

Accompanying the second recommendation of the Division of Employment Security (House, No. 111). Commerce and Labor.

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**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Eight.

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AN ACT ESTABLISHING A WORKSHARING PROGRAM

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 151A of the General Laws, as most  
2 recently amended by section 141 of chapter 199 of the acts of 1987,  
3 is hereby further amended by adding after section 29C the  
4 following new section: —

5 Section 29D. (a) As used in this section the following words  
6 and phrases shall, unless the context clearly requires otherwise,  
7 have the following meanings:

8 (1) "Affected unit", a specified plant, department, shift, or  
9 other definable unit consisting of not less than two employees to  
10 which an approved work sharing plan applies.

11 (2) "Approved work sharing plan", a plan of an employer under  
12 which there is a reduction in the number of hours worked by the  
13 employees in an affected unit, and the affected employees share  
14 the work remaining after the normal weekly hours of work are  
15 reduced.

16 (3) "Employee", any individual employed full-time or on a  
17 permanent part-time basis by any employer subject to this chapter  
18 and in employment subject thereto.

19 (4) "Fringe benefits" include, but are not limited to, health  
20 insurance, retirement benefits, paid vacation and holidays, sick  
21 leave, and similar advantages which are incidents of employment.

22 (5) "Normal weekly hours of work", the normal number of  
23 hours of work each week for an employee in an affected unit when  
24 that unit is operating on a full-time basis, not to exceed forty hours  
25 and not including overtime.

26 (6) "Unemployment benefits" or "regular benefits", benefits  
27 payable under this chapter other than work sharing benefits,  
28 reemployment assistance benefits or health insurance benefits.

29 (7) "Work sharing benefits", the benefits payable to employees  
30 in an affected unit under an approved work sharing plan.

31 (8) "Work sharing employer", an employer with an approved  
32 work sharing plan in effect.

33 (b) An employer wishing to participate in a work sharing  
34 program shall submit a written and signed work sharing plan to  
35 the director for approval. The director may approve a work  
36 sharing plan if the following criteria, and any other factors the  
37 director deems relevant, are met:

38 (1) The plan identifies the affected unit or units to which it  
39 applies; and

40 (2) The employees in the affected unit are identified by name,  
41 social security number, the normal weekly hours of work,  
42 proposed wage and hour reduction and any other information the  
43 director deems necessary to carry out the provisions of this  
44 section; and

45 (3) The normal weekly hours of work by employees in the  
46 affected unit are reduced by not less than ten percent and not more  
47 than sixty percent and the reduction in hours in each affected unit  
48 is spread equally among employees in the affected unit; and

49 (4) The plan provides that health benefits and retirement  
50 benefits under a benefit pension plan as defined in section 3 (35)  
51 of the Employee Retirement Income Security Act of 1974 will  
52 continue to be provided to the employees in the affected units as  
53 though their normal weekly hours of work had not been reduced  
54 and specifies the effect, if any, the reduction in the normal weekly  
55 hours of work will have on other fringe benefits provided by the  
56 employer; and

57 (5) The plan certifies that the reduction in the normal weekly  
58 hours of work is in lieu of layoffs and states the reason for and  
59 expected duration of the work reduction. The plan must not serve  
60 as a subsidy of seasonal employment during the off season, nor  
61 as a subsidy of temporary part-time or intermittent employment;  
62 and

63 (6) The written approval by the collective bargaining agent for  
64 each collective bargaining agreement for each affected unit is  
65 included in the plan; and



66 (7) The plan specifies a beginning and ending date which shall  
67 be not more than twenty-six weeks from the beginning date; and

68 (8) The plan contains an agreement by the employer to furnish  
69 all reports and information necessary for the administration of  
70 the plan and to permit access by the director to all records  
71 necessary to verify and evaluate the plan; and

72 (9) An employee's participation in the plan is not precluded or  
73 limited by any particular definition of attachment to the employer,  
74 such as, length of employment.

75 (10) The plan applies to only full-time or permanent part-time  
76 employees, and does not include seasonal employees; and

77 (11) The plan certifies that the employer has paid all  
78 contributions, payments in lieu of contributions, interest or  
79 penalty charges due under this chapter; and

80 (12) The plan meets all other criteria prescribed by the director.

81 (c) The director shall approve or reject a work sharing plan in  
82 writing within fifteen working days after its receipt. The director's  
83 rejection of the work sharing plan shall be final and non-  
84 appealable, but rejection shall not prevent an employer from  
85 submitting another plan for approval.

86 (d) An approved work sharing plan may be modified only with  
87 the approval of the director. The work sharing employer shall  
88 notify the director of any changes in the conditions of an approved  
89 plan within two working days. If the proposed changes meet the  
90 requirements for approval of a plan, the director may approve  
91 the modifications. If the modifications do not meet the  
92 requirements for approval, the director shall revoke the plan.

93 (e) The director may revoke approval of a work sharing plan  
94 for good cause. The revocation order shall be in writing and shall  
95 specify the date the revocation is effective and the reasons for the  
96 revocation. Good cause for revocation shall include, but is not  
97 limited to, failure to comply with the assurances given in the plan,  
98 unreasonable revision of the productivity standards for the  
99 affected unit, conduct or occurrences tending to defeat the intent  
100 and effective operation of the plan, and violation of the criteria  
101 on which approval of the plan was based. Such action may be  
102 initiated at any time upon the director's own motion, or at the  
103 request of any of the affected unit's employees, or at the request  
104 of the appropriate collective bargaining agent. The revocation  
105 order shall be final and non-appealable.

106 (f) At the end of the work sharing period provided in paragraph  
107 (7) of subsection (b), the work sharing employer may submit a  
108 new work sharing plan to the director for approval.

109 (g) The provisions of section forty-seven of this chapter shall  
110 apply to any information submitted in connection with an  
111 application for approval or modification of a work sharing plan,  
112 the implementation of an approved work sharing plan, or the  
113 payment of work sharing benefits. An employer shall also be liable  
114 for the repayment to the director of any work sharing benefits  
115 improperly paid by the director as a result of information the  
116 employer submitted to the director in connection with the  
117 approval, modification or implementation of a work sharing plan  
118 which is substantially misleading or contains a material misrep-  
119 resentation of fact. In addition thereto, a claimant shall be liable  
120 for the repayment to the director of any work sharing benefits  
121 which were improperly paid due to the fault of the claimant. The  
122 director may utilize any remedies provided by this chapter to  
123 recover work sharing benefits.

124 (h) (1) An individual shall be eligible to receive work sharing  
125 benefits, subsequent to serving a waiting period as prescribed by  
126 the director, with respect to any week only if, in addition to  
127 meeting the other conditions of eligibility for regular benefits  
128 under this chapter which are not inconsistent with this section,  
129 director finds that (i) the individual is employed as a member of  
130 an affected unit under an approved work sharing plan in effect,  
131 and (ii) the individual is able to work and is available for the  
132 normal weekly hours of work with the work sharing employer.  
133 An otherwise eligible affected individual shall not be denied work  
134 sharing benefits for any week by reason of the application of  
135 provisions relating to availability for work, active search for work  
136 or applying for or accepting suitable work with other than the  
137 work sharing employer.

138 (2) An individual shall be deemed to be unemployed in any  
139 week for which remuneration is payable to him or her as an  
140 employee in an affected unit for less than the employee's normal  
141 weekly hours or work as specified under the approved work  
142 sharing plan in effect for that week.

143 (3) An individual who is not eligible to receive unemployment  
144 benefits by reason of the application of paragraph (6) of



145 subsection (d) of section twenty-nine shall not be eligible to receive  
146 work sharing benefits.

147 (i) The weekly work sharing benefit amount payable to an  
148 affected individual shall be the product of the regular weekly  
149 benefit amount, as defined in section twenty-nine, multiplied by  
150 the percentage of reduction in the individual's normal weekly  
151 hours of work, plus the allowance set forth in subsection (c) of  
152 section twenty-nine, rounded to the next lower full dollar amount.  
153 The weekly work sharing benefit amount shall not be reduced by  
154 reason of application of the provisions of subsection (b) of section  
155 twenty-nine to remuneration received from the work sharing  
156 employer.

157 If in any week an individual performs services for a work  
158 sharing employer and an employer other than the work sharing  
159 employer, the weekly work sharing benefit amount shall be  
160 reduced by the amount by which the aggregate remuneration  
161 received from the non-work sharing employer exceeds thirty per  
162 cent of the maximum benefit rate in effect.

163 (j) The total work sharing benefit amount payable to an  
164 affected individual during any benefit year shall not exceed the  
165 amount of total benefits calculated under the first paragraph of  
166 section thirty minus the amount of regular benefits payable to said  
167 individual under this chapter.

168 (k) An individual who has received all the work sharing benefits  
169 or the combined regular benefits and work sharing benefits  
170 available in a benefit year shall be considered an exhaustee for  
171 purposes of extended benefits, as provided under the provisions  
172 of section thirty A, and, if otherwise eligible under those  
173 provisions, shall be eligible to receive extended benefits.

174 (l) An individual who performs no services during a week for  
175 the work sharing employer and is otherwise eligible shall be paid  
176 benefits in accordance with the other provisions of this chapter.

177 (m) Claims for work sharing benefits shall be filed in the same  
178 manner as claims for other benefits under this chapter or as  
179 otherwise prescribed by the director.

180 (n) Notwithstanding any other provision of this chapter  
181 relating to charges, all work sharing benefits shall be charged to  
182 the account of the work sharing employer. Benefits paid under  
183 this section shall be charged to the employer's account in the same

184 manner as regular benefits are charged, except that, if the  
185 employer's account reserve percentage is negative as of the most  
186 recent computation date, the employer shall be charged and billed  
187 in accordance with the provisions of section fourteen A as if the  
188 employer had elected to make payments in lieu of contributions.  
189 Benefits paid under this to employees of employers who have  
190 elected to make payments in lieu of contributions shall be charged  
191 in accordance with section fourteen A.

192 (o) Except where inconsistent with the provisions of this  
193 section, the provisions of this chapter, including regulations  
194 adopted under this chapter, shall apply to benefits under this  
195 section.

1 SECTION 2. Section twenty-nine D of said chapter one  
2 hundred and fifty-one A, inserted by section one of this act, is  
3 hereby repealed.

1 SECTION 3. Section one shall take effect six months  
2 following the date of enactment. Section two shall take effect three  
3 years from the effective date of section one.



