

Enrolled Senate Bill 192

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CHAPTER

AN ACT

Relating to unemployment insurance benefits; amending ORS 657.158, 657.370, 657.375, 657.380, 657.390 and 657.471; limiting expenditures; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 657.471 is amended to read:

657.471. (1) *[Subject to the provisions of subsections (2) to (7) and (10) of]* **Except as otherwise provided in** this section, benefits paid to an eligible individual shall be charged to each of the individual's employers during the base year in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(2) *[With the exception of]* **The account of an employer, other than** a political subdivision electing to pay taxes under ORS 657.509, *[an employer's account shall]* **may** not be charged with benefits paid an unemployed individual in excess of one-third of the base year wages paid that individual while in the employ of *[such]* **the** employer.

(3) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having left *[work of]* **the employment of** an employer voluntarily without good cause *[shall]* **may** not be charged to *[that]* **the** employer.

(4) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having been discharged by an employer for misconduct *[shall]* **may** not be charged to *[that]* **the** employer.

(5) Benefits paid without any disqualification to an individual *[shall]* **may** not be charged to an employer of the individual for the immediate period of unemployment *[when]* **if:**

(a) The individual left *[work of]* **the employment of** the employer voluntarily for good cause not attributable to the employer; or

(b) The employer discharged the individual because the individual was unable to satisfy a job prerequisite required by law or administrative rule.

(6) If it is determined under the provisions of subsection (3), (4) or (5) of this section that benefits paid to an individual *[shall]* **may** not be charged to an employer, *[such]* **the** employer's account *[shall]* **may** not be charged for any benefits paid for any subsequent period or periods of unemployment during *[that]* **the** individual's affected benefit year or during any benefit year beginning within 52 weeks subsequent to the affected benefit year.

(7)(a) [If] A base-year employer[,] **that is** not otherwise eligible for relief of charges for benefits under this section[,] **and that** receives notification of an initial valid determination of a claim [filed by] **may request relief of charges if the claim is made by** an individual who:

[(a)] (A) Left [work of such] **the employment of the** employer voluntarily and not for reasons attributable to the employer[, such employer may request relief of charges within 30 days of the date the notice provided for in ORS 657.266 is mailed or delivered to the employer. The request must advise the Director of the Employment Department in writing the date of such leaving and that such leaving was voluntary and not attributable to the employer and the reason therefor. Upon receipt of such notice from the employer the director shall investigate the separation and if the resulting determination, which shall be made by the director, establishes that the leaving was voluntary and not attributable to the employer, that employer's account shall not be charged with benefits during that individual's benefit year. If the individual was reemployed by such employer prior to the filing of the initial valid claim, the employer shall not receive relief of the employer's account under this subsection];

[(b)] (B) Was disqualified for the individual's most recent separation from [such] **the employer** by [the director's decision that found] **a determination of the Director of the Employment Department that** the individual has been discharged for misconduct connected with the [work, that employer may request relief of charges within 30 days of the date the notice provided for in ORS 657.266 is mailed or delivered to the employer. Upon receipt of such request from the employer, the director shall examine department records and if the requirements of this subsection have been met shall grant the relief of charges to that employer for benefits paid to the individual during the benefit year] **employment for the employer;** or

[(c)] (C) Was discharged for reasons that would be disqualifying under ORS 657.176 (2)(a), (b), (f), (g) or (h)[, the employer may request relief of charges within 30 days of the date the notice provided for in ORS 657.266 is mailed or delivered to the employer. The request].

(b)(A) A request under paragraph (a)(A) of this subsection:

(i) Must advise the director in writing of the date on which the individual left employment, state that the individual left voluntarily and not for reasons attributable to the employer and give the reason for which the individual left employment.

(ii) May not be granted if the individual was reemployed by the employer prior to the filing of the initial valid claim.

(B) A request under paragraph (a)(C) of this subsection must specify the date of the discharge and the reasons why the employer believes the discharge was for reasons that would be disqualifying under ORS 657.176 (2)(a), (b), (f), (g) or (h).

(c) A request for relief under this subsection must be sent to the department within 30 days after the date on which the notice provided for under ORS 657.266 is mailed or delivered to the employer.

(d) Upon receipt of the request from the employer, the director shall review the information provided by the employer and determine whether the employer is entitled to relief of charges for benefits paid to the individual during the benefit year. If the director determines that the employer is entitled to [such] relief of charges, the director shall grant the relief.

[(8)] **(e)(A)** The determination of the director under [subsection (7)(a) and (c) of this section shall be] **paragraph (a)(A) and (C) of this subsection is** final in all cases unless an application for hearing is filed within 20 days after delivery of [such decision] **the determination**, or, if mailed, within 20 days after the [same] **determination** was mailed to the employer's last-known address.

(B) When a request for hearing has been timely filed, an administrative law judge shall be assigned to conduct a hearing.

(C) After the administrative law judge has afforded all parties an opportunity for a fair hearing, the administrative law judge shall affirm or reverse the [decision] **determination** and promptly notify all parties entitled to notice of the decision and the reasons [therefor] **for the decision.**

(D) Decisions of the administrative law judge under this subsection [become] **are** final and may be judicially reviewed as provided in ORS 657.684 to the extent applicable.

[9] **(8)(a)** If the director finds that an employer or *[any employee, officer or agent of an employer]* **the employer's agent**, in submitting facts under subsection (7) *[or (8)]* of this section, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of an individual's employment, the director shall make a determination *[thereon]* charging the employer's reserve account not less than two nor more than 10 times the weekly benefit amount of the claimant or claimants, *[as the case may be]*.

(b) The director shall give notice to the employer of the determination under this subsection and *[such decision]* **the determination** of the director *[shall become]* **is** final unless an application for hearing is filed in *[accordance with]* **the manner provided for in** subsection *[(8)]* **(7)(e)** of this section.

[(10)] **(9)** Benefits paid to an individual *[shall]* **may** not be charged to a base-year employer if:

(a) The employer furnished part-time work to the individual during the base year;

(b) The individual has become eligible for benefits because of loss of employment with one or more other employers;

(c) The employer has continued to furnish part-time work to the individual in substantially the same amount as during the individual's base year; and

(d) The employer requests relief of charges within 30 days of the date the notice provided for in ORS 657.266 is mailed or delivered to the employer.

(10) Notwithstanding any other provision of this section, benefits paid to an individual shall be charged to an employer's account if:

(a) The employer or the employer's agent fails to respond timely or adequately to a request from the Employment Department for information relating to the claim for benefits;

(b) The failure to respond causes an overpayment of benefits to the claimant; and

(c) The employer or the employer's agent has a pattern of failing to respond timely or adequately to requests from the department for information relating to claims for benefits.

SECTION 2. ORS 657.370 is amended to read:

657.370. As used in ORS 657.370 to 657.390, unless the context requires otherwise:

(1) "Affected employee" means an individual who was continuously employed as a member of the affected group, by the shared work employer, for six months on a full-time basis or for one year on a part-time basis, **but not on a seasonal, temporary or intermittent basis**, immediately preceding the submission by the employer of the shared work plan.

(2) "Affected group" means three or more employees designated by the employer to participate in a shared work plan.

(3) "Approved shared work plan" or "approved plan" means an employer's shared work plan that meets the requirements of ORS 657.375.

(4) "Normal weekly hours of work" means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

(5) "Shared work employer" means an employer with a shared work plan in effect.

(6) "Shared work plan" or "plan" means an employer's voluntary, written plan for reducing un-employment, under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced.

SECTION 3. ORS 657.375 is amended to read:

657.375. (1) An employer wishing to participate in the shared work unemployment benefit program *[shall]* **must** submit a signed, written shared work plan to the Director of the Employment Department for approval.

(2) The director *[shall]* **may** give written approval of a shared work plan only if it:

(a) Provides a description of how the requirements of the shared work unemployment benefit program will be implemented.

(b) Is consistent with employer obligations under federal law.

[(a)] **(c)** Specifies the employees in the affected group.

[(b)] **(d)** Applies to only one affected group.

[(c)] (e) Includes a certified statement by the employer that each individual specified in the affected group is an affected employee.

(f) **Includes the employer's estimate of the number of layoffs that would have occurred if not for the shared work unemployment benefit program.**

[(d)] (g) Includes a certified statement by the employer that for the duration of the plan the reduction in the normal weekly hours of work of the employees in the affected group is instead of layoffs which otherwise would result in at least as large a reduction in the total normal weekly hours of work.

[(e)] (h) Specifies an expiration date [which] **that** is no more than one year from the date the employer submits the plan for approval.

[(f)] *Specifies the manner in which the employer will treat fringe benefits of the employees in the affected group.*

(i) **Certifies that existing health and retirement benefits under a defined benefit plan or contributions to a defined contribution plan, as defined in section 414 of the Internal Revenue Code, for the benefit of any participating employee with a reduced workweek will be provided to the employee as if the workweek had not been reduced.**

[(g)] (j) Is approved in writing by the collective bargaining agent for each collective bargaining agreement [which] **that** covers any employee in the affected group.

[(2)] (3) The director shall establish the beginning and ending dates of an approved shared work plan.

[(3)] (4)(a) The director shall approve or disapprove the plan within 15 days of [its] receipt of **the plan.**

(b) The director shall notify the employer of the reasons for disapproval of a shared work plan within 10 days of [such] **making the** determination.

(c) Determinations of the director [shall be] **are** final and are not subject to review by any court or other administrative body.

[(4)] (5) Disapproval of a **shared work** plan may be reconsidered upon application of the employer or at the discretion of the director.

(6) Approval of a shared work plan may be revoked by the director when it is established that [such] approval was based, in whole or in part, upon information contained [therein which] **in the plan that** is either false or substantially misleading.

SECTION 4. ORS 657.380 is amended to read:

657.380. (1) Notwithstanding any other provision of this chapter, for the purposes of ORS 657.370 to 657.390, an individual is unemployed and eligible to receive shared work benefits with respect to any week if, in addition to meeting all other eligibility requirements of this chapter, [except as specifically excepted in subsection (4) of this section,] the Director of the Employment Department finds **that:**

(a) During the week the individual is employed as a member of an affected group in an approved plan [which] **that** was approved prior to the week and is in effect for the week.

(b) During the week the individual's normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.

(2) Shared work benefits [shall] **may** not be paid to an eligible individual [for more than 52 weeks under an approved plan or modification thereof] **in an amount greater than 26 times the individual's weekly benefit amount of regular benefits.**

(3) The total amount of regular benefits and shared work benefits paid to an individual in a benefit year [shall] **may** not exceed the total for the benefit year as provided in ORS 657.150 (5).

(4) An otherwise eligible individual [shall] **may** not be denied benefits under this section:

(a) Because of the application of any provision of this chapter relating to availability for work, active search for work or refusal to apply for or accept work from other than the individual's shared work employer.

(b) For participating in training to enhance the job skills of the individual, if the training is sponsored by the employer or funded under the federal Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), and approved by the director.

SECTION 5. ORS 657.390 is amended to read:

657.390. (1) *[Any]* **An** employer who participates in an approved shared work plan after December 31, 1993, shall pay into the Unemployment Compensation Trust Fund an amount equivalent to all shared work benefits paid to employees of the employer under *[such]* **the** plan during any rating period for which the employer's benefit ratio, expressed as a percentage rounded to the nearest 0.1 percent, is in excess of the employer's tax rate for *[such]* **the** rating period.

(2) All reimbursement obligations arising under this section are in addition to and separate from any other obligation imposed under this chapter.

(3)(a) At the end of each calendar quarter, the Director of the Employment Department shall determine the amount of reimbursement due to the fund from each employer participant in a shared work plan and shall bill each employer for *[such]* **the** amount **determined**.

(b) Notwithstanding paragraph (a) of this subsection, an amount may not be billed to an employer during any rating period described in subsection (1) of this section in which federal law provides for 100 percent of the funding of shared work benefits.

(c) The reimbursement shall be subject to the same interest, penalty and collection provisions as any other reimbursement of unemployment insurance contributions provided for under this chapter.

[3] **(4)** Notwithstanding ORS 657.471 or any other provision to the contrary, no benefit charges *[which]* **that** are reimbursable under this section *[shall]* **may** be included in an employer's benefit charges for any purpose in any rating period.

SECTION 6. ORS 657.158 is amended to read:

657.158. (1) As used in this section:

(a)(A) "Regular benefits" means benefits payable to an individual under this chapter, including benefits payable to federal civilian employees and to ex-servicemembers under 5 U.S.C. chapter 85, *but not including*.

(B) "Regular benefits" does not mean additional benefits payable under ORS 657.331 to 657.334 or extended benefits payable under ORS 657.321 to 657.329 *[or 657.331 to 657.334]* unless otherwise allowed under the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3306 et seq.), or other benefits unless otherwise authorized under federal law.

(b) "Self-employment assistance activities" means activities approved by the Director of the Employment Department in which individuals, identified under ORS 657.156 as likely to exhaust benefits, participate for the purpose of enabling those individuals to establish a business and become self-employed. "Self-employment assistance activities" includes, but is not limited to, entrepreneurial training, business counseling and technical assistance.

(c) "Self-employment assistance allowance" means an amount, payable in lieu of regular benefits under this chapter[,] to an individual participating in self-employment assistance activities in accordance with this section. *[Self-employment assistance allowance amounts shall be paid from the Unemployment Compensation Benefit Fund.]*

(2)(a) The weekly amount of the self-employment assistance allowance payable to an individual is equal to the weekly regular benefit amount. *[The sum of the self-employed assistance allowance paid under this section and the regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount payable under ORS 657.150 (5) with respect to that benefit year.]*

(b) Self-employment assistance allowance amounts shall be paid from the Unemployment Compensation Benefit Fund or from federal benefits.

(3) The self-employment assistance allowance *[shall be]* **is** payable to an individual at the same intervals and on the same terms and conditions as regular benefits under this chapter except that:

(a) The provisions of this chapter regarding being available for work, actively seeking work and refusing to accept suitable work are not applicable to [such an] **the** individual.

(b) The provisions of ORS 657.150 (6) relating to remuneration for services performed are not applicable to income earned from self-employment by [such an] **the** individual.

(c) An individual participating in self-employment assistance activities shall be considered to be unemployed under ORS 657.100.

(d) An individual who fails to participate in self-employment assistance activities or who fails actively to engage on a full-time basis in establishing a business and becoming self-employed is ineligible to receive the self-employment assistance allowance for each week in which [such] **the** failure occurs.

(4)(a) An individual may receive the self-employment assistance allowance:

(A) In lieu of regular benefits for a period of not more than 26 weeks; and

(B) In lieu of extended benefits or other unemployment insurance benefits allowable under federal law for an additional period of not more than 26 weeks.

(b) The total period for which an individual may receive regular benefits, extended benefits or other unemployment insurance benefits allowable under federal law is reduced by the number of weeks for which the individual receives the self-employment assistance allowance in lieu of regular benefits or extended benefits or other unemployment insurance benefits, respectively.

[(4)] **(5) The number of individuals receiving the self-employment assistance allowance at any time [shall] may not exceed:**

(a) With respect to individuals receiving self-employment assistance allowance in lieu of regular benefits, five percent of the number of individuals receiving regular benefits.

(b) With respect to individuals receiving self-employment assistance allowance in lieu of extended benefits, one percent of the number of individuals receiving extended benefits.

[(5)] **(6) The self-employment assistance allowance shall be charged to employers in the manner provided in this chapter for the charging of regular benefits or extended benefits.**

[(6)] **(7) In adopting rules to carry out the provisions of this section, the director, insofar as practicable, shall comply with rules and policies of the United States Department of Labor.**

[(7)] **(8) The provisions of this section apply to weeks beginning after the date of enactment of federal law authorizing this section or the date of any required plan adopted by the United States Department of Labor, whichever date is later. The authority under this section terminates at the end of the week preceding the date when federal law no longer authorizes this section, unless that date is on a Saturday in which case the authority terminates on that date.**

SECTION 7. Notwithstanding any other law limiting expenditures, the amount of \$542,138 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from federal funds other than those described in sections 2 and 4, chapter _____, Oregon Laws 2013 (Enrolled House Bill 5009), collected or received by the Employment Department for the administration of the provisions of this 2013 Act.

SECTION 8. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by Senate June 26, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 28, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State