

By Mr. Durand of Marlboro, petition of Robert A. Durand relative to establishing a worksharing program and providing for retraining incentives. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING A WORKSHARING PROGRAM AND PROVIDING FOR RETRAINING INCENTIVES.

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. Subsection (e) of section 25 of chapter 151A of
2 the General Laws, as appearing in the 1984 Official Edition, is
3 hereby further amended by adding the following new paragraph:
4 An individual in partial unemployment who leaves work from
5 other than the most recent base period employer while receiving
6 benefits under this chapter shall not be disqualified pursuant to
7 the provisions of this subsection from receiving benefits, if such
8 individual establishes to the satisfaction of the director that the
9 reason for leaving was to enter training for which the individual
10 has received the directors' approval under section thirty.

1 SECTION 2. Section 29 of said chapter 151A is hereby
2 amended by striking out subsection (b), as appearing in the 1984
3 Official Edition, and inserting in place thereof the following
4 subsection:
5 (b) An individual in partial unemployment and otherwise
6 eligible for benefits shall be paid the difference between the
7 individual's aggregate remuneration with respect to each week of
8 partial unemployment and the weekly benefit rate to which the
9 individual would have been entitled if totally unemployed;
10 provided, however, that thirty percent of the individual's
11 aggregate remuneration plus fifteen percent of the maximum

12 weekly benefit rate in effect shall be disregarded. In no case shall
13 the amount of aggregate remuneration so disregarded exceed
14 thirty percent of the maximum weekly benefit rate in effect. Such
15 partial benefit shall be rounded to the next lower full dollar
16 amount if it includes a fractional part of the dollar.

17 An individual who is otherwise eligible for benefits and has left
18 subsidiary part-time work or newly obtained part-time work in
19 the benefit year under disqualifying circumstances within the
20 meaning of subsection (e) of section twenty-five shall have the
21 amount of benefits otherwise payable for any week reduced by
22 the average earnings from said part-time work as determined by
23 the director after application of the earnings disregard standard
24 provided in this subsection. Such reduction shall remain in effect
25 for the period of unemployment next ensuing and until the
26 individual has had at least four weeks of work and in each of said
27 weeks had earned an amount equivalent to or in excess of the
28 weekly benefit amount.

1 SECTION 3. Chapter 151A of the General Laws, as most
2 recently amended by chapter 4 of the acts of 1985, is hereby further
3 amended by adding after section 29C the following new
4 section: —

5 Section 29D.

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

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

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

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

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

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

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

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

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

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

39 (1) The plan identifies the affected unit or units to which it
40 applies.

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

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

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

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

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.

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

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.

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

75 (10) The plan applies to only full-time or permanent part-time
76 employees. Seasonal employees may not participate in a work
77 sharing plan.

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

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

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

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

94 (e) The director may revoke approval of work sharing plan for
95 good cause. The revocation order shall be in writing and shall

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

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

110 (g) The provisions of section 47 of this chapter shall apply to
111 any information submitted in connection with an application for
112 approval or modification of a work sharing plan, the
113 implementation of an approved work sharing plan, or the
114 payment of work sharing benefits. An employer shall also be liable
115 for the repayment to the director of any work sharing benefits
116 improperly paid by the director as a result of information the
117 employer submitted to the director in connection with the
118 approval, modification or implementation of a work sharing plan
119 which is substantially misleading or contains a material
120 misrepresentation of fact. In addition thereto, a claimant shall be
121 liable for the repayment to the director of any work sharing
122 benefits which were improperly paid due to the fault of the
123 claimant. The director may utilize any remedies provided by this
124 chapter to recover work sharing benefits.

125 (h)(1) An individual shall be eligible to receive work sharing
126 benefits, subsequent to serving a waiting period as prescribed by
127 the director, with respect to any week only if, in addition to
128 meeting the other conditions of eligibility for regular benefits
129 under this chapter which are not inconsistent with this section,
130 the director finds that

131 (i) the individual is employed as a member of an affected unit
132 under a approved work sharing plan in effect, and

133 (ii) the individual is able to work and is available for the
134 normal weekly hours of work with the work sharing employer.

135 An otherwise eligible affected individual shall not be denied work
136 sharing benefits for any week by reason of the application of
137 provisions relating to availability for work, active search for work
138 or applying for or accepting suitable work with other than the
139 work sharing employer.

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

145 (3) An individual who is not eligible to receive unemployment
146 benefits by reason of the application of paragraph (6) of
147 subsection (d) of section twenty-nine shall not be eligible to receive
148 work sharing benefits.

149 (i) The weekly work sharing benefit amount payable to an
150 affected individual shall be the product of the regular weekly
151 benefit amount, as defined in section twenty-nine, multiplied by
152 the percentage of reduction in the individual's normal weekly
153 hours of work, plus the allowance set forth in subsection (c) of
154 section 29, rounded to the next lower full dollar amount. The
155 weekly work sharing benefit amount shall not be reduced by
156 reason of application of the provisions of subsection (b) of section
157 twenty-nine to remuneration received from the work sharing
158 employer.

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

165 (j) The total work sharing benefit amount payable to an affected
166 individual during any benefit year shall not exceed the amount
167 of total benefits calculated under the first paragraph of section
168 30 minus the amount of regular benefits payable to said individual
169 under this chapter.

170 (k) An individual who has received all the work sharing benefits
171 or the combined regular benefits and work sharing benefits
172 available in a benefit year shall be considered an exhaustee for

173 purposes of extended benefits, as provided under the provisions
174 of section 30A, and, if otherwise eligible under those provisions,
175 shall be eligible to receive extended benefits.

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

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

182 (n) Notwithstanding any other provision of this chapter relating
183 to charges, all work sharing benefits shall be charged to the
184 account of the work sharing employer. Benefits paid under this
185 section shall be charged to the employer's account in the same
186 manner as regular benefits are charged, except that, if the
187 employer's account reserve percentage is negative as of the most
188 recent computation date, the employer shall be charged and billed
189 in accordance with the provisions of section 14A as if the employer
190 had elected to make payments in lieu of contributions. Benefits
191 paid under this section to employees of employers who have
192 elected to make payments in lieu of contributions shall be charged
193 in accordance with section 14A.

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

1 SECTION 4. Section twenty-nine D of said chapter one
2 hundred and fifty-one A, inserted by section three of this act, is
3 hereby repealed.

1 SECTION 5. The first paragraph of section two shall apply to
2 weeks of unemployment occurring on or after January 1, 1987
3 or 90 days after enactment, whichever is later. The second
4 paragraph of section two shall apply to new or additional claims
5 filed on or after the effective date of this Act. Section three shall
6 take effect on March 1, 1987. Section four shall take effect on
7 March 4, 1990.

