

Chapter 50.60 RCW
SHARED WORK COMPENSATION PLANS—BENEFITS

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RCW 50.60.010 Legislative intent. In order to provide an economic climate conducive to the retention of skilled workers in industries adversely affected by general economic downturns and to supplement depressed buying power of employees affected by such downturns, the legislature finds that the public interest would be served by the enactment of laws providing greater flexibility in the payment of unemployment compensation benefits in situations where qualified employers elect to retain employees at reduced hours rather than instituting layoffs. [1983 c 207 s 1.]

RCW 50.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affected employee" means a specified employee, hired on a permanent basis, to which an approved shared work compensation plan applies.

(2) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan.

(3) "Shared work benefits" means the benefits payable to an affected employee under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than layoffs.

(5) "Shared work employer" means an employer, who has at least two employees, and at least two employees are covered by a shared work compensation plan.

(6) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts

payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) "Usual weekly hours of work" means the regular number of hours of work before the hours were reduced, not to exceed forty hours and not including overtime. [2021 c 2 s 23; 2013 c 79 s 1. Prior: 2009 c 3 s 7; 1983 c 207 s 2.]

Intent—Conflict with federal requirements—Effective date—2021 c 2: See notes following RCW 50.04.323.

Conflict with federal requirements—2013 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 79 s 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

RCW 50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

- (1) The plan identifies the affected employees to which it applies;
- (2) Each affected employee is identified by name, social security number, and by any other information required by the commissioner;
- (3) The usual weekly hours of work for each affected employee are reduced by not less than ten percent and not more than fifty percent;
- (4) The employer certifies health benefits will continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain coverage under the same terms and conditions as employees not participating in the shared work compensation plan. However, a change in health benefits applicable to employees who are not participating in the shared work compensation plan may also apply to affected employees;
- (5) The employer certifies retirement benefits under a defined benefit plan or contributions under a defined contribution plan will continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the shared work compensation plan. However, a reduction in benefits under a defined benefit plan or a reduction in contributions under a defined contribution plan applicable to

employees who are not participating in the shared work compensation plan may also apply to affected employees;

(6) The employer certifies paid vacation, holidays, and sick leave continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain these benefits under the same terms and conditions as employees not participating in the shared work compensation plan. However, a reduction in these benefits applicable to employees who are not participating in the shared work compensation plan may also apply to affected employees;

(7) The plan certifies that the aggregate reduction in work hours for each affected employee is in lieu of layoffs which would have resulted in an equivalent reduction in work hours;

(8) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any affected employee;

(9) The plan will not subsidize seasonal employers during the off season;

(10) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan;

(11) The plan includes an estimate of the number of layoffs that would have occurred absent the ability to participate in shared work;

(12) The shared work compensation plan includes a plan to give advance notice, when feasible, to an employee whose usual weekly hours of work will be reduced. If not feasible, the shared work compensation plan must explain why it is not feasible; and

(13) The employer must attest that participation is consistent with employer obligations under federal and state law.

In addition to subsections (1) through (13) of this section, the commissioner shall take into account any other factors which may be pertinent. [2013 c 79 s 2; 2009 c 3 s 8; 1985 c 43 s 1; 1983 c 207 s 3.]

Conflict with federal requirements—2013 c 79: See note following RCW 50.60.020.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 s 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 43 s 3.]

RCW 50.60.040 Compensation plan—Approval or rejection—Resubmission. The commissioner shall approve or reject a shared work compensation plan in writing within fifteen days of its receipt. The reasons for the rejection shall be final and nonappealable, but the rejection shall not prevent an employer from submitting another plan for approval not earlier than fifteen days after the date of a previous written rejection. [1983 c 207 s 4.]

RCW 50.60.050 Approved plan—Misrepresentation—Penalties. If an approved plan or any representation for implementation of the plan is intentionally and substantially misleading or false, any individual who participated in any such misrepresentation shall be subject to criminal prosecution as well as personal liability for any amount of benefits deemed by the commissioner to have been improperly paid from the fund as a result thereof. This provision for personal liability is in addition to any remedy against individual claimants for collection of overpayment of benefits if such claimants participated in or were otherwise at fault in the overpayment. [1983 c 207 s 5.]

RCW 50.60.060 Approved plan—Effective date—Expiration. A shared work compensation plan shall be effective on the date agreed upon by the department and the employer but no later than the first day of the second calendar week after the date of the commissioner's approval, unless a later date is requested by the employer. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [2009 c 3 s 9; 1983 c 207 s 6.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

RCW 50.60.070 Approved plan—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve-month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [2009 c 3 s 10; 1983 c 207 s 7.]

~~Short title—Effective date—Conflict with federal requirements—~~
2009 c 3: See notes following RCW 50.20.120.

RCW 50.60.080 Approved plan—Modification. An approved shared work compensation plan in effect may be modified with the approval of the commissioner. If the hours of work are increased or decreased beyond the level in the original plan, or any other condition is changed, the employer shall promptly notify the commissioner. If the changes meet the requirements for approval of a plan, the commissioner shall approve the modifications. This approval shall not change the expiration date of the original plan. If the modifications do not meet the requirements for approval, the commissioner shall revoke the plan as specified in RCW 50.60.060. [1983 c 207 s 8.]

RCW 50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as an affected employee under an approved shared work compensation plan which was in effect for that week;

(2) The affected employee was able to work and was available for his or her usual weekly hours of work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an affected employee for less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for that week. [2013 c 79 s 3; 2009 c 3 s 11; 1983 c 207 s 9.]

~~Conflict with federal requirements—2013 c 79:~~ See note following RCW 50.60.020.

~~Short title—Effective date—Conflict with federal requirements—~~
2009 c 3: See notes following RCW 50.20.120.

RCW 50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6) (a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. [2009 c 3 s 12; 1983 c 207 s 10.]

Short title—Effective date—Conflict with federal requirements—
2009 c 3: See notes following RCW 50.20.120.

RCW 50.60.110 Benefits—Charge to employers' experience rating accounts. (1) Except as provided in subsection (2) of this section, shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as other benefits under this title are attributed.

(2) Any amount of shared work benefits that is paid or reimbursed by the federal government is not charged to experience rating accounts of employers or to employers who are liable for payments in lieu of contributions. The employment security department shall remove charges for any amount of shared work benefits that is paid or reimbursed by the federal government. [2021 c 2 s 24; 2013 c 79 s 4; 1983 c 207 s 11.]

Intent—Conflict with federal requirements—Effective date—2021 c 2: See notes following RCW 50.04.323.

Conflict with federal requirements—2013 c 79: See note following RCW 50.60.020.

RCW 50.60.120 Benefits—Exhaustee. An individual who has received all of the shared work benefits, or all of the combined unemployment compensation and shared work benefits, available in a benefit year shall be considered an exhaustee for purposes of the extended benefits program under chapter 50.22 RCW, and, if otherwise

eligible under that chapter, shall be eligible to receive extended benefits. [1983 c 207 s 12.]

RCW 50.60.130 Approved training—Affected employees. Affected employees may participate, as appropriate, in training, including employer-sponsored training or training funded under the workforce innovation and opportunity act, to enhance job skills if such program has been approved by the employment security department. [2021 c 2 s 25.]

Intent—Conflict with federal requirements—Effective date—2021 c 2: See notes following RCW 50.04.323.

RCW 50.60.900 Title and rules to apply to shared work benefits—Conflict with federal requirements. Unless inconsistent with or otherwise provided by this section, this title and rules adopted under this title apply to shared work benefits. To the extent permitted by federal law, those rules may make such distinctions and requirements as may be necessary with respect to unemployed individuals to carry out the purposes of this chapter, including rules defining usual hours, days, workweek, wages, and the duration of plans adopted under this chapter. To the extent that any portion of this chapter may be inconsistent with the requirements of federal law relating to the payment of unemployment insurance benefits, the conflicting provisions or interpretations of this chapter shall be deemed inoperative, but only to the extent of the conflict. If the commissioner determines that such a conflict exists, a statement to that effect shall be filed with the governor's office for transmission to both houses of the legislature. [1983 c 207 s 13.]

RCW 50.60.901 Rules. The department shall adopt such rules as are necessary to carry out the purposes of chapter 207, Laws of 1983. [1998 c 245 s 101; 1983 c 207 s 14.]