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SENATE BILL 545

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING FOR SALARY-
SHARING AGREEMENTS BETWEEN THE STATE AND PRIVATE EMPLOYERS FOR
THE TEMPORARY EMPLOYMENT OF INDIVIDUALS RECEIVING UNEMPLOYMENT
COMPENSATION BENEFITS; PROVIDING A DELAYED REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Unemployment Compensation
Law is enacted to read:

"[NEW MATERIAL] SALARY-SHARING AGREEMENTS.--

A. An employer may enter into a salary-sharing
agreement with the division pursuant to the provisions of this
section under which the employer may employ one or more
individuals who are currently receiving unemployment
compensation benefits.

B. A salary-sharing agreement shall:

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1 (1) provide that the salary to be paid by the
2 employer during the contractual employment period shall be
3 negotiated between the employer and the employee but shall not
4 be less than one-half of the average of the salaries reported
5 by the employer to the division in the previous calendar year
6 for employees with similar duties; provided that, if the
7 employer did not have employees with similar duties during the
8 previous calendar year, the division and the employer shall
9 jointly agree on an amount that represents the average salary
10 paid to employees with similar duties;

11 (2) provide that, during the contractual
12 employment period, the employee shall continue to receive
13 weekly benefits but in an amount equal to one-half of the
14 benefits that the employee would have otherwise received;

15 (3) specify the contractual employment period;
16 provided that the period shall not extend beyond twenty-six
17 weeks after the employee initially became eligible to receive
18 unemployment compensation benefits;

19 (4) provide that, at the end of the
20 contractual employment period, the employer may terminate the
21 employment or offer the employee continued employment at a
22 salary agreed to between the employer and the employee;

23 (5) provide that either the employer or the
24 employee may terminate the employment at any time during the
25 contractual employment period; and

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1 (6) contain such other provisions as are
2 required by rule of the division or negotiated by the parties.

3 C. An employer who, either during the contractual
4 employment period, at the end of the contractual employment
5 period or within one year after the end of the contractual
6 employment period, terminates the employment of an employee
7 hired pursuant to a salary-sharing agreement shall, for one
8 year after the termination, be ineligible to again enter into a
9 salary-sharing agreement for a position with similar duties.

10 D. The hiring of an employee pursuant to a salary-
11 sharing agreement shall not result in the displacement of any
12 currently employed worker or position, including partial
13 displacement such as a reduction in the hours of non-overtime
14 work, wages or employment benefits, or in any infringement of
15 the promotional opportunities of any currently employed
16 individual.

17 E. The hiring of an employee pursuant to a salary-
18 sharing agreement shall not impair existing contracts for
19 services or collective bargaining agreements and shall not be
20 inconsistent with the terms of a collective bargaining
21 agreement or involve the performance of duties covered under a
22 collective bargaining agreement unless the employer and the
23 labor organization concur in writing.

24 F. An employee hired pursuant to a salary-sharing
25 agreement may fill or perform the duties of an employment

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1 position only in a manner that is consistent with existing
2 laws, personnel procedures and collective bargaining contracts.

3 G. No employee hired pursuant to a salary-sharing
4 agreement shall be employed or assigned:

5 (1) when any other individual is on layoff
6 from the same or any substantially equivalent job;

7 (2) if the employer has terminated the
8 employment of any regular employee or otherwise caused an
9 involuntary reduction of its work force with the effect of
10 filling the vacancy so created with an employee hired pursuant
11 to a salary-sharing agreement; or

12 (3) to any position at a particular work site
13 when there is an ongoing strike or lockout at that particular
14 work site.

15 H. Upon the violation by an employer of a provision
16 of this section or a substantive provision in a salary-sharing
17 agreement, the division shall have a cause of action against
18 the employer for the unemployment compensation benefits paid to
19 an employee during the contractual employment period.

20 I. For purposes of determining compliance with a
21 federal, state or local minimum wage law or a federal or state
22 law mandating prevailing wages, the wages paid to an employee
23 hired pursuant to a salary-sharing agreement shall be the sum
24 of the salary paid by the employer plus the unemployment
25 compensation benefit received.

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1 J. Eligibility requirements and other inconsistent
2 provisions of the Unemployment Compensation Law shall not apply
3 to an employee during the contractual employment period of a
4 salary-sharing agreement.

5 K. Nothing in this section:

6 (1) requires an employer or an applicant for,
7 or a recipient of, unemployment compensation benefits to
8 participate in a salary-sharing agreement; or

9 (2) relieves an employer from the requirement
10 to make contributions based on the salary paid to an employee
11 hired pursuant to a salary-sharing agreement.

12 L. The division shall make an effort to ensure that
13 employers and applicants for benefits are familiar with the
14 provisions of this section and shall maintain a database of
15 employers and applicants that have expressed an interest in
16 participating in salary-sharing agreements.

17 M. The division shall promulgate such rules as are
18 necessary to carry out the provisions of this section."

19 **SECTION 2. DELAYED REPEAL.**--Section 1 of this act is
20 repealed effective July 1, 2013.

21 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2011.