

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1681

S.P. 653

In Senate, January 6, 2010

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

Submitted by the Department of Labor pursuant to Joint Rule 204.
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator JACKSON of Aroostook.
Cosponsored by Senator: DAVIS of Cumberland, Representatives: BLODGETT of Augusta,
BUTTERFIELD of Bangor, CUSHING of Hampden, GILBERT of Jay.

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

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

3 **§1198. Work-sharing benefits**

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

6 A. "Affected unit" means a specified plant, department, shift or other definable unit
7 consisting of 2 or more eligible employees to which a work-sharing plan applies.

8 B. "Commissioner" means the Commissioner of Labor or the commissioner's
9 designee.

10 C. "Eligible employee" means an individual who usually works for the eligible
11 employer submitting a work-sharing plan.

12 D. "Eligible employer" means a private employer:

13 (1) Who has had contributions credited to private employer's account;

14 (2) To whose account benefits have been chargeable; and

15 (3) Who is not delinquent in the payment of contributions or reimbursements or
16 in the reporting of wages.

17 E. "Fringe benefits" includes, but is not limited to, health insurance, retirement
18 benefits, paid vacation and holidays, sick leave and similar advantages that are
19 incidents of employment.

20 F. "Intermittent employment" means employment that is not continuous but may
21 consist of intervals of weekly work and intervals of no weekly work.

22 G. "Seasonal employment" means employment in seasonal industries within the
23 determined seasonal period or periods.

24 H. "Seasonal industry" means an industry in which, because of the seasonal nature of
25 the industry, it is customary to operate only during a regularly recurring period or
26 periods of less than 26 weeks in a calendar year and any seasonal industry under
27 section 1251, subsection 1.

28 I. "Temporary layoff" means the layoff of workers in an affected unit for an
29 indefinite period expected to last for at least 2 months but less than 6 months.

30 J. "Usual weekly hours of work" means the normal hours of work each week for an
31 eligible employee in an affected unit when that unit is operating on a full-time basis,
32 not to exceed 40 hours and not including overtime.

33 K. "Work-sharing benefits" means benefits payable to eligible employees in an
34 affected unit under an approved work-sharing plan.

35 L. "Work-sharing employer" means an eligible employer with an approved work-
36 sharing plan in effect.

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

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

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

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

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

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

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

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

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

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

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

1 4. Effective date and duration of the work-sharing plan. A work-sharing plan
2 takes effect on the date specified in the plan or on the first Sunday following the date on
3 which the plan is approved by the commissioner, whichever is later. It expires at the end
4 of the 12th full calendar month after its effective date or on the date specified in the plan
5 if that date is earlier, unless the plan is previously revoked by the commissioner. If a plan
6 is revoked by the commissioner, it terminates on the date specified in the written order of
7 revocation.

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

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

15 B. Good cause includes, but is not limited to, failure to comply with assurances
16 given in the work-sharing plan, unreasonable revision of productivity standards for
17 the affected unit, conduct or occurrences tending to defeat the intent and effective
18 operation of the plan and violation of any criteria on which approval of the plan was
19 based.

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

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

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

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

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

3 Notwithstanding any other provisions of this chapter, an eligible employee is deemed
4 unemployed in any week for which remuneration is payable to that eligible employee as
5 an eligible employee in an affected unit for less than that eligible employee's normal
6 weekly hours of work as specified under the approved work-sharing plan in effect for the
7 week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 SUMMARY

31 This bill creates a work-sharing program that provides an alternative to layoffs during
32 a temporary slowdown in business. Under a work-sharing plan, an employer elects to
33 avoid layoffs by reducing the number of regularly scheduled hours of work for all
34 workers in a specific unit or department or the business as a whole. Unemployment
35 insurance benefits for the reduced hours of work are then payable as a proportion of the
36 benefit amount for a full week of unemployment.

37 A work-sharing plan is voluntary on the part of the employer. A plan must be
38 approved by the Commissioner of Labor or the commissioner's designee and, if the
39 employees are unionized, by their collective bargaining agent.