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AB-1731 Unemployment insurance: work sharing plans. (2019-2020)

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Assembly Bill No. 1731

CHAPTER 209

An act to amend Section 1279.5 of, to add Section 1279.6 to, and to add and repeal Section 1279.7 of, the Unemployment Insurance Code, relating to unemployment insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2020. Filed with Secretary of State September 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1731, Boerner Horvath. Unemployment insurance: work sharing plans.

Existing law provides for the payment of unemployment compensation benefits to eligible persons who are unemployed through no fault of their own. Existing law deems an employee unemployed in any week if the employee works less than their usual weekly hours of work for the employee's regular employer as the result of the employer's participation in a work sharing plan that meets specified requirements and has been approved by the Director of Employment Development, pursuant to which the employer, in lieu of layoff, reduces employment and stabilizes the workforce. Existing law requires an employer who wishes to participate in the work sharing program to submit to the director a signed, written work sharing plan application form that meets specified requirements.

This bill, until January 1, 2024, would create an alternative process for the submission and approval of employer work sharing plan applications. The bill would require the Director of Employment Development to accept an application to participate in, or renew participation in, the work sharing program that is submitted electronically and would require the Employment Development Department to create a portal on its internet website for the provision and receipt of these applications. For work sharing plan applications submitted by eligible employers between September 15, 2020, and September 1, 2023, the bill would require that, upon approval by the director, they be deemed approved for one year, except as specified. The bill would require the department to mail to an eligible employer a claim packet for each participating employee within 5 business days following approval of the application. The bill would require the department to make online claim forms available to the approved employer for each participating employee within five business days following approval of the application if an employer submitted its work sharing plan application online. Upon completion of the documents in the claim packet, the department would establish an unemployment insurance claim pursuant to applicable requirements. Among other things, the bill would require participating employers and employees to meet the required unemployment insurance claim filing and weekly certification requirements and for employers to be responsible for the completeness and integrity of work sharing certification forms issued to participating employees. The bill would require that these provisions be implemented consistently with the requirements of federal law.

This bill would also authorize the Employment Development Department to collaborate with the Governor's Office of Business and Economic Development and the California Infrastructure and Economic Development Bank to, among other things, develop and implement strategic outreach to increase participation by employers in the work sharing program described above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) More than 40,000,000 Americans have applied for unemployment benefits during the coronavirus pandemic and many businesses have laid off staff or shut down completely.
- (b) Many economists believe that work sharing programs are much better options than laying off workers, as these programs keep workers in their jobs, let employers cut their hours, and provide for benefits that allow workers to backfill their lost wages.
- (c) California has a work sharing program pursuant to which an employer may apply to participate as a temporary alternative to layoffs if the business' production or services have been reduced. This program helps employers minimize or eliminate the need for layoffs in nearly all types of businesses and industries and allows employers to keep trained employees, quickly recover when business financial conditions improve, and avoid the cost of recruiting, hiring, and training new employees.
- (d) With work sharing, both full- and part-time employees whose hours and wages have been reduced can receive unemployment compensation benefits, keep their current jobs, avoid financial hardships, and maintain health and retirement benefits.
- (e) It is the intent of the Legislature to create an expedited process pursuant to which employers may apply to, and participate in, California's work sharing program.

SEC. 2. Section 1279.5 of the Unemployment Insurance Code, as added by Section 2 of Chapter 141 of the Statutes of 2013, is amended to read:

1279.5. (a) As used in this section:

- (1) "Affected unit" means a specified plant, department, shift, or other definable unit that includes two or more workers and not less than 10 percent of the employer's regular permanent work force involved in the affected unit or units in each week, or in at least one week of a two-consecutive-week period, to which an approved work sharing plan applies.
 - (2) "Health and retirement benefits" means employer-provided health benefits and retirement benefits under a defined benefit pension plan, as defined in Section 414(j) of the Internal Revenue Code, or contributions under a defined contribution plan, as defined in Section 414(i) of the Internal Revenue Code, that are incidents of employment in addition to the cash remuneration earned.
 - (3) "Work sharing compensation" means the unemployment compensation benefits payable to employees in an affected unit under an approved work sharing plan, as distinguished from the unemployment compensation benefits otherwise payable under this part.
 - (4) "Work sharing plan" means a plan submitted by an employer, for approval by the director, under which the employer requests the payment of work sharing compensation to employees in an affected unit of the employer in lieu of layoffs.
 - (5) "Work sharing program" means the program described by this section.
 - (6) "Usual weekly hours of work" means the usual hours of work for full- or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed 40 hours and not including hours of overtime work.
 - (7) "Unemployment compensation" means the unemployment compensation benefits payable under this part other than work sharing compensation and includes amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.
- (b) Notwithstanding Section 1252 or 1252.2 or any other provision of this part, for the purposes of this section an employee is "unemployed" in any week if the employee works less than their usual weekly hours of work for the employee's regular employer, as the result of the regular employer's participation in a work sharing plan that meets the requirements of this section and has been approved by the director, pursuant to which the employer, in lieu of layoff, reduces employment and stabilizes the workforce.
- (c) Except as provided in Section 1279.7 an employer wishing to participate in the work sharing program, on and after July 1, 2014, shall submit a signed written work sharing plan to the director for approval. The director shall develop an application form to request approval of a work sharing plan and an approval process that meets the requirements of this section. The application shall include, but is not limited to, the following:

(1) The affected unit covered by the plan, including the number of full- or part-time employees in the unit, the percentage of employees in the affected unit covered by the plan, 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 director to identify plan participants.

(2) A description of how employees in the affected unit will be notified of the employer's participation in the work sharing plan if the 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 does not intend to 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 that notice.

(3) A requirement that the employer identify, in the application, the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. The percentage of reduction of usual weekly hours of work for which a work sharing plan may be approved shall not be less than 10 percent or more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including, but not limited to, incidences due to a holiday or plant closing, then that week shall be identified in the application.

(4) (A) Except as provided in subparagraph (B), certification by the employer, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are to be reduced under the plan, that the benefits will continue to be provided, to the extent permitted by federal law, to employees participating in the work sharing plan under the same terms and conditions as though the usual weekly hours of work of these employees had not been reduced or to the same extent as other employees not participating in the work sharing plan. For defined benefit retirement plans, to the extent permitted by federal law, 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.

(B) If a reduction in health and retirement benefits is scheduled to occur during the duration of the plan and those reductions will be applied equally to employees who are not participating in the work sharing program, then the application shall so certify, and those benefits may be reduced for those employees who are participating in the work sharing plan.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of temporary or permanent layoffs, or both. The application shall include an estimate of the number of workers who would have been laid off in the absence of the work sharing plan.

(6) Agreement by the employer to do all of the following:

(A) Furnish reports to the director relating to the proper conduct of the plan.

(B) Allow the director or the director's authorized representatives access to all records necessary to approve or disapprove the plan application.

(C) After approval of a plan, monitor and evaluate the plan.

(D) Follow any other directives the director deems necessary for the department to implement the plan and that are consistent with the requirements for plan applications.

(7) 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.

(8) The effective date and duration of the plan, which shall not be later than the end of the 12th full calendar month after the effective date.

(9) Any other provision added to the application by the director that the United States Secretary of Labor determines to be appropriate for purposes of a work sharing plan.

(d) The director shall approve or disapprove a work sharing plan in writing by the close of business no later than 10 working days from the date the completed plan is received and communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. Within 20 days, the employer may submit a request for review of the disapproved work sharing plan to the director's work sharing administrator, whom the director shall designate for this purpose. After review, the work sharing administrator's decision of approval or disapproval shall be final. If disapproved, the employer may submit a different work sharing plan for approval.

(e) The director shall work with the employer to determine the effective date of a work sharing plan, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the director. However, if a work sharing plan is revoked by the director under subdivision (f) of this section, the plan shall terminate on the date specified in the director's written order of revocation. An employer may terminate a work sharing plan at any time upon written notice to the director. An employer may submit an application to renew the work sharing plan not more than 10 days after a previously approved work sharing plan expires.

(f) The director may revoke approval of a work sharing plan for good cause at any time. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective. The director may periodically review the operation of an employer's work sharing plan to ensure that good cause does not exist for revocation of the approval of the plan. For purposes of these provisions, good cause includes, but is not limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the work sharing plan, and violation of any criteria on which approval of the plan was based.

(g) An employer may request a modification of an approved plan by filing a written request to the director. 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. The director shall approve or disapprove the proposed modification in writing by the close of business no later than 10 working days from the date the proposed modification is received and communicate the decision to the employer. The director, in the director's discretion, may approve a request for modification of the plan based on conditions that have changed since the plan was approved, provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the director shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification, which shall not be earlier than the effective date of the original work sharing plan. An employer is not required to request approval of a plan modification from the director if the change is not substantial, but the employer shall promptly report, in writing, every change to the plan to the director. The director may terminate an employer's plan if the employer fails to meet this reporting requirement. If the director determines that the reported change is substantial, the director shall require the employer to request a modification to the plan.

(h) (1) An employee is eligible to receive work sharing compensation with respect to any week only if the employee is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and both of the following are true:

(A) During the week, the employee is employed as a member of an affected unit under an approved work sharing plan, which was approved prior to that week, and the plan is in effect with respect to the week for which work sharing compensation is claimed.

(B) Notwithstanding any other provisions relating to availability for work and actively seeking work, the employee is available for the employee's usual 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 director, such as employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.).

(2) Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that plan if the employee's remuneration as an employee in an affected unit is reduced based on a reduction of the employee's usual weekly hours of work under an approved work sharing plan.

(i) For the purposes of this section, an employee shall not be disqualified under subdivision (c) of Section 1253 for any week if both of the following conditions exist:

(1) The employee has not been absent from work without the approval of the regular employer.

(2) The employee accepted all work the regular employer made available to the individual during hours scheduled off due to the work sharing plan.

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

(k) (1) Provisions applicable to unemployment compensation shall apply to employees in a work sharing plan to the extent that they are not inconsistent with work sharing program provisions. An employee who files an initial claim for work sharing compensation shall receive a monetary determination. An employee may be eligible for work sharing compensation or unemployment compensation, as appropriate, except that an employee shall not be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an employee be paid work sharing benefits for more than 52 weeks under a work sharing plan.

(2) An employee 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 compensation, shall be eligible for the amount of regular unemployment compensation to which the employee would otherwise be eligible.

(3) An employee 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 compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment compensation.

(4) The work sharing compensation paid to an employee shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that employee's benefit year.

(5) An employee who has received all of the work sharing compensation or combined unemployment compensation and work sharing compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(6) No employee who receives any benefits under this section during any benefit year shall receive any benefits pursuant to Section 1252 or 1252.2 as a partially unemployed individual with respect to any week during a benefit year while in employment status with the regular employer who initiated the work sharing plan under this section.

(7) Sections 1253.5 and 1279 shall not apply to any individual eligible for any payment under this section.

(l) Any amount payable under this section shall be reduced by the amount of any and all compensation payable for personal services, whether performed as an employee or an independent contractor or as a juror or as a witness, except compensation payable by the regular employer under a work sharing plan. For the purposes of this subdivision, "regular employer" may include, pursuant to an approved plan, a labor organization that periodically employs individuals in accordance with a collective bargaining agreement.

(m) Work sharing compensation shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under this part. Employers liable for payments in lieu of contributions shall have work sharing compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

(n) The benefit payment under this section, if not a multiple of one dollar (\$1), shall be increased to the next higher multiple of one dollar (\$1).

(o) Except as otherwise provided by or inconsistent with this section, all provisions of this division and authorized regulations apply to benefits under this section. Authorized regulations may, to the extent permitted by federal law, make those distinctions and requirements as may be necessary in the procedures and provisions applicable to unemployed individuals to carry out the purposes of this section, including, but not limited to, regulations defining normal hours, days, workweeks, and wages.

(p) Employees shall not be eligible to receive any benefits under this section unless their employer agrees, in writing, and their bargaining agent pursuant to any applicable collective bargaining agreement agrees, in writing, to voluntarily participate in the work sharing program created by this section.

(q) Notwithstanding Section 1327, the department shall not be required to notify an employer of additional claims that result from an approved plan submitted by the employer under which benefits are not paid in each week.

(r) This section shall become operative on July 1, 2014. This section shall apply to work sharing plans that become effective on or after July 1, 2014.

SEC. 3. Section 1279.6 is added to the Unemployment Insurance Code, to read:

1279.6. The department may collaborate with the Governor's Office of Business and Economic Development and the California Infrastructure and Economic Development Bank to develop and implement strategic outreach to increase participation by employers in the work sharing program described in Section 1279.5 and to provide information to employers about their ability to rehire former employees, based on federal guidance.

SEC. 4. Section 1279.7 is added to the Unemployment Insurance Code, to read:

1279.7. (a) Notwithstanding subdivision (c) of Section 1279.5, the director shall accept a work sharing plan application submitted electronically by an employer wishing to participate in, or renew participation in, the work sharing program. The department shall create a portal on its internet website for the provision and receipt of these applications.

(b) Work sharing plan applications submitted by eligible employers between September 15, 2020, and September 1, 2023, to participate in, or renew participation in, the work sharing program, upon approval by the director, shall be deemed approved for

one year, unless a shorter plan is requested by the employer and approved by the director pursuant to subdivision (e) of Section 1279.5. The department shall mail to an eligible employer a claim packet for each participating employee within five business days following approval of the application. For an employer that submitted a work sharing plan application online, the department shall make online claim forms available to the approved employer for each participating employee within five business days following approval of the application. After the participating employer and employees complete and submit the documents in the claim packet, the department shall establish an unemployment insurance claim pursuant to applicable requirements. Participating employers and employees shall meet the required unemployment insurance claim filing and weekly certification requirements and employers shall be responsible for the completeness and integrity of each work sharing certification form issued to a participating employee.

(c) The provisions of this section shall be implemented consistently with the requirements of federal law.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2024, deletes or extends that date.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to encourage employers to utilize California's work sharing program and provide an expedited, online method for the submission and approval of work sharing plan applications as soon as possible, it is necessary for this act to take immediate effect.