35 (4) identify each employee in the affected unit by:

36 (A) name;

37 (B) Social Security number;

38 (C) the employee's normal weekly work hours;

39 (D) the reductions in the number of hours and the amount
40 of wages proposed for the employee by the work sharing
41 plan; and

42 (E) any other information the commissioner requires;

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- 1 (5) specify an expiration date that is not more than twelve (12)
 2 months after the effective date of the work sharing plan;
 3 (6) specify that the work sharing plan will not affect the fringe
 4 benefits of any employee in the affected unit, including:
 5 (A) health insurance for hospital, medical, dental, and
 6 similar services;
 7 (B) retirement benefits under benefit pension plans as
 8 defined in the federal Employee Retirement Income
 9 Security Act (29 U.S.C. 1001 et seq.);
 10 (C) holiday and vacation pay;
 11 (D) sick leave; and
 12 (E) other similar benefits that are incidents of
 13 employment;
 14 (7) certify that:
 15 (A) each affected employee:
 16 (i) has been continuously on the payroll of the employing
 17 unit for three (3) months; and
 18 (ii) works at least thirty (30) normal weekly work hours
 19 for the affected unit;
 20 immediately before the date on which the employing unit
 21 submits the work sharing plan;
 22 (B) the total reduction in normal weekly work hours is in
 23 place of layoffs that would have:
 24 (i) affected at least the number of employees specified in
 25 section 5(1) of this chapter; and
 26 (ii) resulted in an equivalent reduction in work hours;
 27 and
 28 (C) the work sharing plan will not serve as a subsidy of:
 29 (i) seasonal employment outside the employer's seasonal
 30 period or periods as determined by the department
 31 under IC 22-4-7-3;
 32 (ii) temporary part-time employment; or
 33 (iii) intermittent employment; and
 34 (8) contain:
 35 (A) the written approval of the collective bargaining agent
 36 for each collective bargaining agreement that covers any
 37 affected employee in the affected unit; or
 38 (B) in the absence of a collective bargaining agreement, a
 39 certification by the employing unit that the proposed work
 40 sharing plan, or a summary of the work sharing plan, has
 41 been made available to each affected employee in the
 42 affected unit.

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1 (b) A work sharing plan may include an option that allows an
2 affected employee to attend work-related training or retraining
3 approved by the employing unit during the affected employee's
4 work hours. The commissioner shall approve the training offered
5 under this subsection.

6 Sec. 7. A work sharing employer shall agree to:

7 (1) submit reports that are necessary to administer the work
8 sharing plan; and

9 (2) allow the department to have access to all records
10 necessary to:

11 (A) verify the work sharing plan before its approval; and

12 (B) monitor and evaluate the application of the work
13 sharing plan after its approval.

14 Sec. 8. (a) An approved work sharing plan may be modified if:

15 (1) the modification meets the requirements for approval
16 under section 6 of this chapter; and

17 (2) the commissioner approves the modification.

18 (b) An employing unit may add an employee who works at least
19 thirty (30) normal weekly work hours to a work sharing plan when
20 the employee has been continuously on the payroll for three (3)
21 months.

22 (c) The commissioner shall not approve a modification of a work
23 sharing plan that changes the expiration date of the work sharing
24 plan.

25 (d) The decision of the commissioner to disapprove a
26 modification to a work sharing plan is final and may not be
27 appealed.

28 Sec. 9. (a) An affected employee is eligible under this chapter to
29 receive work sharing benefits for each week in which the
30 commissioner determines that the affected employee is:

31 (1) able to work; and

32 (2) available for more hours of work or full-time work for the
33 work sharing employer.

34 (b) An affected employee who otherwise is eligible may not be
35 denied work sharing benefits for lack of effort to secure work as set
36 forth in IC 22-4-14-3 or for failure to apply for available suitable
37 work as set forth in IC 22-4-15-2 from a person other than the
38 work sharing employer.

39 (c) An affected employee shall apply for benefits under
40 IC 22-4-17-1.

41 (d) An affected employee who otherwise is eligible for benefits
42 is:

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- 1 (1) considered to be unemployed for the purpose of the work
- 2 sharing unemployment insurance program; and
- 3 (2) not subject to the requirements of IC 22-4-14-2.

4 **Sec. 10. The weekly work sharing unemployment compensation**
 5 **benefit due to an affected worker is determined in STEP FIVE of**
 6 **the following formula:**

7 **STEP ONE: Determine the weekly benefit that would be due**
 8 **to the affected employee under IC 22-4-12-4.**

9 **STEP TWO: Subtract the number of the employee's work**
 10 **hours under the approved work sharing plan from the**
 11 **number of the employee's normal work hours.**

12 **STEP THREE: Divide the STEP TWO result by the number**
 13 **of the employee's normal work hours.**

14 **STEP FOUR: Multiply the number determined in STEP ONE**
 15 **by the quotient determined in STEP THREE.**

16 **STEP FIVE: If the product determined under STEP FOUR is**
 17 **not a multiple of one dollar (\$1), round down to the nearest**
 18 **lower multiple of one dollar (\$1).**

19 **Sec. 11. (a) An affected employee is eligible to receive not more**
 20 **than fifty-two (52) weeks of work sharing benefits during each**
 21 **benefit year.**

22 **(b) The total amount of benefits payable under IC 22-4-12-4 and**
 23 **work sharing benefits payable under this chapter may not exceed**
 24 **the total payable for the benefit year under IC 22-4-12-4(a).**

25 **Sec. 12. During a week in which an affected employee who**
 26 **otherwise is eligible for benefits does not work for the work**
 27 **sharing employer:**

28 (1) the individual shall be paid unemployment insurance
 29 benefits in accordance with IC 22-4-12; and

30 (2) the week does not count as a week for which a work
 31 sharing benefit is received.

32 **Sec. 13. During a week in which an employee earns wages under**
 33 **an approved work sharing plan and other wages, the work sharing**
 34 **benefit shall be reduced by the same percentage that the combined**
 35 **wages are of wages for normal weekly work hours if the other**
 36 **wages:**

37 (1) exceed the wages earned under the approved work sharing
 38 plan; and

39 (2) do not exceed ninety percent (90%) of the wages that the
 40 individual earns for normal weekly work hours.

41 **This computation applies regardless of whether the employee**
 42 **earned the other wages from the work sharing employer or**

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another employer.

Sec. 14. While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

- (1) extended benefits under IC 22-4-12-4; or**
- (2) supplemental federal unemployment compensation.**

Sec. 15. Work sharing benefits shall be charged to the work sharing employer's experience balance in the same manner as unemployment insurance is charged under this article. Employers liable for payments in lieu of contributions shall have work sharing benefits attributed to service in their employ in the same manner as unemployment insurance is attributed under this article.

Sec. 16. (a) The commissioner may revoke approval of an approved work sharing plan for good cause, including:

- (1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;**
- (2) failure to comply with an assurance in the approved work sharing plan;**
- (3) unreasonable revision of a productivity standard of the affected unit; and**
- (4) violation of a criterion on which the commissioner based the approval of the work sharing plan.**

(b) An affected employee in an affected unit or the collective bargaining agent representing an affected employee in an affected unit may request that the commissioner take action to revoke the approval of an approved work sharing plan.

(c) The commissioner shall give written notice of the revocation to the employing unit specifying:

- (1) the date the revocation is effective; and**
- (2) the reason or reasons for the revocation.**

(d) The commissioner's decision to revoke approval of an approved work sharing plan is final and may not be appealed.

(e) The department shall review the operation of all approved work sharing plans at least once during the period that the work sharing plan is in effect to ensure that the work sharing employer is complying with the requirements of the work sharing plan approved by the commissioner.

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