

## CHAPTER 397

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**LABOR AND INDUSTRY**

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**SENATE BILL 10-028**

BY SENATOR(S) Heath, Bacon, Boyd, Carroll M., Foster, Gibbs, Hudak, Johnston, Keller, Morse, Newell, Schwartz, Shaffer B., Steadman, Tapia, Tochtrop, Whitehead, Williams;  
also REPRESENTATIVE(S) Pace, Apuan, Fischer, Frangas, Hullinghorst, Kagan, Labuda, Merrifield, Middleton, Pommer, Rice, Ryden, Vigil.

**AN ACT**

**CONCERNING THE ESTABLISHMENT OF THE COLORADO "WORK SHARE PROGRAM" TO ALLOW PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFITS TO ELIGIBLE EMPLOYEES WHO HAVE RECEIVED A REDUCTION IN WORK HOURS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 75 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2  
WORK SHARE PROGRAM**

**8-75-201. Short title.** THIS PART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO WORK SHARE PROGRAM".

**8-75-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AFFECTED UNIT" MEANS A SPECIFIED PLANT, DEPARTMENT, SHIFT, OR OTHER DEFINABLE UNIT TO WHICH A WORK SHARE PLAN APPLIES.

(2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF EMPLOYMENT AND TRAINING IN THE DEPARTMENT OF LABOR AND EMPLOYMENT OR HIS OR HER DESIGNEE.

(3) "NORMAL WEEKLY WORK HOURS" MEANS THE NUMBER OF HOURS IN A WEEK THAT AN EMPLOYEE ORDINARILY WORKS FOR A PARTICIPATING EMPLOYER OR FORTY

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

HOURS, WHICHEVER IS LESS.

(4) "WORK SHARE PLAN" MEANS A PLAN FOR REDUCING UNEMPLOYMENT UNDER WHICH EMPLOYEES WHO ARE MEMBERS OF AN AFFECTED UNIT SHARE THE WORK REMAINING AFTER A REDUCTION IN THEIR NORMAL WEEKLY WORK HOURS.

**8-75-203. Work share program - work share plan - eligibility of employer - approval - denial.** (1) THE DIRECTOR SHALL ESTABLISH A VOLUNTARY WORK SHARE PROGRAM FOR THE PURPOSE OF ALLOWING THE PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFITS TO EMPLOYEES WHOSE WAGES AND HOURS HAVE BEEN REDUCED. IN ORDER TO PARTICIPATE IN THE WORK SHARE PROGRAM, AN EMPLOYER SHALL SUBMIT A WORK SHARE PLAN IN WRITING TO THE DIRECTOR FOR APPROVAL. IF THE EMPLOYER IS SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT, THE COLLECTIVE BARGAINING UNIT MUST AGREE IN WRITING TO THE WORK SHARE PLAN PRIOR TO IMPLEMENTATION. AN EMPLOYER THAT IS A NEGATIVE EXCESS EMPLOYER PURSUANT TO SECTION 8-76-103 (3) (b) IS NOT ELIGIBLE TO PARTICIPATE IN THE WORK SHARE PROGRAM.

(2) AN EMPLOYER SHALL SUBMIT A WORK SHARE PLAN TO THE DIVISION ON FORMS AND FOLLOWING PROCEDURES REQUIRED BY THE DIRECTOR. THE DIRECTOR MAY APPROVE A WORK SHARE PLAN IF:

- (a) THE PLAN APPLIES TO AND IDENTIFIES A SPECIFIC AFFECTED UNIT;
- (b) THE PLAN IDENTIFIES THE EMPLOYEES IN THE AFFECTED UNIT BY NAME AND SOCIAL SECURITY NUMBER;
- (c) THE PLAN REDUCES THE NORMAL WORK FOR AN EMPLOYEE IN THE AFFECTED UNIT BY AT LEAST TEN PERCENT AND NOT MORE THAN FORTY PERCENT;
- (d) THE PLAN APPLIES TO AT LEAST TEN PERCENT OF THE EMPLOYEES IN THE AFFECTED UNIT; AND
- (e) THE PLAN INCLUDES A STRATEGY THAT RESTORES THE TOTAL NUMBER OF WORK HOURS TO EACH PARTICIPATING EMPLOYEE TO THE AMOUNT OF HOURS WORKED PRIOR TO PARTICIPATION IN THE PROGRAM.

(3) THE DIRECTOR SHALL NOT APPROVE A WORK SHARE PLAN UNLESS THE EMPLOYER:

- (a) AGREES THAT FOR THE DURATION OF THE EMPLOYER'S PARTICIPATION IN THE WORK SHARE PROGRAM, THE EMPLOYER SHALL NOT ELIMINATE OR DIMINISH HEALTH INSURANCE, RETIREMENT BENEFITS RECEIVED UNDER A PENSION PLAN, PAID VACATION AND HOLIDAYS, SICK LEAVE, OR ANY OTHER SIMILAR EMPLOYEE BENEFIT PROVIDED BY THE EMPLOYER IMMEDIATELY PRIOR TO SUBMITTING THE WORK SHARE PLAN TO THE DIVISION, IF THE EMPLOYER PROVIDES BENEFITS TO HIS OR HER EMPLOYEES;
- (b) CERTIFIES THAT THE COLLECTIVE BARGAINING AGENT FOR THE EMPLOYEES, IF APPLICABLE, HAS AGREED TO THE WORK SHARE PLAN;

(c) 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 TEN PERCENT OF THE EMPLOYEES IN THE AFFECTED UNIT AND THAT WOULD RESULT IN AN EQUIVALENT REDUCTION IN WORK HOURS;

(d) CERTIFIES THAT THE EMPLOYER WILL NOT EMPLOY ADDITIONAL EMPLOYEES IN THE AFFECTED UNIT WHILE PARTICIPATING IN THE WORK SHARE PROGRAM;

(e) AGREES THAT NO EMPLOYEE PARTICIPATING IN THE WORK SHARE PROGRAM SHALL RECEIVE, IN THE AGGREGATE, MORE THAN EIGHTEEN WEEKS OF BENEFITS; AND

(f) AGREES TO SUBMIT REPORTS CONCERNING THE OPERATION OF THE WORK SHARE PLAN TO THE DIVISION UPON REQUEST OF THE DIRECTOR.

(4) THE DIRECTOR SHALL APPROVE OR DENY THE WORK SHARE PLAN IN WRITING NO LATER THAN THIRTY DAYS AFTER THE DATE THE DIVISION RECEIVES THE PLAN. IF THE DIRECTOR DENIES THE WORK SHARE PLAN, HE OR SHE SHALL INFORM THE EMPLOYER IN WRITING OF THE REASONS FOR THE DENIAL.

**8-75-204. Employee eligibility for unemployment benefits under the work share plan.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN EMPLOYEE MAY BE ELIGIBLE FOR UNEMPLOYMENT COMPENSATION BENEFITS FOR A PARTICULAR WEEK PURSUANT TO THIS PART 2 IF:

(a) THE EMPLOYEE IS EMPLOYED AS A MEMBER OF AN AFFECTED UNIT THAT IS SUBJECT TO AN APPROVED WORK SHARE PLAN THAT IS IN EFFECT FOR THAT WEEK;

(b) THE EMPLOYEE'S NORMAL WEEKLY WORK HOURS HAVE BEEN REDUCED BY AT LEAST TEN PERCENT BUT NOT MORE THAN FORTY PERCENT AND THE EMPLOYEE HAS RECEIVED A CORRESPONDING REDUCTION IN WAGES FOR THAT WEEK; AND

(c) THE EMPLOYEE IS ABLE AND AVAILABLE TO WORK ADDITIONAL OR FULL-TIME HOURS WITH HIS OR HER EMPLOYER.

(2) THE ELIGIBILITY REQUIREMENTS FOR THE RECEIPT OF UNEMPLOYMENT COMPENSATION BENEFITS RELATED TO THE AVAILABILITY FOR WORK, ACTIVELY SEEKING WORK, AND REFUSING TO APPLY FOR OR TO ACCEPT WORK WITH AN EMPLOYER OTHER THAN THE EMPLOYEE'S CURRENT EMPLOYER, PURSUANT TO SECTIONS 8-73-107 AND 8-73-108 (5), SHALL NOT APPLY TO AN EMPLOYEE SUBJECT TO THIS PART 2.

**8-75-205. Benefits formula - limitation of benefits.** (1) **Formula.** THE DIVISION SHALL PAY AN EMPLOYEE WHO IS ELIGIBLE FOR UNEMPLOYMENT COMPENSATION BENEFITS UNDER A WORK SHARE PLAN A WEEKLY BENEFIT THAT IS THE PRODUCT OF THE EMPLOYEE'S REGULAR WEEKLY BENEFIT AMOUNT PURSUANT TO ARTICLE 73 OF THIS TITLE, MULTIPLIED BY THE NEAREST FULL PERCENTAGE OF THE REDUCTION OF THE EMPLOYEE'S WORK HOURS, ROUNDED DOWN TO THE NEXT FULL DOLLAR.

(2) **Limitations.** (a) AN INDIVIDUAL IS NOT ENTITLED TO RECEIVE UNEMPLOYMENT COMPENSATION BENEFITS PURSUANT TO THIS PART 2 AND REGULAR

UNEMPLOYMENT COMPENSATION BENEFITS THAT EXCEED THE MAXIMUM ALLOWABLE TOTAL BENEFITS PAYABLE TO AN INDIVIDUAL IN A BENEFIT YEAR PURSUANT TO ARTICLES 70 TO 82 OF THIS TITLE.

(b) THE DIVISION SHALL NOT PAY UNEMPLOYMENT COMPENSATION BENEFITS TO AN EMPLOYEE FOR A WEEK IN WHICH THE EMPLOYEE IS COMPENSATED FOR WORK FOR HIS OR HER EMPLOYER THAT EXCEEDS THE REDUCED HOURS ESTABLISHED UNDER THE WORK SHARE PLAN.

(c) AN EMPLOYEE RECEIVING WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS UNDER A WORK SHARE PLAN IS NOT ENTITLED TO RECEIVE BENEFITS FOR PARTIAL EMPLOYMENT PURSUANT TO SECTION 8-73-103 FOR THE SAME WEEK.

(d) THE WAITING PERIOD OF ONE WEEK IN SECTION 8-73-107 (1) (d) THAT APPLIES TO THE PAYMENT OF BENEFITS FOR TOTAL OR PARTIAL UNEMPLOYMENT SHALL APPLY TO THE PAYMENT OF BENEFITS PURSUANT TO THIS PART 2.

**8-75-206. Work share plan - effective date - expiration - termination.** (1) A WORK SHARE PLAN AND THE PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFITS PURSUANT TO THE PLAN SHALL BEGIN THE FIRST WEEK FOLLOWING APPROVAL OF THE PLAN BY THE DIRECTOR OR THE FIRST WEEK SPECIFIED BY THE EMPLOYER, WHICHEVER IS LATER.

(2) A WORK SHARE PLAN SHALL EXPIRE TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THE PLAN.

(3) THE DIRECTOR MAY TERMINATE A WORK SHARE PLAN FOR GOOD CAUSE IF THE PLAN IS NOT EXECUTED ACCORDING TO THE TERMS AND INTENT OF THE PROGRAM. "GOOD CAUSE" MAY INCLUDE FAILURE TO COMPLY WITH SECTION 8-75-203, UNREASONABLE REVISION OF PRODUCTIVITY STANDARDS FOR THE AFFECTED UNIT, OR OTHER CONDUCT BY THE EMPLOYER THAT MAY COMPROMISE THE PURPOSE, INTENT, AND EFFECTIVENESS OF A WORK SHARE PLAN.

**8-75-207. Work share plan modifications.** (1) AN EMPLOYER MAY MODIFY A WORK SHARE PLAN TO MEET CHANGED CONDITIONS IF THE MODIFICATION CONFORMS TO THE BASIC PROVISIONS OF THE PLAN AS ORIGINALLY APPROVED BY THE DIRECTOR.

(2) BEFORE A PROPOSED CHANGE TO A WORK SHARE PLAN MAY BE IMPLEMENTED:

(a) THE COLLECTIVE BARGAINING AGENT SHALL APPROVE THE MODIFICATION TO THE PLAN IF AN EMPLOYEE IS COVERED BY A COLLECTIVE BARGAINING UNIT;

(b) THE EMPLOYER SHALL REPORT THE CHANGE IN WRITING TO THE DIVISION; AND

(c) THE DIRECTOR SHALL APPROVE THE MODIFIED PLAN.

(3) THE DIRECTOR SHALL APPROVE OR DENY A MODIFIED WORK SHARE PLAN USING THE SAME STANDARDS AND REQUIREMENTS THAT ARE USED FOR THE ORIGINAL WORK SHARE PLAN IN ACCORDANCE WITH SECTION 8-75-203.

(4) APPROVAL OF A MODIFIED WORK SHARE PLAN SHALL NOT AFFECT THE

ORIGINAL EXPIRATION DATE OF THE WORK SHARE PLAN.

**8-75-208. Benefits payments charged to employer.** UNEMPLOYMENT COMPENSATION BENEFITS PAID TO AN EMPLOYEE PURSUANT TO THIS PART 2 SHALL BE CHARGED TO THE ACCOUNT OF THE EMPLOYER PARTICIPATING IN THE WORK SHARE PLAN IN THE SAME MANNER AS REGULAR BENEFITS PURSUANT TO SECTION 8-73-108 (3) (e) (I).

**8-75-209. Repeal of article.** (1) THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2013. PRIOR TO ITS REPEAL, THE "COLORADO WORK SHARE PROGRAM" SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

(2) IF THE DIRECTOR FINDS THAT THE PROVISIONS OF THIS PART 2 CAUSE THE INSOLVENCY OF THE UNEMPLOYMENT INSURANCE CASH FUND TO ACCELERATE, THE DIRECTOR SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING AND THIS PART 2 SHALL BE REPEALED.

**SECTION 2.** The introductory portions to 8-75-101 and 8-75-101 (2) (a), Colorado Revised Statutes, are amended, and the said 8-75-101 (2) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**8-75-101. Definitions.** As used in this ~~article~~ PART 1, unless the context otherwise requires:

(2) (a) "Exhaustee" means an individual who, with respect to any week of unemployment in his OR HER eligibility period:

(VI) HAS RECEIVED ALL OF THE UNEMPLOYMENT COMPENSATION BENEFITS PURSUANT TO PART 2 OF THIS ARTICLE AND REGULAR UNEMPLOYMENT COMPENSATION BENEFITS AVAILABLE IN A BENEFIT YEAR.

**SECTION 3.** 8-75-105 (2) and (3), Colorado Revised Statutes, are amended to read:

**8-75-105. Total extended benefit amount.** (2) Notwithstanding any other provisions of this ~~article~~ PART 1, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this subsection (2), be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by an amount equal to the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

(3) Notwithstanding any other provision of this ~~article~~ PART 1, during any fiscal year in which federal payments to states under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970" and amendments thereto are reduced under section 252 of the "Balanced Budget and Emergency Deficit Control Act of 1985" and amendments thereto, the total extended benefit amount payable to an individual with respect to his OR HER applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions in the weekly amounts paid

to the individual under section 8-75-104.

**SECTION 4.** 8-70-110 (1) (b), Colorado Revised Statutes, is amended to read:

**8-70-110. Benefits - classifications.** (1) Benefits are divided into classifications, as follows:

(b) Extended benefits: Benefits payable to an individual under PART 1 OF article 75 of this title, including benefits payable to federal civilian employees and to ~~ex-servicemen~~ FORMER MEMBERS OF THE ARMED FORCES pursuant to chapter 85 of title 5 of the United States Code, for weeks of unemployment in his OR HER eligibility period;

**SECTION 5.** 24-34-104 (44), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (44) The following agencies, functions, or both, shall terminate on July 1, 2013:

(q) THE "COLORADO WORK SHARE PROGRAM" CREATED IN PART 2 OF ARTICLE 75 OF TITLE 8, C.R.S.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 9, 2010