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**Maine Department of Labor
Bureau of Unemployment Compensation**

Work-sharing Program Proposed Rules

**Report to the
Joint Standing Committee on
Labor, Commerce, Research and Economic Development**

January 2012

Authorized by the 125th Maine Legislature

Public Law Chapter 91

Executive Summary

The 125th Maine Legislature enacted Public Law Chapter 91, and Title 26 Section 1198 of Maine State Law, thereby establishing the Maine Work-sharing Program. The Maine Work-sharing Program model is similar to programs in other states, sometimes called Short-term Compensation. Work-share is beneficial to both employers and employees during a temporary economic downturn as an alternative to layoffs.

Employers benefit from Work-sharing because it provides a mechanism to help retain their skilled employees during a decline in business. Typically when a decline occurs, the employer must either lay off employees, or reduce their hours. In such cases, the affected employees are required to seek work elsewhere and if successful in their search, are no longer available to the original employer when work increases. The employer must then recruit and train a new workforce which is expensive and causes delays in gearing up to meet the increased demand. The Work-sharing program provides a partial wage replacement for the lost hours, providing some support to the worker during the downturn. The workers remain attached to the business's workforce providing continuity in operations and capacity to rapidly respond to increased production demand as economic conditions improve. This typically becomes a more cost effective alternative to layoffs for an employer experiencing a temporary decline in demand.

Workers benefit by remaining attached to the business' workforce, keeping other workplace benefits and tenure intact. Partial unemployment benefits help offset the decrease in salary that occurs with the reduction in hours. As the workers are still employed, the normal work search requirements for receiving unemployment benefits are waived. Additionally, the earnings for the hours still worked at the business do not reduce unemployment benefits under Work-share.

In preparation for the program implementation, the Department reviewed the enacted language and developed proposed Rules for the administration of Work-share. The proposed Rules clarify the procedures surrounding the employer application process and benefit claim filing, as well as define benefit eligibility and employer charging. These Rules will be implemented through the State Emergency Rulemaking process.

In addition, the Department has been working closely with the Office of Information Technology under the Department of Administrative and Financial Services. The computer changes required to implement this program turned out to be much more complex and extensive than initially anticipated. Although not all of the programming needed to fully automate the Work-sharing Program will be completed, the department will be in a position to begin taking employer applications on March 1, 2012 and to pay benefits under the new Work-share program.

Summary of Proposed Rules for the Maine Work-sharing Program

The first paragraph of the Proposed Rules seeks to define two elements of the Work-share Program. The first of these is "Substantial Change". Section 6 of the Law allows an employer to modify an approved Work-sharing plan when the change is "not substantial" by simply notifying the Department

(as long as there is agreement by the collective bargaining agent if applicable). If the conditions of the change are “substantial”, the revised plan must be submitted to the Department for approval before putting the changes into effect. A further reduction of the plan’s work hours for **no** more than two weeks or increasing the work hours of all plan covered employees to full time does not require pre-approval by the department. Further reducing the approved plan weekly work hours for more than two weeks or changing the specific employees named or the agreed upon work hours for some but not all of the named employees under the plan (either up or down), is considered substantial change and requires the submission of a plan modification.

The second definition clarification concerns the potential end date for a plan. The Law allows a plan to last for 12 full calendar months after the approval date. The plan can end sooner if so desired by the employer. The definition in the Proposed Rule states that the plan end will coincide with the end of the last full benefit week of the 12th full month. This will mean that the plan end will coincide with the end of a benefit week, and a partial week of eligibility will be avoided. The Department feels that determining eligibility under differing requirements would not be feasible in a week that is divided into a partial Work-share week and a partial regular unemployment week. By ending on the same day as the end of a benefit week, the unemployment program determining eligibility requirements for any given week would be clear. For example, a benefit week currently ends on a Saturday. If a plan is approved on April 6, 2012, under current law it could be in effect through April 30, 2013, which is a Tuesday. For that week, three days eligibility would be determined by Work-share, and four days by regular unemployment. This is confusing for the claimant, and difficult to administer. The Proposed Rule would have this plan end on April 27, 2013, the last Saturday in the month, thereby eliminating any confusion for the following week.

The second paragraph of the Proposed Rules concerns the employer’s application for participation in the plan. It requires that each affected unit, as defined in the Law, be submitted on a separate application, and that a new application must be submitted for each modification. It further clarifies that the plan beginning and ending dates must coincide with a benefit week. A plan must begin on a Sunday and end on a Saturday.

The next paragraph prohibits an individual from receiving benefits through more than one Work-sharing program. This requirement is needed in order to mirror the weekly claim requirement of the regular state unemployment program. Normally, an individual is only allowed to file one claim for benefits each week; this prevents the payment of a weekly claim more than once. Similarly, under Work-sharing, the Department can still only process one weekly claim per person each week. If an individual was on multiple plans for multiple employers, they would need to submit more than one weekly claim. This situation is not likely to occur, as it would require one individual to be working at or near full-time for different companies that both apply for the Work-sharing program. Nonetheless, the possibility exists and must be accounted for.

In paragraph four, additional guidance is provided on the claimant’s initial application for benefits. It requires that both the employer and the employee provide and certify information, and return it to the Bureau as directed. It is our intent that at least initially, all Work-sharing applications and claims be in

paper form as opposed to filed via the telephone or Internet. This is because Work-sharing eligibility is determined by information provided by both the employer and the claimant. The filing process is very similar to the process that we currently use for temporary plant shutdowns, in which we use the Claim for Unemployment Benefits and Earnings Report ("Green Slip"). It is our hope to automate these processes at some point but we will not initially have this capacity.

Weekly claims processing is the subject of the next paragraph. It also requires that the employer and the claimant provide and certify information on the same claim form, and that a separate claim form must be submitted for each week. In addition, similar to the regular state unemployment claims process, all weekly claims must be filed within 14 days of the week end date, or within 21 days if good cause for missing the first 14 days can be shown. Subparagraph D further states that the weekly claim must be submitted in a format prescribed by the Department. As with the initial application, the current plan is for a paper application. The language in the Proposed Rule would allow for future automation, however.

The sixth paragraph deals with the benefits themselves. It starts by linking the monetary eligibility for unemployment to that of the regular state unemployment program. It further states that eligibility for Work-sharing benefits is based on a full week of eligibility. The paragraph goes on to clarify that any claim submitted that is not eligible as Work-sharing shall automatically be processed as a claim for regular unemployment benefits. In that instance, all regular state unemployment requirements with the exception of work search, will apply. This means that the individual must be able and available for work, and will have any earnings (after the first \$25) deducted from the full weekly benefit amount. The final subparagraph requires that *all* earnings of the individual be reported each week. This includes earnings from the Work-sharing employer, as well as from any other work. Work-sharing benefits will not typically be reduced by earnings from a different employer unless the claimant fails to satisfy the eligibility requirements for Work-sharing (in which case, the claim is processed under the regular state unemployment program and the partial earnings benefit offset is applied).

The next paragraph concerns the charging of benefits. The Work-sharing employer incurs the applicable benefit cost application for benefits paid under the approved Work-sharing plan. If the Work-sharing employer is a contributory (or unemployment tax-paying) employer, the benefits paid out under the Work-sharing program will be charged against the employer's contribution rate experience. If the employer is direct reimbursement (Local or State Government, Indian Tribe Government or certain nonprofit organization), then the employer pays the full cost of the unemployment benefits.

The final paragraph of the Proposed Rules allows for the collection of benefit overpayments, or those paid erroneously, through all of the normal collection methods used by the Department.

Attachment I – *Draft Rules*

Chapter 27: Work-Sharing Program

SUMMARY: This Chapter establishes the requirements and procedures for participants in Maine’s Short-Term Compensation program, known as Work-sharing. This Chapter provides additional guidance and clarifies definitions and processes enacted in Title 26 § 1198 of Maine State Law.

1. Definitions

- A. “Substantial change.” For the purpose of Subsection 6 of the Law, “Substantial change” means any change that further reduces the approved plan reduction of work hours for more than one week or changes the employees named in the approved work share plan (i.e. increased or decreased the hours of one or more employees covered by the plan). A modification involving substantial change must be reviewed and approved by the department before implementation. No plan modification approval is required for a further reduction of work hours that occurs in no more than 2 consecutive weeks, nor for a change that returns the participating employees to full time employment.

- B. “End date” shall coincide with the end of the last full benefit week within the 12th full calendar month after the effective date of the plan, or on the date specified in the plan if that date is earlier, unless the plan is previously revoked by the commissioner.

2. Work-sharing Plan Applications

- A. The work-sharing employer must submit a separate work-sharing plan for each business participating in a work-sharing program. Within each business, a separate application must be submitted for each affected unit.

- B. A new plan application must be submitted for each modification or change to any existing work-sharing plan.

- C. The effective dates for Work-sharing plans shall be as follows:
 - (1) Plan beginning dates shall coincide with the first day of a benefit week.
 - (2) Plan ending dates shall coincide with the last day of a benefit week.

3. **Multiple Work-sharing Plans.** An individual may not participate simultaneously in more than one Work-sharing program. Should an individual be included in more than one employers' approved plans, the individual shall choose the plan through which benefits will be claimed. The individual must notify the Bureau in writing of the selection. Once selected, the individual must remain on that plan until such time as the plan ends or is substantially changed. At that time, the individual may make another selection.
4. **Initial claims.** The employer and employee must both provide and certify the requested information in their respective portions of the Work-sharing Initial Claim Form, and return it to the Bureau as directed. No Work-Sharing Initial Claim Form shall be accepted unless completed and signed by the employer and the employee and returned it to the Bureau as directed.

5. Weekly Claims Filing

- A. The employer and employee must both provide and certify the requested information in their respective portions of the Work-sharing Weekly Claim Form, and submit it to the Bureau as directed.
- B. A separate week claim form must be completed for each week of filing.
- C. Work-Sharing Weekly Claim Forms shall be submitted to the Bureau no later than 14 days after the week ending date of the weekly claim. An additional 7 days may be allowed if the employer can show good cause for not filing within the first 14 days. Any weekly claim filed more than 21 days after the week ending date of the claim shall be considered late and benefits denied for that week.
- D. Work-Sharing weekly claims shall be submitted in a format prescribed by the Bureau.
- E. No weekly claim shall be processed unless filed in accordance with such guidelines.

6. Benefits

- A. Monetary eligibility for a benefit year. Monetary eligibility must be established in accordance with subsection 5 of Section 1192 of Maine Employment Security Law.

- B. Partial weeks. Each work-sharing week of eligibility must be for a full week of eligibility. The work-sharing employee must meet all eligibility requirements for the week in which a weekly claim is filed.
 - C. Processing of Work-sharing ineligible claims. If an individual submits a weekly claim under a work-sharing plan, but does not meet the work-sharing eligibility requirements, the claim will then be processed as a claim against regular state unemployment. All eligibility requirements, with the exception of work search, of the regular state unemployment program shall then apply.
 - D. Reporting of earnings. On a Work-sharing weekly claim, the employer must report any earnings that will be paid to the claimant. In addition, the claimant must report earnings from any other employer during the same week. All earnings shall be treated in a manner consistent with Subsection 8(H) of the Law. Bonus payments during a work sharing week shall be considered as earnings and shall not reduce their entitlements during the work-sharing week.
7. **Benefit charges.** All charges for benefits paid to an individual on an approved plan shall be charged to the unemployment experience rate of the Work-sharing employer. The charges will also be assigned solely to the Work-sharing employer when the weekly claim is paid through the regular state unemployment program, but within the timeframe of the approved Work-sharing plan. Employers who make payments in lieu of contributions shall pay for the full cost of any benefits paid to an individual under an approved Work-sharing plan.
8. **Overpayment recovery**
Collection of overpayments shall be in accordance with Section 1051 of Maine Employment Security Law.

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An Act To Implement a Maine Unemployment Insurance Work-sharing Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §1198 is enacted to read:

§ 1198. Work-sharing benefits

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Affected unit" means a specified plant, department, shift or other definable unit consisting of 2 or more eligible employees to which a work-sharing plan applies.
- B. "Commissioner" means the Commissioner of Labor or the commissioner's designee.
- C. "Eligible employee" means an individual who usually works for the eligible employer submitting a work-sharing plan.
- D. "Eligible employer" means a public or private employer who is not delinquent in the payment of contributions or reimbursements or in the reporting of wages.
- E. "Fringe benefits" includes, but is not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave and similar advantages that are incidents of employment.
- F. "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.
- G. "Seasonal employment" means employment in seasonal industries within the determined seasonal period or periods.
- H. "Seasonal industry" means an industry in which, because of the seasonal nature of the industry, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year and any seasonal industry under section 1251, subsection 1.
- I. "Temporary layoff" means the layoff of workers in an affected unit for an indefinite period expected to last for at least 2 months but less than 6 months.
- J. "Usual weekly hours of work" means the normal hours of work each week for an eligible employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including overtime.
- K. "Work-sharing benefits" means benefits payable to eligible employees in an affected unit under an approved work-sharing plan.
- L. "Work-sharing employer" means an eligible employer with an approved work-sharing plan in

effect.

M. "Work-sharing plan" means a plan submitted to the commissioner by an eligible employer under which there is a reduction in the number of hours worked by the eligible employees in the affected unit in lieu of temporary layoffs of some of the employees.

2. Criteria for approval of a work-sharing plan. An eligible employer wishing to participate in a work-sharing program under this section must submit a signed work-sharing plan to the commissioner for approval. The commissioner shall approve a work-sharing plan if the following requirements are met:

A. The work-sharing plan identifies the affected unit or units and specifies the effective date of the plan;

B. The work-sharing plan identifies the eligible employees in the affected unit or units by name, social security number, usual weekly hours of work, proposed wage and hour reduction and any other information that the commissioner requires;

C. The work-sharing plan certifies that the reduction in the usual weekly hours of work is in lieu of temporary layoffs that would have affected at least 10% of the eligible employees in the affected unit or units and that would have resulted in an equivalent reduction in work hours;

D. Under the work-sharing plan the usual weekly hours of work for eligible employees in the affected unit or units are reduced by not less than 10% and not more than 50% and the reduction in hours in each affected unit is spread equally among eligible employees in the affected unit;

E. The work-sharing plan specifies the manner in which the fringe benefits of the eligible employees will be affected;

F. In the case of eligible employees represented by a collective bargaining agent, the work-sharing plan is approved in writing by the collective bargaining agent that covers the affected eligible employees. In the absence of a collective bargaining agent, the work-sharing plan must contain a certification by the eligible employer that the proposed plan, or a summary of the plan, has been made available to each eligible employee in the affected unit;

G. A statement that the work-sharing plan will not serve as a subsidy of seasonal employment during the off-season or of intermittent employment is included; and

H. The eligible employer agrees to furnish reports relating to the proper conduct of the work-sharing plan and agrees to allow the commissioner or the commissioner's designee or authorized representatives access to all records necessary to verify the plan prior to approval and to monitor and evaluate application of the plan after approval.

3. Approval or rejection of the work-sharing plan. The commissioner shall approve or reject a work-sharing plan in writing. The commissioner's decision is final and not subject to appeal. The eligible employer may submit another work-sharing plan for approval, and a determination must be made based upon the new information submitted by the eligible employer.

4. Effective date and duration of the work-sharing plan. A work-sharing plan

takes effect on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the commissioner, whichever is later. It expires at the end of the 12th full calendar month after its effective date or on the date specified in the plan if that date is earlier, unless the plan is previously revoked by the commissioner. If a plan is revoked by the commissioner, it terminates on the date specified in the written order of revocation.

5. Review; revocation of approval. The commissioner shall review the operation of each approved work-sharing plan at least once during the period the plan is in effect to ensure that it complies with the work-sharing plan requirements under subsection 2. The commissioner may revoke approval of a work-sharing plan for good cause.

A. The revocation order must be in writing, state the reason for revocation and specify the date the revocation takes effect. The revocation order is final and not subject to appeal.

B. Action to revoke the work-sharing plan may be taken at any time by the commissioner on the commissioner's own motion, on the motion of any of the affected unit's eligible employees or on the motion of a collective bargaining agent that covers the affected employees.

For the purposes of this subsection, "good cause" includes, but is not limited to, failure to comply with assurances given in the work-sharing plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan and violation of any criteria on which approval of the plan was based.

6. Modification of the work-sharing plan. An operational approved work-sharing plan may be modified by the eligible employer, with the consent of a collective bargaining agent that covers the affected employees, if any, if the modification is not substantial, conforms with the plan approved by the commissioner and is reported promptly to the commissioner by the eligible employer. If the hours of work are increased or decreased substantially beyond the level in the original plan or any other conditions are changed substantially, the commissioner shall approve or disapprove the modifications without changing the expiration date of the original plan. If the substantial modifications do not meet the requirements for approval under subsection 2, the commissioner shall disallow those modifications in writing. The decision of the commissioner is final and not subject to appeal.

7. Eligibility for work-sharing benefits. After serving a waiting period as prescribed by the commissioner, an eligible employee is eligible to receive work-sharing benefits with respect to any week only if the commissioner finds that, in addition to meeting other conditions of eligibility for regular benefits under this Title that are not inconsistent with this section:

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

B. The eligible employee is available and able to work the normal workweek with the work-sharing employer.

Notwithstanding any other provisions of this chapter, an eligible employee is deemed unemployed in any week for which remuneration is payable to that eligible employee as an eligible employee in an

affected unit for less than that eligible employee's normal weekly hours of work as specified under the approved work-sharing plan in effect for the week.

Notwithstanding any other provisions of this Title, an eligible employee may not be denied work-sharing benefits for any week by reason of the application of laws and rules relating to the availability for work and active search for work with an employer other than the work-sharing employer.

8. Work-sharing benefits. This subsection governs the payment of work-sharing benefits under this section.

A. The weekly work-sharing benefit amount is the product of the regular weekly benefit amount, including any dependents' allowances, multiplied by the percentage reduction in the eligible employee's usual weekly hours of work as specified in the approved work-sharing plan. If the weekly work-sharing benefit amount is not an exact multiple of \$1, the weekly work-sharing benefit amount must be rounded down to the next lower multiple of \$1.

B. An eligible employee may not receive a total of work-sharing benefits and regular unemployment compensation in any benefit year that exceeds the maximum entitlement established for unemployment compensation, nor may an eligible employee be paid work-sharing benefits for more than 52 weeks in any benefit year pursuant to an approved work-sharing plan.

C. The work-sharing benefits paid must be deducted from the maximum entitlement amount established for an eligible employee's benefit year.

D. If an eligible employer approves time off and the eligible employee has performed some work during the week, the eligible employee is eligible for work-sharing benefits based on the combined work and paid leave hours for that week. If the eligible employer does not grant time off, the question of availability must be investigated by the commissioner.

E. If an eligible employee was sick and consequently did not work all the hours offered by the work-sharing employer in a given week, the employee must be denied work-sharing benefits for that week.

F. Claims for work-sharing benefits must be filed in the same manner as claims for unemployment compensation or as prescribed in rules by the commissioner.

G. Laws and rules applicable to unemployment compensation claimants apply to work-sharing claimants to the extent that they are not inconsistent with the established work-sharing provisions. An eligible employee who files an initial claim for work-sharing benefits, if eligible for work-sharing benefits, must be provided a monetary determination of entitlement to work-sharing benefits and must serve a waiting period of one week.

H. If an eligible employee works in the same week for a work-sharing employer and an employer other than the work-sharing employer, the eligible employee's work-sharing benefits must be computed in the same manner as if the eligible employee worked solely with the work-sharing employer, except that if the eligible employee is not able to work or is not available for the normal

workweek with the work-sharing employer, work-sharing benefits may not be paid to that eligible employee for that week.

I. An eligible employee who does not work during a week for the work-sharing employer and is otherwise eligible must be paid the full weekly unemployment compensation amount. That week is not counted as a week for which work-sharing benefits were received.

J. An eligible employee who does not work for the work-sharing employer during a week but works for another employer and is otherwise eligible must be paid benefits for that week under the partial unemployment compensation provisions of this chapter. That week is not counted as a week for which work-sharing benefits were received.

K. Nothing in this section precludes an otherwise eligible employee from receiving total or partial unemployment benefits when the eligible employee's work-sharing benefits have been exhausted.

9. Benefit charges. Notwithstanding any other provisions of this Title, work-sharing benefits are charged to the account of the work-sharing employer. Employers liable for payments in lieu of contributions must reimburse the Unemployment Compensation Fund for the full amount of work-sharing benefits paid to their employees under an approved work-sharing plan.

10. Extended benefits. An individual who has received all of the unemployment compensation or combined unemployment compensation and work-sharing benefits available in a benefit year is considered an exhaustee for purposes of extended benefits, as provided in section 1043, subsection 5, paragraph B, and, if otherwise eligible under that paragraph, is eligible to receive extended benefits.

11. Rules. The commissioner shall adopt rules to implement this section. Those rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

12. Repeal. This section is repealed February 28, 2014.

Sec. 2. Reports. The Commissioner of Labor shall provide the proposed rules implementing the Maine Revised Statutes, Title 26, section 1198 for review by the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012. The Commissioner of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on the implementation and status of the work-sharing program implemented pursuant to Title 26, section 1198 by January 15, 2014.

Sec. 3. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 26, section 1198 takes effect March 1, 2012.

See title page for effective date, unless otherwise indicated.