

SENATE BILL NO. 308—SENATOR DONDERO LOOP

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Provides for the establishment of a worksharing program. (BDR 53-716)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to unemployment compensation; requiring the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a worksharing program to provide for the payment of certain benefits to eligible employees whose usual weekly hours of work have been reduced in accordance with a worksharing plan; setting forth various requirements for the operation of the worksharing program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Unemployment Compensation Law generally: (1) requires employers to pay contributions into the Unemployment Compensation Fund at a certain rate of the wages paid by the employer for employment; and (2) makes persons who have become unemployed and comply with certain requirements eligible for benefits from the Unemployment Compensation Fund in an amount based on the person's previous wages for employment. (Chapter 612 of NRS)

Existing federal law authorizes a state to use funds from the state's account in the Unemployment Trust Fund in the United States Treasury to pay benefits to eligible persons under a short-time compensation program that meets certain specified requirements. (26 U.S.C. § 3306(f), 3306(v)) Under a short-time compensation program, commonly referred to as a worksharing program, an employer reduces the hours for a group of employees rather than implementing layoffs. These employees in turn receive a reduced unemployment benefit payment in addition to the pay they receive for the hours they continue to work under the worksharing program. **Section 11** of this bill requires the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a worksharing program. **Sections 2-21** of this bill set forth various requirements for the worksharing program.



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Section 12 of this bill requires an employer who wishes to participate in the worksharing program to submit a worksharing plan to the Administrator for approval. **Section 12** requires a worksharing plan to contain certain items, including the identification of each affected unit of employees to be covered by the worksharing plan and the percentage by which the usual hours of work for those employees will be reduced. **Sections 12 and 13** of this bill require a worksharing employer who provides health and retirement benefits to employees covered under a worksharing plan to continue such benefits in generally the same manner as when the employees worked their usual weekly hours of work or to the same extent as employees not covered under the worksharing plan.

Section 14 of this bill sets forth certain requirements for the approval or disapproval of a worksharing plan by the Administrator. **Section 15** of this bill sets forth certain requirements relating to the duration of an approved worksharing plan. **Section 16** of this bill establishes the circumstances under which the Administrator is authorized to revoke approval of a worksharing plan. **Section 17** of this bill sets forth the process by which a worksharing employer is authorized to modify an approved worksharing plan. **Section 18** of this bill establishes certain requirements for an employee in an affected unit under a worksharing plan to be eligible for worksharing benefits.

Section 19 of this bill prescribes the manner by which the weekly benefit amount for worksharing benefits is calculated. Under **section 19**, the weekly benefit amount for worksharing benefits is proportional to the reduction in hours for that employee under the worksharing plan. **Section 19** also sets forth various requirements for determining the eligibility for and amount of worksharing benefits for a person who works for both a worksharing employer and another employer during a week covered by an approved worksharing plan.

Section 20 of this bill requires worksharing benefits to be treated in the same manner as regular unemployment compensation with respect to charges to the experience rating account of an employer and the determination of the amount of reimbursement in lieu of contributions due from an employer that elects to make reimbursement in lieu of contributions.

Existing law provides, under certain circumstances, for the provision of extended benefits to persons who are unemployed and have exhausted their regular unemployment compensation benefits. (NRS 612.377-612.3786) **Section 21** of this bill provides that a person who has received all of the worksharing benefits or combined unemployment compensation and worksharing benefits for which the person is eligible may be eligible for extended benefits in accordance with the provisions of existing law governing the provision of extended benefits.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 612 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. *As used in sections 2 to 21, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*



1 **Sec. 3.** *“Affected unit” means a specified plant, department,*
2 *shift or other definable unit that includes two or more employees*
3 *to which an approved worksharing plan applies.*

4 **Sec. 4.** *“Health and retirement benefits” means health*
5 *benefits and retirement benefits provided by an employer under a*
6 *defined benefit plan, as defined in 26 U.S.C. § 414(j), or*
7 *contributions under a defined contribution plan, as defined in 26*
8 *U.S.C. § 414(i), which are incidents of employment in addition to*
9 *the cash remuneration earned.*

10 **Sec. 5.** *“Unemployment compensation” means the benefits*
11 *payable under this chapter other than worksharing benefits,*
12 *including, without limitation, any amounts payable pursuant to an*
13 *agreement under any federal law providing for compensation,*
14 *assistance or allowances with respect to unemployment.*

15 **Sec. 6.** *“Usual weekly hours of work” means the usual hours*
16 *of work for full-time or regular part-time employees in an affected*
17 *unit when that unit is operating on its regular basis, not to exceed*
18 *40 hours and not including hours of overtime.*

19 **Sec. 7.** *“Worksharing benefits” means the benefits payable*
20 *to an employee in an affected unit under an approved worksharing*
21 *plan, as distinguished from the benefits otherwise payable under*
22 *the provisions of this chapter.*

23 **Sec. 8.** *“Worksharing employer” means an employer whose*
24 *worksharing plan has been approved by the Administrator and is*
25 *in effect.*

26 **Sec. 9.** *“Worksharing plan” means a plan submitted by an*
27 *employer pursuant to section 12 of this act under which the*
28 *employer requests the payment of worksharing benefits to*
29 *employees in an affected unit of the employer to avert layoffs.*

30 **Sec. 10.** *“Worksharing program” means the program*
31 *established by the Administrator pursuant to section 11 of this act.*

32 **Sec. 11.** 1. *The Administrator shall establish and maintain*
33 *a worksharing program for the purpose of authorizing the*
34 *payment of worksharing benefits to eligible employees of an*
35 *affected unit whose usual weekly hours of work have been reduced*
36 *by a worksharing employer in accordance with a worksharing*
37 *plan approved by the Administrator.*

38 2. *The Administrator may adopt regulations as necessary to*
39 *administer the worksharing program.*

40 **Sec. 12.** *An employer who wishes to participate in the*
41 *worksharing program must submit a worksharing plan to*
42 *the Administrator for approval. Such a plan must be submitted in*
43 *the form and manner prescribed by the Administrator and include,*
44 *without limitation:*



1 1. An identification of each affected unit covered by the
2 worksharing plan and the following information concerning each
3 affected unit:

4 (a) The number of full-time and part-time employees in the
5 affected unit;

6 (b) The percentage of employees in the affected unit covered
7 by the worksharing plan; and

8 (c) Identifying information regarding each employee in the
9 affected unit, including, without limitation:

10 (1) The name and social security number or alternative
11 personally identifying number, including, without limitation, an
12 individual taxpayer identification number, of each such employee;
13 and

14 (2) Any other identifying information the Administrator
15 deems necessary.

16 2. A description of how the employer will notify employees in
17 the affected unit of the worksharing plan in advance, including,
18 without limitation, how the employer will notify employees in a
19 collective bargaining unit as well as any employees in the affected
20 unit who are not in a collective bargaining unit. If the employer
21 will not provide advance notice to workers in the affected unit, the
22 employer shall include an explanation of why it is not feasible to
23 provide such notice.

24 3. An identification of the usual weekly hours of work for
25 employees in the affected unit and the specific percentage by
26 which such hours will be reduced during all weeks covered by the
27 worksharing plan, which must be a reduction of not less than 10
28 percent and not more than 60 percent. If the worksharing plan
29 includes any week for which the employer regularly provides no
30 work due to a holiday or other plant closing, the employer must
31 identify each such week.

32 4. A certification by the employer that if the employer
33 provides health and retirement benefits to any employee whose
34 usual weekly hours of work are reduced under the worksharing
35 plan, such benefits will continue to be provided to the employee
36 under the same terms and conditions as when the employee
37 worked his or her usual weekly hours of work or to the same
38 extent as other employees who are not covered by the worksharing
39 plan.

40 5. A certification by the employer that the aggregate
41 reduction in work hours is in lieu of temporary or permanent
42 layoffs, or both.

43 6. An estimate of the number of employees who would have
44 been laid off in the absence of the worksharing plan.



7. A certification by the employer that the participation in the worksharing plan is consistent with the obligations of the employer under state and federal law.

8. If any employee in an affected unit is covered by a collective bargaining agreement, the written approval of the bargaining agent designated in the agreement.

9. The effective date and duration of the worksharing plan, which must expire not later than the end of the 12th full calendar month after the effective date.

10. An agreement by the employer to:

(a) Furnish reports to the Administrator relating to the proper implementation of the worksharing plan;

(b) Allow the Administrator or his or her designated representative access to all records necessary to approve or disapprove the worksharing plan and, after approval of a worksharing plan, to monitor and evaluate the plan; and

(c) Follow any other directives the Administrator deems necessary to implement the worksharing plan that are consistent with the requirements for a worksharing plan.

11. Any other provision added to the worksharing plan by the Administrator that the Secretary of Labor determines to be appropriate for a worksharing plan.

Sec. 13. 1. If a worksharing employer provides health and retirement benefits to an employee under a defined benefit plan, the hours that are reduced under the worksharing plan must be credited for purposes of participation, vesting and accrual of benefits as though the usual weekly hours of work of the employee 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 compensation of the employee.

2. A reduction in health and retirement benefits scheduled to occur during the duration of a worksharing plan that is equally applicable to employees who are not participating in the worksharing plan and to employees who are participating in the worksharing plan does not violate the certification made by the worksharing employer pursuant to subsection 4 of section 12 of this act.

Sec. 14. 1. The Administrator shall approve or disapprove a worksharing plan not later than 15 days after its receipt and promptly give written notice of the approval or disapproval to the employer who submitted the worksharing plan.

2. The Administrator shall not approve a worksharing plan if:



(a) The reserve ratio of the employer who submitted the plan is negative as of the most recent computation date; or

(b) The worksharing plan serves as a subsidy of seasonal employment during the off-season or as a subsidy of temporary part-time or intermittent employment.

3. The disapproval of a worksharing plan is final, but the employer may submit another worksharing plan for approval not earlier than 7 days after the date of the disapproval.

4. As used in this section, “computation date” and “reserve ratio” have the meanings ascribed to them in NRS 612.550.

Sec. 15. 1. A worksharing plan becomes effective on the date that is mutually agreed upon by the employer and the Administrator, which must be specified in the notice of approval given to the employer pursuant to section 14 of this act. The worksharing plan expires on the date specified in the notice of approval, which must 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 Administrator.

2. If approval of a worksharing plan is revoked by the Administrator pursuant to section 16 of this act, the worksharing plan terminates on the date specified in the revocation order issued by the Administrator.

3. A worksharing employer may terminate a worksharing plan at any time upon written notice to the Administrator. Upon receipt of such notice from the worksharing employer, the Administrator shall promptly notify each employee in the affected unit of the termination date.

4. An employer may submit a new application to participate in another worksharing plan at any time after the expiration or termination date of a worksharing plan.

Sec. 16. 1. The Administrator may revoke approval of a worksharing plan for good cause at any time.

2. If the Administrator revokes approval of a worksharing plan, the Administrator shall issue a revocation order in writing that specifies the reasons for the revocation and the date the revocation is effective.

3. The Administrator may periodically review the operation of each worksharing plan to ensure that no good cause exists for revocation of approval of the worksharing plan.

4. Good cause for revocation of approval of a worksharing plan pursuant to this section includes, without limitation:

(a) The request of any employees in the affected unit to revoke approval of the worksharing plan;

(b) Failure of the worksharing employer to comply with the assurances given by the employer in the worksharing plan;



(c) Unreasonable revision of productivity standards for the affected unit;

(d) Conduct or occurrences tending to defeat the intent and effective operation of the worksharing plan; and

(e) Violation of any criteria on which approval of the worksharing plan was based.

Sec. 17. 1. A worksharing employer may request a modification of an approved worksharing plan by filing a written request with the Administrator. The request must identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the worksharing plan. The Administrator shall approve or disapprove the proposed modification in writing not more than 15 days after receipt and promptly communicate the decision to the worksharing employer.

2. The Administrator may approve a request for modification based on conditions that have changed since the worksharing plan was approved if the modification is consistent with and supports the purposes for which the worksharing plan was initially approved. A modification does not extend the expiration date of the original worksharing plan and the Administrator must promptly notify the worksharing employer whether the proposed modification has been approved and, if approved, the effective date of the modification.

3. A worksharing employer is not required to request approval of the Administrator for a modification of a worksharing plan if the change is not substantial, but the employer shall report every change to the worksharing plan to the Administrator promptly and in writing. The Administrator may terminate the worksharing plan of a worksharing employer who fails to report such changes. If the Administrator determines that the reported change is substantial, the Administrator shall require the worksharing employer to request a modification of the worksharing plan.

Sec. 18. A person is eligible to receive worksharing benefits with respect to any week only if the person is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation and:

1. During the week, the person is employed as a member of an affected unit under an approved worksharing plan, which was approved before that week, and the worksharing plan is in effect during the week for which worksharing benefits are claimed.

2. Notwithstanding any provision of this chapter relating to availability for work or actively seeking work, the person is available to work the usual hours of work for the worksharing



employer, which may include, for the purposes of this section, participating in training to enhance job skills that is approved by the Administrator, including, without limitation, employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act, 29 U.S.C. §§ 3101 et seq.

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

Sec. 19. 1. The weekly benefit amount for worksharing benefits must be the product of the weekly benefit amount for regular unemployment compensation for a week of total unemployment multiplied by the percentage of the reduction in the person's usual weekly hours of work.

2. A person may be eligible for worksharing benefits or unemployment compensation, as appropriate, except that a person 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 a person be paid worksharing benefits for more than 52 weeks under a worksharing plan.

3. The worksharing benefits paid to a person shall be deducted from the maximum entitlement amount of regular unemployment compensation established for the benefit year of the person.

4. The provisions of this chapter applicable to claimants for unemployment compensation also apply to claimants for worksharing benefits to the extent that they are not inconsistent with the provisions of sections 2 to 21, inclusive, of this act. A person who files an initial claim for worksharing benefits shall receive a monetary determination.

5. For a person who works for both a worksharing employer and another employer during weeks covered by an approved worksharing plan:

(a) If the combined hours of work in a week for both employers results in a reduction of less than 10 percent of the usual weekly hours of work with the worksharing employer, the person shall not be entitled to worksharing benefits.

(b) If the combined hours of work for both employers results in a reduction equal to or more than 10 percent of the usual weekly hours of work with the worksharing employer, the amount of worksharing benefits must be reduced for that week and must



1 be determined by multiplying the weekly benefit amount for
2 regular unemployment compensation for a week of total
3 unemployment by the percentage by which the combined hours of
4 work have been reduced relative to the usual weekly hours of work
5 of the person. A week for which benefits are paid under this
6 paragraph must be reported as a week of worksharing.

7 (c) If a person worked the reduced percentage of the usual
8 weekly hours of work for the worksharing employer, was available
9 for all of the person's usual weekly hours of work with the
10 worksharing employer and did not work any hours for the other
11 employer, either because of a lack of work with the other employer
12 or because the person was excused from work with the other
13 employer, the person shall be eligible for worksharing benefits for
14 that week. The benefit amount for such week must be calculated
15 as provided in subsection 1.

16 6. A person who is not provided any work during a week by a
17 worksharing employer or any other employer, and who is
18 otherwise eligible for unemployment compensation, shall be
19 eligible for the amount of unemployment compensation to which
20 the person would otherwise be eligible.

21 7. A person who is not provided any work by a worksharing
22 employer during a week but who works for another employer and
23 is otherwise eligible may be paid unemployment compensation for
24 that week subject to the disqualifying income and other provisions
25 applicable to claims for regular unemployment compensation.

26 **Sec. 20.** Worksharing benefits must be charged to the
27 employer's experience rating account in the same manner as
28 unemployment compensation is charged pursuant to this chapter.
29 Employers liable for payments by way of reimbursement in lieu of
30 contributions shall have worksharing benefits attributed to service
31 in their employ in the same manner as unemployment
32 compensation is attributed.

33 **Sec. 21.** 1. A person who has received all the worksharing
34 benefits or combined unemployment compensation and
35 worksharing benefits for which the person is eligible is an
36 exhaustee and may be eligible to receive extended benefits in
37 accordance with the provisions of NRS 612.377 to 612.3786,
38 inclusive.

39 2. As used in this section, the terms "exhaustee" and
40 "extended benefits" have the meanings ascribed to them in
41 NRS 612.377.

