



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2013 Wisconsin Act 11 -- Delayed Implementation Date -- Agenda Item V

2013 Assembly Bill 15 was introduced on February 15, 2013. AB 15 was passed by the Legislature on April 9, 2013. The bill was signed by the Governor on May 17, 2013, as 2013 Wisconsin Act 11. Act 11 permits certain employers to submit a plan to the Department of Workforce Development (DWD) to create a short-term work-share program. If DWD approves an employer's work-share plan, an employer could reduce the hours of employees in a work unit in lieu of that employer laying off two or more employees. Employees under a work-share plan are eligible for certain unemployment insurance (UI) benefits to provide partial compensation for the reduction in work hours. Act 11 took effect on June 30, 2013.

One of the provisions of Act 11 permits DWD to request approval from the Joint Committee on Finance to delay implementation of the Act until a date no later than December 31, 2013, by submitting a request to the co-chairpersons of the Committee. If the Co-chairpersons notify DWD and the Legislative Reference Bureau that the Committee has approved a delay in implementation of Act 11, DWD may delay implementation until the date specified by the Committee. On June 28, 2013, the DWD Secretary submitted a request to delay implementation of the work-share program created under Act 11. The remainder of this paper provides: (a) a summary of the provisions Act 11; (b) a description of DWD's request for delayed implementation; and (c) alternatives for consideration by the Committee.

Summary of 2013 Wisconsin Act 11

Act 11 permits employers to create a work-share program under UI law if the employer submits a work-share plan for approval by DWD and the employer's plan is in compliance with certain statutory requirements. A work-share program is defined as a program approved by DWD under which the hours of work of employees in a work unit are reduced in lieu of the layoffs of two or more employees in the work unit. A work unit is defined as an operational unit of employees

designated by an employer for purposes of a work-share program, which may include more than one work site. An employer's work-share plan must include certain disclosures and meet certain requirements, such as: (a) specifying the work unit in which the plan will be implemented and the names of the employees filling those positions on the date of submittal; (b) providing for initial coverage of at least 20 positions that are filled on the effective date of the work share program and provide for equitable apportionment of reduced working hours among employees included in the work share program; and (c) specifying the normal average hours per week worked by each employee in the work unit and the percentage reduction in the average hours of work per week worked by that employee, which must be applied in a uniform manner and must be a reduction of at least 10% but not more than 50% of the hours per work of that employee. The period or periods for which a work-share period can be in effect cannot exceed a total of six months in any five-year period within the same work unit.

An employer's work-share program becomes effective on the later of the Sunday of the second week following DWD's approval or any Sunday after the date specified in the plan. A work-share program is terminated on the earlier of the last Sunday that precedes the end of the six-month period after the program takes effect or any Sunday before that day specified in the plan. DWD may approve a modification requested by an employer of an employer's work-share plan. DWD could revoke approval of a work-share plan for good cause, as specified in statute.

An employee who qualifies to receive regular UI benefits for any week covered under the work-share program must receive a benefit payment for the week that the employee is included under the program equal to the employee's regular benefit amount, as calculated under current law, multiplied by the proportionate reduction in hours worked for that week. For example, if an employee would have been eligible for a weekly benefit rate of \$300 if the employee had been laid off and the employee were, instead, subject to a 25% reduction in hours for a given week under a work-share program, the employee would receive UI benefits of \$75 for that week to partially offset the wages lost as a result of the reduction in work hours under a work-share program. An employee included in a work unit is eligible to receive benefits for a week in which the work-share plan is in effect provided that, combined with other work performed by the employee, the employee does not work more than 90% of the employee's average hours of work per week for the employer that creates the plan. If an employee were to be eligible for a higher amount of benefits under current UI law governing partial benefits, the employee would be eligible to receive that amount.

An employee working under a work-share plan cannot earn benefits under that plan exceeding the total amount of regular benefits an employee could have received for that benefit year under current law. If an employee receives UI benefits under a work-share plan, this amount does not reduce the amount of benefits, other than regular benefits, for which the employee may qualify. An employee receiving benefits under a work-share program is not required to be available for work to remain eligible for UI benefits other than for the normal hours of work that the employee worked for the employer that creates the work-share program and any hours in which the employee is engaged in an approved employer-sponsored training program. An employee is not required to meet the current law requirements to register and search for work to remain eligible for UI benefits if the employee is participating in a work-share program.

If an employer creates a work-share program, it must maintain coverage under any defined benefit or defined contribution retirement plan and any health insurance coverage that it provides to the employees included in the program.

An employer may voluntarily terminate a work-share program by filing notice with DWD of early termination. In addition, a work-share program must be terminated on the second Sunday following the end of the week following a week in which fewer than 20 employees are included in the employer's program.

An employee included in a work-share program may be terminated or may voluntarily terminate his or her employment during the effective period of the program. The employee's eligibility or ineligibility for benefits for any weeks beginning after the date of termination is not affected solely as a result of the employee's inclusion in the program.

Act 11 requires DWD to seek to qualify this state for full federal participation in funding administrative costs and financing benefits to employees participating in work-share programs. The DWD Secretary may waive compliance with any requirements of the work-share program if the Secretary determines that waiving a requirement would be needed to permit continued certification of state UI laws for: (a) federal UI administrative grants to the state; (b) maximum credit allowances to employers under the federal Employment Tax Act; or (c) this state to qualify for full federal financial participation in the cost of administering the program and financing benefits to employees participating in the work-share program.

Act 11 took effect on June 30, 2013. As noted previously, the Act permits DWD to request approval of the Joint Committee on Finance to delay implementation of this act until a date no later than December 31, 2013, by submitting a request to the Co-chairpersons of the Committee. If the Co-chairpersons notify DWD and the Legislative Reference Bureau that the Committee has approved a delay in implementation of this Act until a date specified by the Committee, DWD may delay implementation until the date specified by the Committee.

Federal Payment of Work-Share Benefits

Under federal law, benefits paid through approved work-share programs are 100% funded through federal monies rather than from the state's unemployment reserve fund (URF) through August 15, 2015. Sequestration reduced the federal share of funding to 94.9% for federal fiscal year 2012-13, but the federal funding may revert to 100% for work-share benefits paid beginning October 1, 2013. In addition to federal funding of benefit payments, DWD indicates that federal monies are available to pay for the one-time implementation costs associated with federal approval of Act 11.

Assuming federal approval, DWD estimates that federal benefits paid in lieu of benefits paid from the state URF would improve the balance of the fund by \$1.7 million in state fiscal year 2013-14, \$2.7 million in 2014-15, and \$300,000 in 2015-16. The Department's estimates assume an implementation date of December 31, 2013. It is possible that an earlier implementation date could result in additional savings to the URF; however, the implementation date will depend on

when DWD receives approval of Act 11 from the federal Department of Labor (DOL). As of June 10, 2013, no employers had requested an application to submit a work-share plan.

Requested Delay in Implementation

On June 28, 2013, the DWD Secretary requested that the Committee delay implementation of Act 11 until December 31, 2013. According to DWD, DOL has not finished reviewing the statutory provisions of Act 11 to determine if the Act is in compliance with federal UI law. In addition, DWD has not yet implemented the programming necessary to automate employer participation in the work-share program and would have to manually process work-share plans submitted by employers until the Department completes the necessary programming. According to DWD, the delayed implementation date would: (a) allow DOL to complete its review of the Act to determine if the Act complies with federal laws and if federal monies are available to pay for administrative costs and benefit payments; (b) provide time for the UI Division to finish the programming necessary to automate the process for employers to submit work-share plans; and (c) provide additional time for DWD to train staff, establish internal policies, and apply for federal grants. If the Committee were to approve DWD's request for a delay in the effective date of Act 11 and DOL approves the provisions of the Act, DWD could implement the work-share program prior to the delayed date approved by the Committee.

Alternatives

1. Approve the Department's request to delay the implementation date of 2013 Wisconsin Act 11 until December 31, 2013.
2. Deny the request.

Prepared by: Sean Moran