

Amendment No. 1 to HB2005

Eldridge
Signature of Sponsor

AMEND Senate Bill No. 2213

House Bill No. 2005*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following new part:

50-1-1001. This part shall be known and may be cited as the “Tennessee Work-Share Act of 2014.”

50-1-1002.

(1) “Affected unit” means a specified plant, department, shift, or other definable unit that includes two (2) or more employees to which an approved work-sharing plan applies;

(2) “Commissioner” means the commissioner of labor and workforce development;

(3) “Health and retirement benefits” means:

(A) Employer-provided health benefits and retirement benefits that are incidents of employment; and

(B) The cash remuneration earned under a defined benefit pension plan as defined in 26 USC § 414(j) or contributions under a defined contribution plan as defined in 26 USC § 414(i);

(4) “Participating employee” means an employee who works a reduced number of hours under an approved work-sharing plan;

(5) “Participating employer” means an employer who has an approved work-sharing plan in effect;

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(6) "Unemployment insurance":

(A) Means the benefits payable under the Tennessee Employment Security Law, compiled in chapter 7 of this title;

(B) Includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment; and

(C) Does not include work-sharing benefits;

(7) "Usual weekly hours of work":

(A) Means the weekly hours of work for full-time or part-time employees in the affected unit when the affected unit is operating on its regular basis, not to exceed forty (40) hours; and

(B) Does not include hours of overtime work;

(8) "Work-sharing benefits":

(A) Means unemployment benefits payable to employees in an affected unit under an approved work-sharing plan; and

(B) Does not include unemployment insurance; and

(9) "Work-sharing plan" means a plan submitted by an employer pursuant to this part, for approval by the commissioner, under which the employer requests the payment of work-sharing benefits to employees in an affected unit of the employer to avert layoffs.

50-1-1003. An employer seeking to participate in a work-sharing plan shall first submit a signed, written work-sharing plan to the commissioner for approval. The commissioner shall develop an application form to request approval of a work-sharing plan and an approval process. The application shall include:

(1) The affected units covered by the work-sharing plan, including the number of full-time or part-time employees in the unit; the percentage of employees in the affected unit covered by the work-sharing plan, which shall not exceed forty percent (40%) of the total number of employees in the affected unit; identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number; and any other information required by the commissioner to identify participating employers and employees;

(2) Certification that the employer has obtained the written approval of any applicable collective bargaining representative and has notified all affected employees who are not in a collective bargaining unit of the proposed work-sharing plan;

(3) A description of how employees in the affected unit will be notified of the employer's participation in the work-sharing plan if such application is approved, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide the notice;

(4) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which the employees' hours will be reduced during all weeks covered by the work-sharing

plan. An application shall specify the percentage of reduction for which a work-sharing application may be approved that shall not be less than ten percent (10%) and not more than sixty percent (60%). If the work-sharing plan includes any week for which the employer regularly provides no work, due to a holiday or other plant closing, then such week shall be identified in the application;

(5)

(A) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the work-sharing plan, the benefits shall continue to be provided to employees participating in the work-sharing plan under the same terms and conditions as though the usual weekly hours of work of the employee had not been reduced or to the same extent as other employees not participating in the work-sharing plan;

(B) For defined benefit retirement plans, the hours that are reduced under the work-sharing plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation;

(C) Notwithstanding subdivision (5)(B), an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the work-sharing plan will be applicable equally to employees who are not participating in the work-sharing plan and to those employees who are participating;

(6) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent layoffs, or both, of regularly employed employees in the affected unit. The application shall include an estimate of the number of employees who would have been laid off in the absence of the work-sharing plan;

(7) Agreement by the employer to:

(A) Furnish reports to the commissioner relating to the proper conduct of the work-sharing plan;

(B) Allow the commissioner or the commissioner's designee access to all records necessary to approve or disapprove the work-sharing plan application, and after approval of a work-sharing plan, to monitor and evaluate the work-sharing plan; and

(C) Follow any other directives the commissioner deems necessary for the agency to implement the work-sharing plan and which are consistent with the requirements for work-sharing plan applications.

(8) Certification that the employer has filed all quarterly reports and other reports required under the Tennessee Employment Security Law, compiled in chapter 7 of this title, and has paid all quarterly contributions, reimbursements in lieu of contributions, interest and penalties due through the date of the employer's application;

(9) Certification that the employer shall not hire new employees in, or transfer employees to, the affected unit during the effective period of the work-sharing plan;

(10) Certification that the employer shall not lay off participating employees during the effective period of the work-sharing plan, or reduce participating employees' usual weekly hours of work by more than the reduction

percentage during the effective period of the work-sharing plan, except in cases of holidays, designated vacation periods, equipment maintenance, or similar circumstances;

(11) Certification by the employer that participation in the work-sharing plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;

(12) The effective date and duration of the work-sharing plan that shall expire not later than the end of the twelfth full calendar month after the effective date; and

(13) Any other provision added to the application by the commissioner that the United States secretary of labor determines to be appropriate for purposes of administering this part.

50-1-1004. The commissioner shall approve or disapprove a work-sharing plan in writing within thirty (30) days of its receipt and promptly communicate the decision to the employer. A decision disapproving the work-sharing plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer may submit another work-sharing plan for approval not earlier than fifteen (15) days from the date of the disapproval.

50-1-1005.

(a) A work-sharing plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The work-sharing plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner.

(b) If a work-sharing plan is revoked by the commissioner under § 50-1-1006, the work-sharing plan shall terminate on the date specified in the commissioner's written order of revocation.

(c) An employer may terminate a work-sharing plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date.

(d) An employer may submit a new application to participate in another work-sharing plan at any time after the expiration or termination date.

50-1-1006.

(a) The commissioner may revoke approval of a work-sharing plan for good cause at any time, including upon the request of any of the affected unit's employees.

(b) For purposes of this section, "good cause" includes, but is not limited to:

(1) Failure by a participating employer to comply with the assurances given in the work-sharing plan,

(2) Unreasonable revision by a participating employer of productivity standards for the affected unit;

(3) Conduct or occurrences by a participating employer tending to defeat the intent and effective operation of the work-sharing plan; and

(4) Violation by a participating employer of any criteria on which approval of the work-sharing plan was based.

(c) The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

(d) The commissioner may periodically review the operation of each employer's work-sharing plan to assure that no good cause exists for revocation of the approval of the work-sharing plan.

50-1-1007.

(a) An employer may request a modification of an approved work-sharing plan by filing a written request with the commissioner.

(b) The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the work-sharing plan.

(c) The commissioner shall approve or disapprove the proposed modification in writing within ten (10) working days of receipt and promptly communicate the decision to the employer.

(d)

(1) The commissioner may approve a request for modification of the work-sharing plan based on conditions that have changed since the work-sharing plan was approved provided that the modification is consistent with and supports the purposes for which the work-sharing plan was initially approved.

(2) A modification does not extend the expiration date of the original work-sharing plan, and the commissioner shall promptly notify the employer whether the work-sharing plan modification has been approved and, if approved, the effective date of the modification.

(3) An employer is not required to request approval of a work-sharing plan modification from the commissioner if the change is not substantial, but the employer shall report every change to the work-sharing plan to the commissioner promptly and in writing.

(e) The commissioner may terminate an employer's work-sharing plan if the employer fails to meet the reporting requirement in subdivision (d)(3). If the commissioner determines that the reported change is substantial, the commissioner shall require the employer to request a modification to the work-sharing plan.

50-1-1008. An individual is eligible to receive work-sharing benefits with respect to any week only if the individual is monetarily eligible for unemployment insurance, not otherwise disqualified for unemployment insurance, and:

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

(2) Notwithstanding any other provisions of this part relating to availability for work and actively seeking work to the contrary, the individual is available for the individual's usual weekly hours of work with the work-sharing employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the commissioner such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998, compiled in 29 U.S.C. § 2801 et seq; and

(3) An individual covered by an approved work-sharing plan is deemed unemployed in any week during the duration of the work-sharing plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved work-sharing plan.

50-1-1009.

(a) An individual's work-sharing benefit amount shall be the product of the regular weekly unemployment insurance amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(b) An individual may be eligible for work-sharing benefits or unemployment insurance, as appropriate, except that:

(1) No individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment insurance; and

(2) No individual shall be paid work-sharing benefits for more than fifty-two (52) weeks under an approved work-sharing plan.

(c) The work-sharing benefits paid to an individual shall be deducted from the maximum entitlement amount of regular unemployment insurance established for that individual's benefit year.

(d) Provisions applicable to unemployment insurance claimants shall apply to work-sharing claimants to the extent that the provisions are not inconsistent with this part. An individual who files an initial claim for work-sharing benefits shall receive a monetary determination.

(e) An individual who is eligible for work-sharing benefits shall not be subject to the provision of state unemployment insurance law relating to partial unemployment benefits. Wages earned from an employer other than the work-sharing employer during the week of work-sharing eligibility shall be disregarded in the calculation of the individual's weekly work-sharing benefit.

(f) An individual who is not provided any work during a week by the work-sharing employer, or any other employer, and who is otherwise eligible for

unemployment insurance shall be eligible for the amount of regular unemployment insurance to which the individual would otherwise be eligible.

(g) An individual who is not provided any work by the work-sharing employer during a week, but who works for another employer and is otherwise eligible may be paid unemployment insurance for that week subject to the disqualifying income provisions of the Tennessee Employment Security Law, compiled in chapter 7 of this title, relating to partial unemployment benefits.

50-1-1010.

(a) Except as provided in subsection (b), work-sharing benefits shall be charged to an employer's experience rating account in the same manner as unemployment insurance is charged under the charging provision of the Tennessee Employment Security Law, compiled in chapter 7 of this title. 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 the provision of the Tennessee Employment Security Law, compiled in chapter 7 of this title, relating to the financing of benefits by employers using the reimbursing method.

(b) If federal funding is available to the state for the purpose of full reimbursement for the cost of funding work-sharing benefits paid by the unemployment insurance agency pursuant to 26 U.S.C. § 3304 and an approved work-sharing plan under this part, those benefits shall not be charged or billed to a participating employer.

50-1-1011. An individual who has received all of the work-sharing benefits, or combined unemployment insurance and work-sharing benefits available, in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided under the provisions of the Tennessee Employment Security Law, compiled in chapter 7

of this title, relating to extended benefits, and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

50-1-1012. Notwithstanding any other law to the contrary, this part shall not apply to the extent that compliance with this part would violate federal law or cause the department of labor and workforce development a loss of federal funding.

50-1-1013. In the event that adequate funds are not available for payment of expenditures related to administering this part, the commissioner may, in the commissioner's sole discretion, suspend this part until adequate funds are available.

SECTION 2. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 3. For purpose of promulgating rules, this act shall take effect, upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2016, the public welfare requiring it and shall cease to be effective after June 30, 2018.