SENATE BILL No. 438

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 normal weekly work hours are reduced. Permits an employer that has a work sharing plan disapproved by the commissioner to request a review of the disapproval.

Effective: July 1, 2013.

Skinner

January 10, 2013, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 438

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:

SECTION 1. IC 22-4-15-1, AS AMENDED BY P.L.175-2009, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

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

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

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

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

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

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

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

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

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

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

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

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

(B) ninety percent (90%);

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

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

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

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

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

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

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(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

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

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

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

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

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

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

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

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

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

(5) refusing to obey instructions;

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

(7) conduct endangering safety of self or coworkers;

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

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felony by a court of competent jurisdiction; or

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

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

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

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

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

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

SECTION 2. IC 22-4-44 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 44. Work Sharing

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

(1) "Affected employee" means an individual:

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

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

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

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

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

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

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

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

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

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

(B) Forty (40) hours.

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(7) "Part-time employment" means that an individual works in a position for an employing unit in which the number of scheduled work hours is fewer than the normal weekly work hours for the position.

(8) "Payments in lieu of contributions" has the meaning set forth in IC 22-4-2-32.

(9) "Seasonal employment" has the meaning set forth in IC 22-4-8-4.

(10) "Work sharing benefit" means a benefit payable to an affected employee for work performed under an approved work sharing plan, but does not include benefits that are otherwise payable under this article.

(11) "Work sharing employer" means an employing unit for which a work sharing plan has been approved.

(12) "Work sharing plan" means a plan of an employing unit under which:

(A) normal weekly work hours of the affected employees are reduced in lieu of a layoff of a part or all of the affected employees; and

(B) the affected employees share the work that remains after the reduction.

Sec. 2. The work sharing unemployment insurance program seeks to:

(1) preserve the jobs of employees and the work force of an employer during lowered economic activity by reduction in work hours or workdays rather than by a layoff of some employees while other employees continue their normal weekly work hours or workdays; and

(2) ameliorate the adverse effect of reduction in business activity by providing benefits for the part of the normal weekly work hours or workdays in which an employee does not work.

Sec. 3. (a) An employing unit that meets all the following requirements is eligible to participate in the work sharing unemployment insurance program established by this chapter:

(1) The employing unit is subject to this article for wages paid during a calendar year.

(2) The employing unit's:

(A) contribution rate for the calendar year; or

(B) payments in lieu of contributions;

are determined under IC 22-4-10, IC 22-4-11, IC 22-4-11.5, or IC 22-4-37-3.

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(3) The employing unit is not delinquent as determined under IC 22-4-11-2.

(b) An employing unit that:

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

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

shall submit to the commissioner a written work sharing plan.

Sec. 4. (a) Not later than fifteen (15) days after receipt of a work sharing plan, the commissioner shall give written approval or disapproval of the plan to the employing unit.

(b) The employing unit that has a work sharing plan disapproved under subsection (a) may, not later than seven (7) days after the date of the disapproval, request a hearing before an administrative law judge employed by the department. If the employing unit does not request a hearing, the commissioner's disapproval of the plan is final and may not be appealed.

(c) The administrative law judge, after providing notice of a hearing to the employing unit and the commissioner and affording the parties a reasonable opportunity for a fair hearing, shall affirm or reverse the commissioner's disapproval and issue a written decision not later than thirty (30) days after receiving an employing unit's request under subsection (b).

(d) The decision of the administrative law judge under subsection (c) is final and may not be appealed.

(e) An employing unit may not submit a new work sharing plan less than fifteen (15) days after the date of a final decision disapproving a work sharing plan.

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

(1) The work sharing plan must apply to:

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

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

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

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

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

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(2) state:
(A) the reason or reasons resulting in the reduction in normal weekly work hours under section 5(2) of this chapter; and
(B) the expected duration of the reduction in normal weekly work hours under section 5(2) of this chapter;
(3) specify the effective date of the work sharing plan;
(4) identify each employee in the affected unit by:
(A) name;
(B) Social Security number;
(C) the employee's normal weekly work hours;
(D) the reductions in the number of hours and the amount of wages proposed for the employee by the work sharing plan; and
(E) any other information the commissioner requires;
(5) specify an expiration date that is not more than twelve (12) months after the effective date of the work sharing plan;
(6) specify that the work sharing plan will not affect the fringe benefits of any employee in the affected unit, including:
(A) health insurance for hospital, medical, dental, and similar services;
(B) retirement benefits under benefit pension plans as defined in the federal Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.);
(C) holiday and vacation pay;
(D) sick leave; and
(E) other similar benefits that are incidents of employment;
(7) certify that:
(A) each affected employee:
(i) has been continuously on the payroll of the employing unit for at least three (3) months; and
(ii) works at least thirty (30) normal weekly work hours for the affected unit;
immediately before the date on which the employing unit submits the work sharing plan;
(B) the total reduction in normal weekly work hours is in place of layoffs that would have:
(i) affected at least the number of employees specified in section 5(1) of this chapter; and
(ii) resulted in an equivalent reduction in work hours; and

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(C) the work sharing plan will not serve as a subsidy of:

(i) seasonal employment outside the employer's seasonal period or periods as determined by the department under IC 22-4-7-3;

(ii) temporary part-time employment; or

(iii) intermittent employment; and

(8) contain:

(A) the written approval of the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit; or

(B) in the absence of a collective bargaining agreement, a certification by the employing unit that the proposed work sharing plan, or a summary of the work sharing plan, has been made available to each affected employee in the affected unit.

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

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

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

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

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

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

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

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

(2) the commissioner approves the modification.

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

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

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

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

(1) able to work; and

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

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

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

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

(1) considered to be unemployed for the purpose of the work sharing unemployment insurance program; and

(2) not subject to the requirements of IC 22-4-14-2.

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

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

STEP TWO: Subtract the number of the employee's work hours under the approved work sharing plan from the number of the employee's normal weekly work hours.

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

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

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

Sec. 11. (a) An affected employee may not receive more than fifty-two (52) weeks of work sharing benefits during each benefit year.

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

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

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

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

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

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

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

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

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(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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