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HOUSE BILL NO. 835

Offered January 11, 2012

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A *BILL to amend the Code of Virginia by adding in Title 60.2 a chapter numbered 7, consisting of sections numbered 60.2-700 through 60.2-708, relating to unemployment compensation; shared work programs; reports.*

Patrons—Hope, Kory and Plum

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 60.2 a chapter numbered 7, consisting of sections numbered 60.2-700 through 60.2-708, as follows:

CHAPTER 7.**SHARED WORK PROGRAMS.****§ 60.2-700. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Affected employee" means an individual who has been continuously on the payroll of an affected unit for at least three months immediately before the employing unit submits a shared work plan.

"Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved shared work plan applies.

"Approved shared work plan" means a plan that is approved by the Commission as provided by this chapter.

"Fringe benefits" includes, but is not limited to, such benefits as health insurance, retirement benefits under defined benefit pension plans, paid vacation and holidays, and sick leave that are incidents of employment in addition to the cash remuneration earned.

"Normal weekly work hours" means the lesser of (i) the number of hours in a week that an employee usually works for the regular employing unit or (ii) 40 hours.

"Shared work benefit" means benefits payable to an affected employee for work performed under an approved shared work plan.

"Shared work employer" means an employing unit for which a shared work plan has been approved.

"Shared work plan" means a plan of an employing unit under which (i) the normal weekly work hours of affected employees are reduced, rather than temporary layoffs of some such employees, and (ii) affected employees share the work that remains after the reduction. As used herein, "temporary layoffs" means the separation of workers in the affected unit for an indefinite period expected to last for more than two months but less than one year.

§ 60.2-701. Criteria for approval of a shared work plan.

A. An employing unit that wishes to participate in the program provided by this chapter shall submit to the Commission a signed, written shared work plan. Within 15 days after receipt of a shared work plan, the Commission shall give written approval or disapproval of the plan. If the Commission disapproves a shared work plan, the decision is final and may not be appealed; however, after 15 days following the Commission's disapproval of a shared work plan, the employing unit may submit a new shared work plan.

B. The Commission shall approve a shared work plan that meets the following requirements:

1. The shared work plan shall apply to at least 10 percent of the employees in the affected unit and applies equally to all affected employees;

2. The normal weekly work hours of affected employees in the affected unit shall be reduced by at least 10 percent but not by more than 50 percent;

3. Each employee in the affected unit is identified by name, social security number, and any other information that the Commission requires;

4. The plan specifies a proposed expiration date that is not more than 12 months after the effective date of the shared work plan;

5. Fringe benefits will continue to be provided to employees in affected units as though their work weeks had not been reduced;

6. The plan certifies that:

a. Each affected employee has been continuously on the payroll of the employing unit for three months immediately before the date on which the employing unit submits the shared work plan,

b. The total reduction in normal weekly work hours is instead of layoffs that would have affected at

59 least the number of employees specified in subdivision 1 and that would have resulted in an equivalent
60 reduction in work hours, and

61 c. During the previous four months the workforce in the affected unit has not been reduced by
62 temporary layoffs of more than 10 percent of the employees;

63 7. If the employees are represented by an exclusive bargaining representative, the plan is approved
64 in writing by the collective bargaining agent or, if they are not, the plan is approved in writing by the
65 employees in the affected unit;

66 8. If a shared work plan serves the shared work employer as a transitional step to permanent staff
67 reduction, the shared work plan shall contain for each affected employee a reemployment assistance
68 plan that the shared work employer develops with the Commission;

69 9. The plan does not subsidize an employing unit that traditionally has used employees who work
70 less than 30 hours a week;

71 10. The plan will not serve as a subsidy of seasonal employment during the off-season or as a
72 subsidy of temporary part-time or intermittent employment; and

73 11. The shared work employer shall agree to submit to the Commission reports that are necessary to
74 administer the shared work plan and to allow the Commission to have access to all records necessary to
75 verify the shared work plan before its approval and to monitor and evaluate the application of the
76 shared work plan after its approval.

77 § 60.2-702. Modification of plan.

78 A. An approved shared work plan may be modified if the modification meets the requirements for
79 approval under § 60.2-701 and the Commission approves the modification.

80 B. An employing unit may add an employee to a shared work plan under this section when the
81 employee has been continuously on the payroll for three months.

82 C. An approved modification of a shared work plan shall not change its expiration date.

83 § 60.2-703. Effective date and duration of plan.

84 A. A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by
85 the employer and the Commission.

86 B. If not sooner revoked, the plan shall expire at the end of the twelfth calendar month after its
87 effective date or on the date specified in the plan, if such date is earlier. If a plan is revoked by the
88 Commission, it shall terminate on the date specified in the Commission's written order of revocation.

89 § 60.2-704. Revocation of plan.

90 A. The Commission may revoke approval of an approved shared work plan for good cause. Good
91 cause shall include, but is not limited to:

92 1. Conduct or an occurrence that tends to defeat the intent and effective operation of the approved
93 shared work plan;

94 2. Failure to comply with an assurance in the approved shared work plan;

95 3. Unreasonable revision of a productivity standard of the affected unit; and

96 4. Violation of a criterion on which the Commission based approval of the approved shared work
97 plan.

98 B. A notice of revocation shall be in writing and shall specify the date the revocation is effective and
99 the reasons therefor.

100 § 60.2-705. Eligibility for shared work benefits.

101 A. An affected employee shall be eligible under § 60.2-706 to receive shared work benefits for each
102 week in which the Commission determines that the affected employee is:

103 1. Employed as a member of an affected unit under an approved plan, for which approval was
104 granted prior to the week for which short-term benefits are sought, and the plan is in effect for the week
105 for which the benefit is claimed;

106 2. Able to work;

107 3. Available for more hours of work or full-time work for the shared work employer; or

108 4. Deemed unemployed.

109 B. An affected employee who otherwise is eligible shall not be denied shared work benefits for
110 failure to actively seek work under § 60.2-612 from an employer other than the shared work employer.

111 C. An affected employee may not be disqualified for refusal to apply for or accept suitable work
112 from a person other than the shared work employer.

113 D. An affected employee shall be considered to be unemployed for the purpose of the shared work
114 unemployment insurance program during any week for which remuneration is payable to him as an
115 employee in an affected unit for 90 percent or less than his normal weekly hours of work as specified
116 under the approved plan in effect for that week.

117 § 60.2-706. Benefits.

118 A. The weekly shared work benefit amount shall be the product obtained by multiplying the regular
119 weekly unemployment compensation amount by the percentage of the reduction in the employee's normal
120 weekly work hours under the approved shared work plan, which reduction shall be at least 10 percent

of the employee's normal weekly hours of work. The hours for which an affected employee receives holiday or vacation pay shall be counted as hours worked.

B. An affected employee shall not be eligible to receive more than 26 weeks of shared work benefits during each benefit year.

C. The total amount of benefits payable under Chapter 6 (§ 60.2-600 et seq.) and shared work benefits payable under this chapter shall not exceed the total for the benefit year under § 60.2-602.

D. During a week in which an individual who otherwise is eligible for benefits does not work for the shared work employer:

1. The individual shall be paid benefits in accordance with Chapter 6 (§ 60.2-600 et seq.); and

2. The week does not count as a week for which a shared work benefit is received.

E. During a week in which an employee earns wages under an approved shared work plan and other wages, the shared work benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the combined wages:

1. Exceed the wages earned under the approved shared work plan; and

2. Do not exceed 90 percent of the wages the individual earns for normal weekly work hours.

The computation under subdivision 1 shall apply regardless of whether the employee earned the other wage from the shared work employer or another employer.

F. During any period that an affected employee applies for or receives shared work benefits, the affected employee shall be not be eligible for:

1. Extended benefits;

2. Supplemental federal unemployment compensation; or

3. Benefits under any other federal or state unemployment compensation program.

§ 60.2-707. Participation in training programs.

An affected employee may participate in a training program sponsored by his shared work employer or any other employer on days that he is not directed to report to work by his shared work employer without reduction in shared work benefits, if the training program has been approved by the Commission.

§ 60.2-708. Severability.

If any provision of this chapter shall be found by the U.S. Department of Labor to be in violation of federal law, such finding shall render such provision of this chapter inoperative, but such finding shall (i) not affect, impair, or invalidate the remaining provisions of this chapter and (ii) be confined in its operation to the specific provision found to be in violation of federal law.

2. That the Virginia Employment Commission shall submit to the Governor and the General Assembly (i) a report no later than January 1, 2013, on the status of the implementation of shared work programs pursuant to Chapter 7 (§ 60.2-700 et seq.) of Title 60.2 of the Code of Virginia; (ii) a report no later than January 1, 2014, on the status and accomplishments of such shared work programs, which report shall include recommendations for alterations to the statutory authorization for such programs that may be appropriate to improve the effectiveness of such programs; and (iii) additional reports thereafter as the Virginia Employment Commission finds are appropriate.