

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide employers with an alternative to layoffs by establishing a voluntary program that would enable an employer to reduce employee hours and allow its employees to receive unemployment compensation corresponding to the reduction in hours.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Keep D.C. Working Act of 2010”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Affected unit” means an employer or its specified department, shift, or other unit of 2 or more employees that is designated by the employer to participate in a shared work plan.

(2) “Director” means the Director of the Department of Employment Services, established by Reorganization Plan No. 1 of 1980, effective April 17, 1980 (part A, subchapter IV, Chapter 15 of the D.C. Official Code).

(3) “Employment security law” means the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-101 *et seq.*), and the federal unemployment compensation laws, including the Social Security Act, approved August 14, 1935 (49 Stat. 620; 42 U.S.C. § 301 *et seq.*), the Employment Security Administrative Financing Act of 1954, approved August 5, 1954 (68 Stat. 668; 42 U.S.C. § 1101 *et seq.*), and the Federal Unemployment Tax Act, approved August 16, 1954 (68A Stat. 439; 26 U.S.C. § 3301 *et seq.*).

(4) “Fringe benefits” means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.

(5) “Normal weekly hours of work” means the lesser of:

(A) Forty hours; or

(B) The average obtained by dividing the total number of hours worked per week during the preceding 12-week period by 12.

(6) "Participating employer" means an employer who has a shared work plan in effect.

(7) "Shared work benefit" means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

(8) "Shared work plan" means a strategy for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(9) "Shared work unemployment compensation program" means a voluntary 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 reduction in wages.

Sec. 3. Shared work unemployment compensation program.

The Director shall establish a shared work unemployment compensation program as provided by this act. The Director may adopt rules and establish procedures necessary to administer the shared work unemployment compensation program.

Sec. 4. Employer participation in the shared work unemployment compensation program.

An employer who wishes to participate in the shared work unemployment compensation program shall submit a written shared work plan to the Director for the Director's approval. As a condition for approval, a participating employer shall agree to furnish the Director with reports relating to the operation of the shared work plan as requested by the Director. The employer shall monitor and evaluate the operation of the shared work plan as requested by the Director and shall report the findings to the Director.

Sec. 5. Approval of shared work plan.

(a) The Director may approve a shared work plan if:

- (1) The shared work plan applies to and identifies a specific affected unit;
- (2) The employer has at least 2 employees;
- (3) The employees in the affected unit are identified by name and social security number;
- (4) The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than 20% and not more than 40%;
- (5) The shared work plan applies to at least 10% of the employees in the affected unit;
- (6) The shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

(7) The employer certifies that the shared work plan will not be used to reduce the fringe benefits offered to employees;

(8) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours; and

(9) The employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or, if the employer is a reimbursing employer, the employer has made all payments in lieu of contributions due for all past and current periods.

(b)(1) If any of the employees who participate in a shared work plan under this act are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

(2) An employee who is not subject to a collective bargaining agreement shall be given the option to participate in the shared work plan. If the employee chooses not to participate in the shared work plan, and if the employee is terminated, the employee shall be terminated without loss of benefits.

(c) A shared work plan shall not be implemented to subsidize seasonal employers during the off-season or to subsidize employers who have traditionally used part-time employees.

(d) The Director shall approve or deny a shared work plan, in writing, no later than the 30th day after the day the shared work plan is received by the Director. If the Director denies a shared work plan, the Director shall notify the employer of the reasons for the denial.

Sec. 6. Effective date and expiration of shared work plan.

(a) A shared work plan shall be effective on the date that it is approved by the Director, except that, for good cause shown, a shared work plan may be made effective retroactive to any time within a period of 14 days prior to the date the plan is approved by the Director. The shared work plan shall expire on the last day of the 12th full calendar month after the effective date of the shared work plan.

(b) The Director may terminate a shared work plan for good cause if the Director determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

Sec. 7. Modification of shared work plan.

An employer may modify a shared work plan created pursuant to this act to meet changed conditions if the modification does not substantially modify the basic provisions of the shared work plan as approved by the Director. The employer shall report the changes made to the shared work plan in writing to the Director before implementing the changes. If the original shared work plan is substantially modified, the Director shall reevaluate the shared work plan

and may approve the modified shared work plan if it meets the requirements for approval under section 5. The approval of a modified shared work plan shall 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 Director shall deny approval to the modifications as provided by section 5(d).

Sec. 8. Employee eligibility for shared work benefits.

(a) For the purposes of this act, and notwithstanding any other provisions of the employment security law, an individual shall be deemed to be unemployed and 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 in effect for that week. The Director shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer.

(b) An individual shall be eligible to receive shared work benefits with respect to any week in which the Director finds that:

- (1) 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;
- (2) The individual is able to work and is available for additional hours of work or full-time work with the participating employer;
- (3) The individual's normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages; and
- (4) The individual's normal weekly hours of work and wages have been reduced as described in paragraph (3) of this subsection for a waiting period of one week which 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.

(c) For the purposes of this act, an individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under section 8(g)(1)(H) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 949; D.C. Official Code § 51-107(g)(1)(H)), and shall be entitled to receive extended benefits under the employment security law if the individual is otherwise eligible under the employment security law.

(d) Notwithstanding any other provisions of this act, an individual shall not be eligible to receive shared work benefits for more than 50 calendar weeks during the 12-month period of the shared work plan; provided, that 2 weeks of additional benefits shall be payable to claimants who exhaust regular benefits and any benefits under any other federal or state extended benefits program. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this act unless the week occurs within the 12-month period of

the shared work plan.

Sec. 9. Payment of shared work benefits.

(a) The Director shall pay an individual who is eligible for shared work benefits under this act a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of \$1, the Director shall reduce the amount to the next lowest multiple of \$1. All shared work benefits made available pursuant to this act shall be payable from the District Unemployment Fund, established by section 2 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-102).

(b) The Director shall not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

Sec. 10. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 11. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia