

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2337

Introduced by

Senators Lee, D. Mathern

Representatives Berg, Koppang, Severson

1 A BILL for an Act to create and enact chapter 52-06.1 of the North Dakota Century Code,
2 relating to a shared work unemployment compensation program.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 57-06.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **52-06.1-01. Definitions.** In this chapter, unless the context otherwise requires:

- 7 1. "Affected employee" means an employee who was continuously employed as a
8 member of the affected unit, for at least six months, on a full-time basis, before
9 submission of the shared work plan.
- 10 2. "Affected unit" means a specified department, shift, or other unit of two or more
11 employees which is designated by an employer to participate in a shared work
12 plan.
- 13 3. "Approved shared work plan" means an employer's shared work plan that meets
14 the requirements of this chapter and which the bureau approves in writing.
- 15 4. "Fringe benefit" includes health insurance, a retirement benefit received under a
16 pension plan, a paid vacation day, a paid holiday, sick leave, and any other
17 analogous employee benefit that is provided by an employer.
- 18 5. "Normal weekly hours of work" means forty hours or the average obtained by
19 dividing the total number of hours worked per week during the preceding
20 twelve-week period by the number twelve, whichever is less.
- 21 6. "Participating employee" means an employee who works a reduced number of
22 hours under an approved shared work plan.
- 23 7. "Participating employer" means an employer that has an approved shared work
24 plan in effect.

8. "Regular unemployment compensation" means benefits payable under chapter 52-06.

9. "Shared work benefit" means unemployment compensation benefits, excluding benefits payable to federal civilian employees and to ex-servicemen under Public Law 94-183, Section 2(42), as amended [89 Stat. 1059; 5 U.S.C. 8501 et seq., as amended], payable to an individual under this section for weeks of reduced work under an approved shared work plan.

10. "Shared work employer" means an employer with a shared work plan in effect. An individual who or an employing unit that succeeds to or acquires, under section 52-04-08, an organization, a trade, or a business with a shared work plan in effect automatically becomes a shared work employer and adopts the shared work plan if the individual or employing unit certifies to shared work benefits under the previously approved shared work plan.

11. "Shared work plan" means an employer's written plan approved by the bureau under which a group of employees whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.

12. "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding proportionate reduction in wages.

52-06.1-02. Employer qualification for shared work program.

1. An employer that wishes to participate in the shared work unemployment compensation program shall submit a signed shared work plan to the bureau for approval. As a condition for approval, a participating employer shall agree to furnish the bureau with reports relating to the operation of the shared work plan as requested by the bureau. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the bureau and shall report the findings to the bureau.

2. The bureau may approve a shared work plan if the plan:

- 1 a. Identifies the employees in the affected unit by name and social security
2 number, the usual weekly hours of work, proposed wage and hour reduction,
3 and any other information that the bureau may require;
- 4 b. Applies and identifies to one specific affected unit;
- 5 c. Includes a certified statement by the employer that for the duration of the
6 shared work plan the reduction in the normal weekly hours of work of the
7 employees in the affected unit is in lieu of layoffs that otherwise would result
8 in at least as large a reduction in the total normal weekly hours of work;
- 9 d. Specifies that fringe benefits available to the employees in the affected unit
10 are not reduced beyond the percentage of reduction in hours of work;
- 11 e. Specifies an expiration date that is no more than one year from the date the
12 employer submits the shared work plan for approval, except that on written
13 request by the employer, the bureau may approve an extension of the shared
14 work plan for a period of not more than one year from the date of the request;
- 15 f. Reduces the normal weekly hours of work for an employee in the affected unit
16 by not less than five percent and not more than seventy percent, and the
17 reduction in hours in the affected unit are spread equally among employees in
18 the affected unit;
- 19 g. Will not serve as a subsidy of seasonal employment during the off-season, as
20 a subsidy for intermittent employment, nor as a subsidy of employers that
21 have traditionally used part-time employees; and
- 22 h. Is approved in writing by the collective bargaining agent for each collective
23 bargaining agreement that covers any employee in the affected unit.
- 24 3. To qualify, the employer must have filed all reports required to be filed under the
25 unemployment compensation law for all past and current periods and must have
26 paid all contributions, benefit cost payments, interest, and penalty charges or if a
27 reimbursing employer must have made all payments in lieu of contributions due for
28 all past and current periods and interest and penalty charges.
- 29 4. To qualify, a contributing employer must be eligible for a rate computation under
30 subdivision a of subsection 3 of section 52-04-05, and may not be a negative

account employer as defined under subdivision b of subsection 3 of section
52-04-05.

5. A shared work plan is effective on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the bureau, whichever is later. The shared work plan expires at the end of the twelfth full calendar month after the plan's effective date or on the date specified in the plan if that date is earlier; provided, the plan is not previously revoked by the bureau. If a shared work plan is revoked by the bureau, the plan terminates on the date specified in the bureau's written order of revocation.
6. The bureau shall approve or disapprove the proposal within thirty days of receipt of the proposal by the bureau. The bureau shall notify the employer of the reasons for denial of a shared work plan within ten days of the determination.
7. Disapproval of a plan may be reconsidered at the discretion of the executive director of job service North Dakota. Approval of a shared work plan may be revoked if the approval was based, in whole or in part, upon information that was false or misleading.
8. An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the bureau. The employer shall report the changes made to the shared work plan in writing to the bureau before implementing the changes. If the original shared work plan is substantially modified, the bureau shall reevaluate the shared work plan and may approve the modified shared work plan if the modified plan meets the requirements for approval under subsection 2. The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the bureau shall deny approval to the modifications as provided by subsection 6.
9. The bureau may terminate a shared work plan for good cause if the bureau determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

52-06.1-03. Employee qualification.

1. Notwithstanding any other provision of the unemployment compensation law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan under subsection 2 of section 52-06.1-02 in effect for that week.
2. An individual is eligible to receive shared work benefits with respect to any week if, in addition to meeting the requirements of regular unemployment compensation as modified by subsection 7, the bureau finds that:
 - a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;
 - b. The individual is able to work and is available for additional hours of work or full-time work with the participating employer;
 - c. The individual's normal weekly hours of work have been reduced, in accordance with the shared work plan, not less than five percent but not more than seventy percent, with a corresponding proportionate reduction in wages; and
 - d. The individual's normal weekly hours of work and wages have been reduced as described in subdivision c for a waiting period of one week that occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.
3. An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount exceeding the maximum total amount of benefits payable to that individual in a benefit year as provided by sections 52-06-04 and 52-06-05.
4. The bureau may not pay an individual shared work benefits for more than twenty-six weeks, whether or not consecutive, in any benefit year.
5. If an employer approves time off and the worker has performed some work during the week, the individual is eligible for shared work benefits based on the combined

- 1 work and paid leave hours for that week. If the employer does not grant time off,
2 the question of availability must be investigated.
- 3 6. If an employee was sick and consequently did not work all the hours offered by the
4 shared work employer in a given week, the employee will not be denied shared
5 work benefits for that week.
- 6 7. The bureau may not deny shared work benefits for any week to an otherwise
7 eligible individual by reason of the application of any provision of the
8 unemployment compensation law which relates to availability for work, active
9 search for work, or refusal to apply for or accept work with an employer other than
10 the individual's shared work employer.
- 11 8. An individual who has received all the shared work benefits and regular
12 employment compensation benefits available in a benefit year is an exhaustee
13 under subsection 3 of section 52-07.1-03 and is entitled to receive extended
14 benefits under such statutes if the individual is otherwise eligible under such
15 statutes.
- 16 9. A shared work benefit payment may not be made under any shared work plan or
17 this section for any week commencing before July 7, 2002.
- 18 10. The bureau shall pay an individual who is eligible for shared work benefits under
19 this section a weekly shared work benefit amount equal to the individual's regular
20 weekly benefit amount for a period of total unemployment multiplied by the nearest
21 full percentage of reduction of the individual's hours as set forth in the employer's
22 approved shared work plan. If the shared benefit amount is not a multiple of one
23 dollar, the bureau shall reduce the amount to the next highest multiple of one
24 dollar. All shared work benefits under this section are payable from the fund.
- 25 11. In any week an individual performs services for a work-sharing employer and an
26 employer other than the work-sharing employer, the weekly work-sharing benefit is
27 reduced by the amount of remuneration received from the non-work-sharing
28 employer in accordance with the weekly benefit amount wage reduction provision
29 in section 52-06-06.

- 1 12. The provisions of section 52-06-06.1 which require the bureau to deduct and
2 withhold certain amounts payable to an individual who is liable for child support
3 obligations apply to this subsection.
- 4 13. An applicant is not eligible for shared work benefits for any week that employment
5 is performed for the shared work employer in excess of the reduced hours set forth
6 in the approved shared work plan.
- 7 14. Notwithstanding any other provision of this chapter relating to charges, the
8 employer must be charged and billed for all shared work benefits paid in
9 accordance with sections 52-04-18, 52-04-19, and 52-04-19.1 as if the employer
10 had elected to make payment in lieu of contributions.