43:21-20.3 et seq.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 279

NJSA: 43:21-20.3 et seq. (Modifies short-time unemployment benefit law)

BILL NO: A4189 (Substituted for S2741)

SPONSOR(S) Egan and others

DATE INTRODUCED: June 10, 2013

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 27, 2013

SENATE: January 13, 2014

DATE OF APPROVAL: January 17, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

A4189

SPONSOR'S STATEMENT: (Begins on page 8 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: No

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(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 6-24-2013
6-27-2013

LEGISLATIVE FISCAL ESTIMATE: Yes

S2741

SPONSOR'S STATEMENT: (Begins on page 7 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

OTHER: (U.S. Department of Labor – UIPL No. 22-12, Change 1) Yes

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2013, CHAPTER 279, ***approved January 17, 2014***
Assembly, No. 4189 ***(Second Reprint)***

AN ACT concerning short-time unemployment benefits and amending P.L.2011, c.154.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.2011, c.154 (C.43:21-20.3) is amended to read as follows:

1. For the purposes of this act:

"Affected unit" means a specified plant or other facility, department, shift or other definable unit which includes two or more employees to which an approved short-time benefits program applies.

"Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development, or any representative of the division responsible for approval or other division responsibilities regarding a shared work program.

["Full-time hours" means not less than 30 and not more than 40 hours per week.**]**

"Health insurance and pension coverage" means employer-provided health benefits, and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), which are incidents of employment in addition to the cash remuneration earned.

"Shared work employer" means an employer who is providing a shared work program approved by the division pursuant to section 2 of this act.

"Shared work program" means a program submitted by an employer for approval by the division pursuant to section 2 of P.L.2011, c.154 (C. 43:21-20.4) and approved by the division, under which the employer requests short-time benefits to employees in an affected unit of the employer to avert layoffs.

"Short-time benefits" means unemployment benefits payable to employees of an affected unit under an approved shared work program that are intended to be in lieu of **[**temporary**]** layoffs and provided pursuant to sections 1 through 9 of this act, as distinguished from unemployment benefits otherwise payable under

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly floor amendments adopted June 24, 2013.
[2]Assembly floor amendments adopted June 27, 2013.

the New Jersey "unemployment compensation law," R.S. 43:21-1 et seq.

"Usual weekly hours of work" means the usual hours of work for an employee in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

(cf: P.L.2011, c.154, s.1)

2. Section 2 of P.L.2011, c.154 (C.43:21-20.4) is amended to read as follows:

2. An employer who has not less than 10 employees[1]**[**, who are each employed for not less than 1,500 hours per year,**]**[1] may apply to the division for approval to provide a shared work program, the purpose of which is to stabilize the employer's work force during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Any subsidizing of seasonal employment during off season, **[**of employers who traditionally use part-time employees,**]** or of temporary **[**part-time**]** or intermittent employment on an ongoing basis, is contrary to the purpose of a shared work program approved pursuant to this act. The application for a shared work program shall be made according to procedures and on forms specified by the division and shall include whatever information the division requires. The division may approve the program for a period of not longer than one year and may, upon employer request, renew the approval of the program **[**annually**]** for additional periods, each period not to exceed one year. The division shall not approve an application unless the employer:

a. (1) Certifies to the division that **[**it**]** the aggregate reduction in work hours is in lieu of layoffs; (2) provides an estimate of the number of employees who would have been laid off in the absence of the program; and (3) certifies that the employer will not hire additional **[**part-time or full-time**]** employees while short-time benefits are being paid;

[1]**[**benefits provided to participating employees before the application was made, or make unreasonable revisions of workforce productivity standards;**]**[1]

b. **[**Agrees with**]** Certifies to the division **[**not to reduce**]** that health insurance or pension coverage, paid time off, or other benefits, including retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), will continue to be provided to **[**participating employees before the application was made, or**]** any employee whose workweek is reduced under the program, that those benefits will continue to be provided to employees

participating in the program under the same terms and conditions as though the workweek of the employee had not been reduced or to the same extent as other employees not participating in the program, except that employer contributions to a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), may be reduced in proportion to the reduction of weekly hours, and certifies to the division that the employer will not make unreasonable revisions of workforce productivity standards;

c. Certifies to the division that any collective bargaining agent representing the employees has entered into a written agreement with the employer regarding the terms of the program, including terms regarding attendance in training programs while receiving short-time benefits, and provides a copy of the agreement to the division; **[**and**]**

d. Provides, in the application, the effective date and duration of the program, a description of the affected unit or units covered by the program, including the number of employees in each unit, the percentage of employees in the affected unit covered by the program, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number and any other information required by the division to identify program participants;

e. Provides, in the application, a description of how the employees in the affected units will be notified of the employer's participation in the shared work program if the application is approved, including the means of notification for employees who are members of collective bargaining units and employees who are not members of a collective bargaining unit;

f. Identifies the usual weekly hours of work for the employees of the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the program;

g. Certifies that participation in the program and its implementation is consistent with the employer's obligations under all applicable federal and State laws; and

h. Agrees to provide the division with **[**whatever**]** any reports or other information, including access to employer records, the division deems necessary to administer the shared work program and monitor compliance with all agreements and certifications required pursuant to this section.

The division shall approve or disapprove the program in writing not more than 60 days after the receipt of the application and promptly communicate the decision to the employer. A decision disapproving the application shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be permitted to submit another application for approval of a plan not earlier than 60 days from the date of disapproval.

(cf: P.L.2011, c.154, s.2)

3. Section 3 of P.L.2011, c.154 (C.43:21-20.5) is amended to read as follows:

3. a. The division, on its own initiative or upon request of the affected unit's employees, may revoke approval of an employer's application previously granted [for good cause shown, including] for any failure to comply with any agreement or certification required pursuant to section 2 of this act, or any other conduct or occurrences which the division determines to defeat the purpose, intent and effective operation of a shared work program. The notice of revocation shall be in writing and shall specify the reasons for the revocation and the date on which the revocation is effective.

b. An employer may request modifications of an approved shared work program by filing with the division a written request identifying the specific proposed modifications and explaining the need for the modifications. The division shall approve or disapprove the modifications within 30 days and promptly communicate to the employer the division's decision and the date on which the modification will take effect. The employer is not required to obtain division approval to make a plan modification which is not substantial, but is required to provide prompt, written notice of the modification to the division, which shall require the employer to request division approval of the modification if the division finds the modification to be substantial. The division may terminate the program if the employer fails to provide the notice required by this subsection.

(cf: P.L.2011, c.154, s.3)

4. Section 4 of P.L.2011, c.154 (C.43:21-20.6) is amended to read as follows:

4. An individual who is employed by an employer with a shared work program approved by the division shall be eligible for short-time benefits during a week if:

a. [1][The individual was employed by the employer for not less than 1,500 hours during the individual's base year;] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)[1]

b. The individual works for the employer at an affected unit less than the individual's [normal full-time] usual weekly hours [during the week] of work, and the employer has reduced the individual's weekly hours of work pursuant to a shared work program in effect during that week and approved by the division pursuant to section 2 of this act;

c. The percentage of the reduction of the individual's work hours below the individual's [normal full-time] usual weekly hours [during a week] of work is not less than 10% and not more than 60%, with a corresponding reduction of wages;

d. The individual would be eligible for unemployment benefits other than short-time benefits during the week, if the individual was entirely unemployed during that week and applied for unemployment benefits other than short-time benefits; and

e. During the week, the individual is able to work and is available **[**to work**]** for the individual's **[**normal full-time**]** usual weekly hours **[**for**]** of work with the shared work employer or is **[**attending**]** participating in a training program **[**which is in compliance with the provisions of paragraph (4) of**]** approved by the division, including division-approved employer-sponsored training, division-approved training funded under the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or the Workforce Development Partnership program established pursuant to section 4 of P.L.1992, c.43 (C.34:15D-4), or any other training approved by the division pursuant to subsection (c) of R.S.43:21-4 **[**and the agreements and certifications required pursuant to the provisions of section 2 of this act**]**.

If the individual complies with the requirements of subsection e. of this section, the individual shall not be subject to any other requirement of the "unemployment compensation law," R.S.43:21-1 et seq., to be available for work and actively seeking work.

(cf: P.L.2011, c.154, s.4)

5. Section 5 of P.L.2011, c.154 (C.43:21-20.7) is amended to read as follows:

5. The amount of short-time benefits paid to an eligible individual shall, for any week, be equal to the individual's weekly benefit rate multiplied by the percentage of reduction of his wages resulting from reduced hours of work. The weekly benefit amount shall be rounded off to the nearest dollar. An individual shall not be paid short-time benefits **[**in excess of 26**]**, for more than 52 weeks **[**during a benefit year, but the weeks**]** under a shared work program. Weeks of short-time benefits may be nonconsecutive. An individual shall not receive short-time benefits during any benefit week in which the individual receives any other unemployment benefits, with respect to the employment with the shared work employer.

Total unemployment benefits paid to an individual during any benefit year, including short-time benefits and all other unemployment benefits, shall not exceed the maximum amount to which the individual is entitled for all unemployment benefits other than short-time benefits.

The following provision shall apply to an individual who is employed by both a shared work employer and another employer during weeks covered by a shared work program:

a. If combined hours of work in a week for both employers result in a reduction of less than 10% of the usual weekly hours of

work with the shared work employer, the individual shall not be entitled to benefits under the shared work program;

b. If combined hours of work in a week for both employers result in a reduction of 10% or more of the usual weekly hours of work with the shared work employer, the short-time benefit payable to the individual shall be reduced for that week and be determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10% or more of the individual's usual weekly hours of work;

c. If the individual worked a reduced percentage of the usual weekly hours of work for the shared work employer and is available for all of his usual hours of work with the shared work employer, and the individual did not work any hours for the other employer, either because of a lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time benefits for that week.

An individual who is not provided any work during a week by a shared work employer or any other employer and is otherwise eligible for unemployment benefits shall be eligible for the full amount of regular unemployment benefits to which the individual otherwise would be eligible. An individual who is not provided any work during a week by a shared work employer, but who works for another employer and is otherwise eligible for unemployment benefits shall be eligible for regular unemployment benefits for that week subject to the disqualifying income and other provision applicable to claims for regular unemployment benefits.

An individual who has received all of the short-time benefits or a combination of all of the short-time benefits and regular unemployment benefits available in a benefit year shall be considered to be an exhaustee for the purposes of any extended benefits provided pursuant to the provisions of the "Extended Benefits Law," sections 5 through 11 of P.L.1970, c.324 (C.43:21-24.11 et seq.), and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(cf: P.L.2011, c.154, s.5)

6. Section 6 of P.L.2011, c.154 (C.43:21-20.8) is amended to read as follows:

6. A shared work program and payment of short-time benefits to individuals under the program shall **[**begin with the first week following approval of an application by**]** go into effect on the date mutually agreed upon by employer and the division **[**or the first week specified by the employer, whichever is later**]**. A shared work program shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the division. The program shall

also expire upon the date of any revocation of approval of the program by the division. An employer of an approved program may terminate the program at any time upon written notice to the division, and the division shall notify participating employees of the affected unit of the termination. If a shared work program expires or the employer terminates the program, the employer may, at any time after the expiration or termination date, submit a new application for division approval of another shared work program.
(cf: P.L.2011, c.154, s.6)

[1]7. Section 7 of P.L.2011, c.154 (C.43:21-20.9) is amended to read as follows:

7. [All short-time benefits paid to an individual shall be charged to the account of the shared work employer by which the individual is employed while receiving the short-time benefits.] [2][If the shared work employer is liable for payments in lieu of contributions in the case of other unemployment benefits, that employer shall be liable for payments in lieu of contributions for the entire amount of the short-time benefits paid] Any short-time benefits paid to an individual shall be charged in the same manner as other unemployment benefits pursuant to the "unemployment compensation law," R.S.43:21-1 et seq[2].[1]
(cf: P.L.2011, c.154, s.7)

[1][7.] 8.[1] Section 9 of P.L.2011, c.154 (C.43:21-20.11) is amended to read as follows:

9. If the United States Department of Labor finds any provision of this act to be in violation of federal law, [all provisions] that provision of this act shall be inoperative.
(cf: P.L.2011, c.154, s.9)

[1][8.] 9.[1] This act shall take effect immediately.

Modifies short-time unemployment benefit law.

ASSEMBLY, No. 4189

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED JUNE 10, 2013

Sponsored by:
Assemblyman JOSEPH V. EGAN
District 17 (Middlesex and Somerset)
Assemblyman JOHN DIMAIO
District 23 (Hunterdon, Somerset and Warren)
Assemblywoman ANGELICA M. JIMENEZ
District 32 (Bergen and Hudson)

Co-Sponsored by:
Assemblyman Coughlin

SYNOPSIS
Modifies short-time unemployment benefit law.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/25/2013)

AN ACT concerning short-time unemployment benefits and amending P.L.2011, c.154.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.2011, c.154 (C.43:21-20.3) is amended to read as follows:

1. For the purposes of this act:

"Affected unit" means a specified plant or other facility, department, shift or other definable unit which includes two or more employees to which an approved short-time benefits program applies.

"Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development, or any representative of the division responsible for approval or other division responsibilities regarding a shared work program.

["Full-time hours" means not less than 30 and not more than 40 hours per week.**]**

"Health insurance and pension coverage" means employer-provided health benefits, and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), which are incidents of employment in addition to the cash remuneration earned.

"Shared work employer" means an employer who is providing a shared work program approved by the division pursuant to section 2 of this act.

"Shared work program" means a program submitted by an employer for approval by the division pursuant to section 2 of P.L.2011, c.154 (C. 43:21-20.4) and approved by the division, under which the employer requests short-time benefits to employees in an affected unit of the employer to avert layoffs.

"Short-time benefits" means unemployment benefits payable to employees of an affected unit under an approved shared work program that are intended to be in lieu of **[**temporary**]** layoffs and provided pursuant to sections 1 through 9 of this act, as distinguished from unemployment benefits otherwise payable under the New Jersey "unemployment compensation law," R.S. 43:21-1 et seq.

"Usual weekly hours of work" means the usual hours of work for an employee in the affected unit when that unit is operating on its

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

regular basis, not to exceed forty hours and not including hours of overtime work.
(cf: P.L.2011, c.154, s.1)

2. Section 2 of P.L.2011, c.154 (C.43:21-20.4) is amended to read as follows:

2. An employer who has not less than 10 employees, who are each employed for not less than 1,500 hours per year, may apply to the division for approval to provide a shared work program, the purpose of which is to stabilize the employer's work force during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Any subsidizing of seasonal employment during off season, **[**of employers who traditionally use part-time employees,**]** or of temporary **[**part-time**]** or intermittent employment on an ongoing basis, is contrary to the purpose of a shared work program approved pursuant to this act. The application for a shared work program shall be made according to procedures and on forms specified by the division and shall include whatever information the division requires. The division may approve the program for a period of not longer than one year and may, upon employer request, renew the approval of the program **[**annually**]** for additional periods, each period not to exceed one year. The division shall not approve an application unless the employer:

a. (1) Certifies to the division that **[**it**]** the aggregate reduction in work hours is in lieu of layoffs; (2) provides an estimate of the number of employees who would have been laid off in the absence of the program; and (3) certifies that the employer will not hire additional **[**part-time or full-time**]** employees while short-time benefits are being paid;

benefits provided to participating employees before the application was made, or make unreasonable revisions of workforce productivity standards;

b. **[**Agrees with**]** Certifies to the division **[**not to reduce**]** that health insurance or pension coverage, paid time off, or other benefits, including retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), will continue to be provided to **[**participating employees before the application was made, or**]** any employee whose workweek is reduced under the program, that those benefits will continue to be provided to employees participating in the program under the same terms and conditions as though the workweek of the employee had not been reduced or to the same extent as other employees not participating in the program, except that employer contributions to a defined contribution plan, as

defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), may be reduced in proportion to the reduction of weekly hours, and certifies to the division that the employer will not make unreasonable revisions of workforce productivity standards;

c. Certifies to the division that any collective bargaining agent representing the employees has entered into a written agreement with the employer regarding the terms of the program, including terms regarding attendance in training programs while receiving short-time benefits, and provides a copy of the agreement to the division; **[**and**]**

d. Provides, in the application, the effective date and duration of the program, a description of the affected unit or units covered by the program, including the number of employees in each unit, the percentage of employees in the affected unit covered by the program, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number and any other information required by the division to identify program participants;

e. Provides, in the application, a description of how the employees in the affected units will be notified of the employer's participation in the shared work program if the application is approved, including the means of notification for employees who are members of collective bargaining units and employees who are not members of a collective bargaining unit;

f. Identifies the usual weekly hours of work for the employees of the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the program;

g. Certifies that participation in the program and its implementation is consistent with the employer's obligations under all applicable federal and State laws; and

h. Agrees to provide the division with **[**whatever**]** any reports or other information, including access to employer records, the division deems necessary to administer the shared work program and monitor compliance with all agreements and certifications required pursuant to this section.

The division shall approve or disapprove the program in writing not more than 60 days after the receipt of the application and promptly communicate the decision to the employer. A decision disapproving the application shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be permitted to submit another application for approval of a plan not earlier than 60 days from the date of disapproval.

(cf: P.L.2011, c.154, s.2)

3. Section 3 of P.L.2011, c.154 (C.43:21-20.5) is amended to read as follows:

3. a. The division, on its own initiative or upon request of the affected unit's employees, may revoke approval of an employer's

application previously granted [for good cause shown, including] for any failure to comply with any agreement or certification required pursuant to section 2 of this act, or any other conduct or occurrences which the division determines to defeat the purpose, intent and effective operation of a shared work program. The notice of revocation shall be in writing and shall specify the reasons for the revocation and the date on which the revocation is effective.

b. An employer may request modifications of an approved shared work program by filing with the division a written request identifying the specific proposed modifications and explaining the need for the modifications. The division shall approve or disapprove the modifications within 30 days and promptly communicate to the employer the division's decision and the date on which the modification will take effect. The employer is not required to obtain division approval to make a plan modification which is not substantial, but is required to provide prompt, written notice of the modification to the division, which shall require the employer to request division approval of the modification if the division finds the modification to be substantial. The division may terminate the program if the employer fails to provide the notice required by this subsection.

(cf: P.L.2011, c.154, s.3)

4. Section 4 of P.L.2011, c.154 (C.43:21-20.6) is amended to read as follows:

4. An individual who is employed by an employer with a shared work program approved by the division shall be eligible for short-time benefits during a week if:

a. The individual was employed by the employer for not less than 1,500 hours during the individual's base year;

b. The individual works for the employer at an affected unit less than the individual's [normal full-time] usual weekly hours [during the week] of work, and the employer has reduced the individual's weekly hours of work pursuant to a shared work program in effect during that week and approved by the division pursuant to section 2 of this act;

c. The percentage of the reduction of the individual's work hours below the individual's [normal full-time] usual weekly hours [during a week] of work is not less than 10% and not more than 60%, with a corresponding reduction of wages;

d. The individual would be eligible for unemployment benefits other than short-time benefits during the week, if the individual was entirely unemployed during that week and applied for unemployment benefits other than short-time benefits; and

e. During the week, the individual is able to work and is available [to work] for the individual's [normal full-time] usual weekly hours [for] of work with the shared work employer or is

[attending] participating in a training program [which is in compliance with the provisions of paragraph (4) of] approved by the division, including division-approved employer-sponsored training, division-approved training funded under the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or the Workforce Development Partnership program established pursuant to section 4 of P.L.1992, c.43 (C.34:15D-4), or any other training approved by the division pursuant to subsection (c) of R.S.43:21-4 [and the agreements and certifications required pursuant to the provisions of section 2 of this act].

If the individual complies with the requirements of subsection e. of this section, the individual shall not be subject to any other requirement of the "unemployment compensation law," R.S.43:21-1 et seq., to be available for work and actively seeking work.

(cf: P.L.2011, c.154, s.4)

5. Section 5 of P.L.2011, c.154 (C.43:21-20.7) is amended to read as follows:

5. The amount of short-time benefits paid to an eligible individual shall, for any week, be equal to the individual's weekly benefit rate multiplied by the percentage of reduction of his wages resulting from reduced hours of work. The weekly benefit amount shall be rounded off to the nearest dollar. An individual shall not be paid short-time benefits [in excess of 26], for more than 52 weeks [during a benefit year, but the weeks] under a shared work program. Weeks of short-time benefits may be nonconsecutive. An individual shall not receive short-time benefits during any benefit week in which the individual receives any other unemployment benefits, with respect to the employment with the shared work employer.

Total unemployment benefits paid to an individual during any benefit year, including short-time benefits and all other unemployment benefits, shall not exceed the maximum amount to which the individual is entitled for all unemployment benefits other than short-time benefits.

The following provision shall apply to an individual who is employed by both a shared work employer and another employer during weeks covered by a shared work program:

a. If combined hours of work in a week for both employers result in a reduction of less than 10% of the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under the shared work program;

b. If combined hours of work in a week for both employers result in a reduction of 10% or more of the usual weekly hours of work with the shared work employer, the short-time benefit payable to the individual shall be reduced for that week and be determined by multiplying the weekly unemployment benefit amount for a

week of total unemployment by the percentage by which the combined hours of work have been reduced by 10% or more of the individual's usual weekly hours of work;

c. If the individual worked a reduced percentage of the usual weekly hours of work for the shared work employer and is available for all of his usual hours of work with the shared work employer, and the individual did not work any hours for the other employer, either because of a lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time benefits for that week.

An individual who is not provided any work during a week by a shared work employer or any other employer and is otherwise eligible for unemployment benefits shall be eligible for the full amount of regular unemployment benefits to which the individual otherwise would be eligible. An individual who is not provided any work during a week by a shared work employer, but who works for another employer and is otherwise eligible for unemployment benefits shall be eligible for regular unemployment benefits for that week subject to the disqualifying income and other provision applicable to claims for regular unemployment benefits.

An individual who has received all of the short-time benefits or a combination of all of the short-time benefits and regular unemployment benefits available in a benefit year shall be considered to be an exhaustee for the purposes of any extended benefits provided pursuant to the provisions of the "Extended Benefits Law," sections 5 through 11 of P.L.1970, c.324 (C.43:21-24.11 et seq.), and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(cf: P.L.2011, c.154, s.5)

6. Section 6 of P.L.2011, c.154 (C.43:21-20.8) is amended to read as follows:

6. A shared work program and payment of short-time benefits to individuals under the program shall **[**begin with the first week following approval of an application by**]** go into effect on the date mutually agreed upon by employer and the division **[**or the first week specified by the employer, whichever is later**]**. A shared work program shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the division. The program shall also expire upon the date of any revocation of approval of the program by the division. An employer of an approved program may terminate the program at any time upon written notice to the division, and the division shall notify participating employees of the affected unit of the termination. If a shared work program expires or the employer terminates the program, the employer may, at any

time after the expiration or termination date, submit a new application for division approval of another shared work program.
(cf: P.L.2011, c.154, s.6)

7. Section 9 of P.L.2011, c.154 (C. 43:21-20.11) is amended to read as follows:

9. If the United States Department of Labor finds any provision of this act to be in violation of federal law, ⟦all provisions⟧ that provision of this act shall be inoperative.
(cf: P.L.2011, c.154, s.9)

8. This act shall take effect immediately.

STATEMENT

This bill amends P.L.2011, c.154 (C.43:21-20.3 et seq.), the law which permits employers to apply to the Division of Unemployment and Temporary Disability Insurance for approval of shared work programs, under which their employees may receive short-time unemployment benefits. The purpose of a shared work program is to stabilize an employer's workforce during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Under a division-approved shared work program, workers who have their hours of work reduced may receive "short-time" unemployment benefits for the lost hours of work, while continuing to work at reduced hours with a continuation of their health insurance and pension coverage and other benefits.

The amendments to the law made by this bill bring the provisions of that law into conformity with the requirements of subsequently enacted federal legislation regarding shared work programs, the "Layoff Prevention Act of 2012," Subtitle D of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)).

The amendments are based on a model act provided by the U.S. Department of Labor in an unemployment insurance program letter issued to assist state agencies to comply with the act, UIPL No 22-12, Change 1.

The principal changes made to the current law by the bill are:

1. Layoffs and work hour reductions no longer are required to be temporary for short-time benefits to be provided;

2. The reduction of weekly work hours for a participating employee may not exceed 60%;

3. The employer's written plan must provide for written notification to employees of the program;

4. The employer's plan shall certify that the proposed plan complies with applicable federal and State laws;

5. The health, pension and other benefits are required to be provided on the same terms and conditions as if the employees' work hours were not reduced, except that the dollar amount of an employer's contribution to a defined contribution pension plan may be reduced in proportion to the reduction in work hours, and benefits for program participants may be reduced if the benefits are reduced in the same way for non-participating employees whose hours are not reduced;

6. Plans may apply selectively to "affected units" of employer's operations, such as specific plants, facilities, departments, shifts or other definable units with two or more employees;

7. More extensive information about affected employees and the proposed reductions in work time are required for the employer's program application;

8. Procedures, due process standards and minimum and maximum time limits are set with respect to the plans and division action regarding plans, including approval of plans and modification of plans and revocation of plan approval;

9. The maximum time period in which an employee may receive benefits under a plan is increased from 26 to 52 weeks, without increasing the maximum total amount of short-time and regular unemployment benefits which may be paid in a base year, which remains at 26 weeks; and

10. Specific provisions are made for the amount of benefits paid in various cases involving workers who are employed simultaneously by an employer with a shared work program and one without a program; and

11. Give a more expansive treatment of what job training programs are acceptable under short-time UI benefit programs, by including all division-approved, employer-provided training and all training funded through the federal Workforce Investment Act or the State Workforce Development Partnership program;

12. Clarify that workers, during the time that they are participating in a shared work program and receiving short-time benefits, are exempt not only from the requirements of the UI law to be "able" and "available" to work, but also from the requirement to be "actively seeking" work;

13. Provide that if the USDOL finds that any provision of P.L.2011, c.154 is out of compliance with federal requirements, only that particular provision will be inoperative, not the entire law.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4189

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4189.

This bill modifies P.L.2011, c.154 (C.43:21-20.3 et seq.), the law which permits employers to apply to the Division of Unemployment and Temporary Disability Insurance for approval of shared work programs, under which their employees may receive short-time unemployment benefits. The purpose of a shared work program is to stabilize an employer's workforce during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Under a division-approved shared work program, workers who have their hours of work reduced may receive "short-time" unemployment benefits for the lost hours of work, while continuing to work at reduced hours with a continuation of their health insurance, pension coverage, and other benefits.

This bill brings the State's shared work program law into conformity with the requirements of subsequently enacted federal legislation, the "Layoff Prevention Act of 2012," Subtitle D of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)).

The bill is based on a model act provided by the U.S. Department of Labor in an unemployment insurance program letter issued to assist state agencies to comply with the act, UIPL No 22-12, Change 1.

The principal changes made to current law by the bill are:

1. Layoffs and work hour reductions no longer are required to be temporary for short-time benefits to be provided;

2. The reduction of weekly work hours for a participating employee may not exceed 60%;

3. The employer's written plan must provide for written notification to employees of the program;

4. The employer's plan shall certify that the proposed plan complies with applicable federal and State laws;

5. The health, pension, and other benefits are required to be provided on the same terms and conditions as if the employees' work hours were not reduced, except that the dollar amount of an employer's contribution to a defined contribution pension plan may be reduced in proportion to the reduction in work hours, and benefits for program participants may be reduced if the benefits are reduced in the

same way for non-participating employees whose hours are not reduced;

6. Plans may apply selectively to "affected units" of employer's operations, such as specific plants, facilities, departments, shifts or other definable units with two or more employees;

7. More extensive information about affected employees and the proposed reductions in work time are required for the employer's program application;

8. Procedures, due process standards and minimum and maximum time limits are set with respect to the plans and division action regarding plans, including approval of plans and modification of plans and revocation of plan approval;

9. The maximum time period in which an employee may receive benefits under a plan is increased from 26 to 52 weeks, without increasing the maximum total amount of short-time and regular unemployment benefits which may be paid in a base year, which remains at 26 weeks;

10. Specific provisions are made for the amount of benefits paid in various cases involving workers who are employed simultaneously by an employer with a shared work program and one without a program;

11. Give a more expansive treatment of what job training programs are acceptable under short-time UI benefit programs, by including all division-approved, employer-provided training, and all training funded through the federal Workforce Investment Act or the State Workforce Development Partnership program;

12. Clarify that workers, during the time that they are participating in a shared work program and receiving short-time benefits, are exempt not only from the requirements of the UI law to be "able" and "available" to work, but also from the requirement to be "actively seeking" work; and

13. Provide that if the USDOL finds that any provision of P.L.2011, c.154 is out of compliance with federal requirements, only that particular provision will be inoperative, not the entire law.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

STATEMENT TO

ASSEMBLY, No. 4189

with Assembly Floor Amendments
(Proposed by Assemblyman EGAN)

ADOPTED: JUNE 24, 2013

These Assembly amendments make changes to the bill that bring the provisions of the bill into compliance with changes in federal law. The amendments delete references to the qualifier that an individual must be employed for not less than 1,500 hours per year with an employer for purposes of short-time benefits eligibility.

The amendments also delete a provision requiring that all short-time benefits paid to an individual must be charged to the account of the employer that employs the individual while receiving the short-time benefits. By deleting that provision, the amendments have the effect of charging short-time benefits to employer accounts in the same manner as any other unemployment benefits.

The Assembly also made technical amendments.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4189

with Assembly Floor Amendments
(Proposed by Assemblyman EGAN)

ADOPTED: JUNE 27, 2013

These Assembly amendments make changes to the bill that bring the provisions of the bill into compliance with changes in federal law. The amendments delete a provision requiring that if any short-time benefits are paid to an individual employed by an employer that regularly makes payments in lieu of contributions for unemployment benefits other than short-time benefits, then the employer is also liable for payments in lieu of contributions for the entire amount of short-time benefits paid to the individual.

For purposes of clarifying the manner in which employers are liable for short-time benefits paid to their employees, the amendments provide that any short-time benefits paid to an individual shall be charged to the employer in the same manner as other unemployment benefits pursuant to the "unemployment compensation law."

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4189

STATE OF NEW JERSEY
215th LEGISLATURE

DATED: JULY 17, 2013

SUMMARY

Synopsis: Modifies short-time unemployment benefit law.

Type of Impact: Indeterminate; unemployment compensation insurance trust fund (UI trust fund) and the State General Fund.

Agencies Affected: Department of Labor and Workforce Development

Fiscal Impact	2013, and annually thereafter
State Cost	
General Fund	Indeterminate (equal to State revenue)
State Revenue	
General Fund	Indeterminate (equal to State cost)

Fiscal Impact	2013 - 2015	2015 onward
State Expenditures		
UI trust fund	Indeterminate decrease	Indeterminate increase

- The Office of Legislative Services estimates that Assembly Bill No. 4189 (2R) will likely result in increased expenditures by the Department of Labor and Workforce Development for promotion and administration of the shared work program, costs which will be reimbursed by the federal government.

- The bill may also result in reduced expenditures from the unemployment insurance (UI) trust fund of an indeterminate amount until August 22, 2015, because the shared work program will now qualify for federal reimbursement of all UI benefits paid to individuals participating in the shared work program until August 22, 2015.

- After the completion of the federal reimbursement of shared work benefits on August 22, 2015, the shared work program may result in increased expenditures from the UI trust fund.

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– OLS –

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Under certain limited circumstances, the shared work program may result in higher overall UI benefits being paid by the UI trust fund to UI beneficiaries.

BILL DESCRIPTION

Assembly Bill No. 4189 (2R) of 2013 amends P.L.2011, c.154 (C.43:21-20.3 et seq.), the law which permits employers to apply to the Division of Unemployment and Temporary Disability Insurance for approval of shared work programs, under which their employees may receive short-time unemployment benefits. The purpose of a shared work program is to stabilize an employer's workforce during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Under a division-approved shared work program, workers who have their hours of work reduced may receive "short-time" unemployment benefits for the lost hours of work, while continuing to work at reduced hours with a continuation of their health insurance and pension coverage and other benefits.

The amendments to the law made by this bill bring the provisions of that law into conformity with the requirements of subsequently enacted federal legislation regarding shared work programs, the "Layoff Prevention Act of 2012," Subtitle D of Title II of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)).

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that Assembly Bill No. 4189 (2R) will have an indeterminate effect on the UI trust fund and be cost neutral for the State General Fund. The bill will most likely result in increased expenditures by the Department of Labor and Workforce Development, which will be matched by increased funding from the federal government. It may also result in decreased expenditures from the State UI trust fund for UI benefits until August 2015. However, after August 2015, the shared work program may result in increased expenditures from the UI trust fund. Due to uncertainty of the behavior of employers and employees, cost savings and expenditures can not be quantified with any certainty at this time.

The "Layoff Prevention Act of 2012," Subtitle D of Title II of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)) ("the Act"), was signed into law on February 22, 2012, and set up guidelines for state shared work programs. The Act does not require states to adopt shared work programs, but establishes parameters for any states that do establish shared work programs. The Act also establishes funding for administrative costs for states that implement shared work programs and for shared work program benefits paid in the three years following enactment of the Act.

The Act provides that states may apply for federal grants for the implementation or improved administration of a shared work program, or for promotion and enrollment of employers in a shared work program. This may result in increased revenue, matched by expenditures for the

administration and promotion of the shared work program by the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

The costs associated with the promotion of the shared work program are indeterminate as they are dependent upon the actions of the department in promoting and administering the program. The promotion could be quite extensive or could be minimal, and the activity level would directly affect the costs of the promotion. Similarly, the costs of administration are dependent upon the participation rates of employers and the associated need for the department to provide services to the employers. Without input from the department, the costs related to the administration are uncertain.

Additionally, Section 2162 of the Act provides that shared work benefit costs will be reimbursed by the federal government and will not be charged to the UI trust fund until August 22, 2015. After this time, benefits will be paid from the UI trust fund for any individuals who are participating in the shared work program. Although benefits paid to each individual participating in the shared work program will not exceed the individual's current maximum allowable UI benefits, it is possible in limited circumstances that the shared work program may result in increased expenditures for UI benefits to all participants in the shared work program than if the shared work program did not exist.

To conform State law with the federal requirements of the Act, Assembly Bill No. 4189 (2R) amends current State law to permit individuals to receive shared work benefits for a maximum of 52 weeks. Current law limits the shared work benefits to 26 weeks and thus restricts the participating individuals from receiving their total allowable amount of UI benefits while participating in the shared work program. By extending the time and increasing the total amount of benefits that could possibly be collected by an individual participating in the shared work program, Assembly Bill No. 4189 (2R) may increase the total benefits paid through the shared work program and result in increased expenditures from the UI trust fund.

For example, if an employer planned to lay off one individual, but instead chose to participate in the shared work program and retain two employees at a 50 percent workload for one year, these two employees under the shared work program could receive 50 percent of their UI benefit for 52 weeks for a total of 26 weeks of UI benefits. Conversely, if the employer did not participate in the shared work program and instead laid one person off and retained one person at 100 percent, then only one person would receive 26 weeks of benefits, saving the UI trust fund the cost of one person's 26 weeks of benefits. However, due to uncertainty over employers' and employees' behavior, it is not possible to determine the impact on the UI trust fund of the extension to 52 weeks.

In summary, due to uncertainty of the department's activities in promoting and administering the shared work program, and ambiguity as to the behavior of employees and employers in participating in the shared work program, it is not possible to quantify costs or savings attributable to this bill.

Section:	*Commerce, Labor and Industry*
Analyst:	*Robin C. Ford* *Senior Fiscal Analyst*
Approved:	*David J. Rosen* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2741

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED MAY 9, 2013

Sponsored by:
Senator ANTHONY R. BUCCO
District 25 (Morris and Somerset)
Senator SANDRA B. CUNNINGHAM
District 31 (Hudson)

Co-Sponsored by:
Senators Addiego and Madden

SYNOPSIS

Modifies short-time unemployment benefit law.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/10/2013)

AN ACT concerning short-time unemployment benefits and amending P.L.2011, c.154.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.2011, c.154 (C.43:21-20.3) is amended to read as follows:

1. For the purposes of this act:

"Affected unit" means a specified plant or other facility, department, shift or other definable unit which includes two or more employees to which an approved short-time benefits program applies.

"Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development, or any representative of the division responsible for approval or other division responsibilities regarding a shared work program.

"Full-time hours" means not less than 30 and not more than 40 hours per week.

"Health insurance and pension coverage" means employer-provided health benefits, and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), which are incidents of employment in addition to the cash remuneration earned.

"Shared work employer" means an employer who is providing a shared work program approved by the division pursuant to section 2 of this act.

"Shared work program" means a program submitted by an employer for approval by the division pursuant to section 2 of P.L.2011, c.154 (C. 43:21-20.4) and approved by the division, under which the employer requests short-time benefits to employees in an affected unit of the employer to avert layoffs.

"Short-time benefits" means unemployment benefits payable to employees of an affected unit under an approved shared work program that are intended to be in lieu of **[**temporary**]** layoffs and provided pursuant to sections 1 through 9 of this act, as distinguished from unemployment benefits otherwise payable under the New Jersey "unemployment compensation law," R.S. 43:21-1 et seq.

"Usual weekly hours of work" means the usual hours of work for a full-time or part-time employee in the affected unit when that unit

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.
(cf: P.L.2011, c.154, s.1)

2. Section 2 of P.L.2011, c.154 (C.43:21-20.4) is amended to read as follows:

2. An employer who has not less than 10 employees, who are each employed for not less than 1,500 hours per year, may apply to the division for approval to provide a shared work program, the purpose of which is to stabilize the employer's work force during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Any subsidizing of seasonal employment during off season, of employers who traditionally use part-time employees, or of temporary part-time or intermittent employment on an ongoing basis, is contrary to the purpose of a shared work program approved pursuant to this act. The application for a shared work program shall be made according to procedures and on forms specified by the division and shall include whatever information the division requires. The division may approve the program for a period of not longer than one year and may, upon employer request, renew the approval of the program **[**annually**]** for additional periods, each period not to exceed one year. The division shall not approve an application unless the employer:

a. (1) Certifies to the division that **[**it**]** the aggregate reduction in work hours is in lieu of layoffs; (2) provides an estimate of the number of employees who would have been laid off in the absence of the program; and (3) certifies that the employer will not hire additional part-time or full-time employees while short-time benefits are being paid;

b. Agrees with the division not to reduce health insurance or pension coverage, paid time off, or other benefits provided to participating employees before the application was made, with the benefits continuing to be provided under the same terms and conditions as if the participating employees were working their usual weekly hours, except that employer contributions to a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), may be reduced in proportion to the reduction of weekly hours and except that a percentage reduction may be made to any benefit of a participating employee if an equivalent percentage reduction is made simultaneously to the benefits of all non-participating employees in the affected unit, [or] and agrees not to make unreasonable revisions of workforce productivity standards;

c. Certifies to the division that any collective bargaining agent representing the employees has entered into a written agreement with the employer regarding the terms of the program, including terms regarding attendance in training programs while receiving

short-time benefits, and provides a copy of the agreement to the division; **[**and**]**

d. Provides, in the application, the effective date and duration of the program, a description of the affected unit or units covered by the program, including the number of part-time and full-time employees in each unit, the percentage of employees in the affected unit covered by the program, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number and any other information required by the division to identify program participants;

e. Provides, in the application, a description of how the employees in the affected units will be notified of the employer's participation in the shared work program if the application is approved, including the means of notification for employees who are members of collective bargaining units and employees who are not members of a collective bargaining unit;

f. Identifies the usual weekly hours of work for the employees of the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the program;

g. Certifies that participation in the program and its implementation is consistent with the employer's obligations under all applicable federal and State laws; and

h. Agrees to provide the division with **[**whatever**]** any reports or other information, including access to employer records, the division deems necessary to administer the shared work program and monitor compliance with all agreements and certifications required pursuant to this section.

The division shall approve or disapprove the program in writing not more than 60 days after the receipt of the application and promptly communicate the decision to the employer. A decision disapproving the application shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be permitted to submit another application for approval of a plan not earlier than 60 days from the date of disapproval.

(cf: P.L.2011, c.154, s.2)

3. Section 3 of P.L.2011, c.154 (C.43:21-20.5 is amended to read as follows:

3. a. The division, on its own initiative or upon request of the affected unit's employees, may, for good cause and at any time, revoke approval of an employer's application previously granted **[**for good cause shown, including**]**. Good cause shall include, but not be limited to, an unreasonable revision of productivity standards for the affected unit, or any other failure to comply with any agreement or certification required pursuant to section 2 of this act, or any other conduct or occurrences which the division determines to defeat the purpose, intent and effective operation of a

shared work program. The notice of revocation shall be in writing and shall specify the reasons for the revocation and the date on which the revocation is effective.

b. An employer may request modifications of an approved shared work program by filing with the division a written request identifying the specific proposed modifications and explaining the need for the modifications. The division shall approve or disapprove the modifications within 30 days and promptly communicate to the employer the division's decision and the date on which the modification will take effect. The employer is not required to obtain division approval to make a plan modification which is not substantial, but is required to provide prompt, written notice of the modification to the division, which shall require the employer to request division approval of the modification if the division finds the modification to be substantial. The division may terminate the program if the employer fails to provide the notice required by this subsection,

(cf: P.L.2011, c.154, s.3)

4. Section 4 of P.L.2011, c.154 (C.43:21-20.6) is amended to read as follows:

4. An individual who is employed by an employer with a shared work program approved by the division shall be eligible for short-time benefits during a week if:

a. The individual was employed by the employer for not less than 1,500 hours during the individual's base year;

b. The individual works for the employer at an affected unit less than the individual's normal full-time hours during the week, and the employer has reduced the individual's weekly hours of work pursuant to a shared work program in effect during that week and approved by the division pursuant to section 2 of this act;

c. The percentage of the reduction of the individual's work hours below the individual's normal full-time hours during a week is not less than 10% and not more than 60%, with a corresponding reduction of wages;

d. The individual would be eligible for unemployment benefits other than short-time benefits during the week, if the individual was entirely unemployed during that week and applied for unemployment benefits other than short-time benefits; and

e. During the week, the individual is able to work and is available to work the individual's normal full-time hours for the shared work employer or is attending a training program which is in compliance with the provisions of paragraph (4) of subsection (c) of R.S.43:21-4 and the agreements and certifications required pursuant to the provisions of section 2 of this act.

(cf: P.L.2011, c.154, s.4)

5. Section 5 of P.L.2011, c.154 (C.43:21-20.7) is amended to read as follows:

5. The amount of short-time benefits paid to an eligible individual shall, for any week, be equal to the individual's weekly benefit rate multiplied by the percentage of reduction of his wages resulting from reduced hours of work. The weekly benefit amount shall be rounded off to the nearest dollar. An individual shall not be paid short-time benefits **[**in excess of 26**]**, for more than 52 weeks during a benefit year**[**, but the weeks**]**. Weeks of short-time benefits may be nonconsecutive. An individual shall not receive short-time benefits during any benefit week in which the individual receives any other unemployment benefits, with respect to the employment with the shared work employer.

Total unemployment benefits paid to an individual during any benefit year, including short-time benefits and all other unemployment benefits, shall not exceed the maximum amount to which the individual is entitled for all unemployment benefits other than short-time benefits.

The following provision shall apply to an individual who is employed by both a shared work employer and another employer during weeks covered by a shared work program:

a. If combined hours of work in a week for both employers result in a reduction of less than 10% of the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under the share work program;

b. If combined hours of work in a week for both employers result in a reduction of 10% or more of the usual weekly hours of work with the shared work employer, the short-time benefit payable to the individual shall be reduced for that week and be determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10% or more of the individuals usual weekly hours of work;

c. If the individual worked a reduced percentage of the usual weekly hours of work for the shared work employer and is available for all of his usual hours of work with the shared work employer, and the individual did not work any hours for the other employer, either because of a lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time benefits for that week.

An individual who is not provided any work during a week by a shared work employer or any other employer and is otherwise eligible for unemployment benefits shall be eligible for the full amount of regular unemployment benefits to which the individual otherwise would be eligible. An individual who is not provided any work during a week by a shared work employer, but who works for another employer and is otherwise eligible for unemployment benefits shall be eligible for regular unemployment benefits for that

week subject to the disqualifying income and other provision applicable to claims for regular unemployment benefits.

An individual who has received all of the short-time benefits or a combination of all of the short-time benefits and regular unemployment benefits available in a benefit year shall be considered to be an exhaustee for the purposes of any extended benefits provided pursuant to the provisions of the "Extended Benefits Law," sections 5 through 11 of P.L.1970, c.324 (C.43:21-24.11 et seq.), and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(cf: P.L.2011, c.154, s.5)

6. Section 6 of P.L.2011, c.154 (C.43:21-20.8) is amended to read as follows:

6. A shared work program and payment of short-time benefits to individuals under the program shall **[**begin with the first week following approval of an application by**]** go into effect on the date mutually agreed upon by employer and the division **[**or the first week specified by the employer, whichever is later**]**. A shared work program shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the division. The program shall also expire upon the date of any revocation of approval of the program by the division. An employer of an approved program may terminate the program at any time upon written notice to the division, and the division shall notify participating employees of the affected unit of the termination. If a shared work program expires or the employer terminates the program, the employer may, at any time after the expiration or termination date, submit a new application for division approval of another shared work program.

(cf: P.L.2011, c.154, s.6)

7. This act shall take effect immediately.

STATEMENT

This bill amends P.L.2011, c.154 (C.43:21-20.3 et seq.), the law which permits employers to apply to the Division of Unemployment and Temporary Disability Insurance for approval of shared work programs, under which their employees may receive short-time unemployment benefits. The purpose of a shared work program is to stabilize an employer's workforce during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Under a division-approved shared work program, workers who have their hours of work reduced may receive "short-time" unemployment benefits for the lost hours of

work, while continuing to work at reduced hours with a continuation of their health insurance and pension coverage and other benefits.

The amendments of this bill bring the provisions of that law into conformity with the requirements of subsequently enacted federal legislation regarding shared work programs, the "Layoff Prevention Act of 2012," Subtitle D of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)). The amendments are based on a model act provided by the U.S. Department of Labor in an unemployment insurance program letter (UIPL) issued to assist state agencies to comply with the act (UIPL No 22-12, Change 1).

The principal changes made to the current law by the bill are:

1. Layoffs and work hour reductions no longer are required to be temporary for short-time benefits to be provided;

2. The reduction of weekly work hours for a participating employee may not exceed 60%;

3. The employer’s written plan must provide for written notification to employees of the program;

4. The employer’s plan shall certify that the proposed plan complies with applicable federal and State laws;

5. The health, pension and other benefits are required to be provided on the same terms and conditions as if the employees' work hours were not reduced, except that the dollar amount of an employer’s contribution to a defined contribution pension plan may be reduced in proportion to the reduction in work hours, and benefits for program participants may be reduced if the benefits are reduced in the same way for non-participating employees whose hours are not reduced;

6. Plans may apply selectively to “affected units” of employer’s operations, such as specific plants, facilities, departments, shifts or other definable units with two or more employees;

7. More extensive information about affected employees and the proposed reductions in work time are required for the employer’s program application;

8. Procedures, due process standards and minimum and maximum time limits are set with respect to the plans and division action regarding plans, including approval of plans and modification of plans and revocation of plan approval;

9. The maximum time period in which an employee may receive benefits under a plan is increased from 26 to 52 weeks, without increasing the maximum total amount of short-time and regular unemployment benefits which may be paid in a base year, which remains at 26 weeks; and

10. Specific provisions are made for the amount of benefits paid in various cases involving workers who are employed

simultaneously by an employer with a shared work program and one without a program.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2741

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 2013

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 2741.

As amended by the committee, this bill amends P.L.2011, c.154 (C.43:21-20.3 et seq.), the law which permits employers to apply to the Division of Unemployment and Temporary Disability Insurance for approval of shared work programs, under which their employees may receive short-time unemployment benefits. The purpose of a shared work program is to stabilize an employer's workforce during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Under a division-approved shared work program, workers who have their hours of work reduced may receive "short-time" unemployment benefits for the lost hours of work, while continuing to work at reduced hours with a continuation of their health insurance and pension coverage and other benefits.

The amendments to the law made by this bill bring the provisions of that law into conformity with the requirements of subsequently enacted federal legislation regarding shared work programs, the "Layoff Prevention Act of 2012," Subtitle D of the "Middle Class Tax Relief and Job Creation Act of 2012" (Pub.L.112-96) (see 26 U.S.C. s.3306(v)).

The amendments are based on a model act provided by the U.S. Department of Labor in an unemployment insurance program letter issued to assist state agencies to comply with the act, UIPL No 22-12, Change 1.

The principal changes made to the current law by the bill are:

1. Layoffs and work hour reductions no longer are required to be temporary for short-time benefits to be provided;

2. The reduction of weekly work hours for a participating employee may not exceed 60%;

3. The employer's written plan must provide for written notification to employees of the program;

4. The employer's plan shall certify that the proposed plan complies with applicable federal and State laws;

5. The health, pension and other benefits are required to be provided on the same terms and conditions as if the employees' work hours were not reduced, except that the dollar amount of an employer’s contribution to a defined contribution pension plan may be reduced in proportion to the reduction in work hours, and benefits for program participants may be reduced if the benefits are reduced in the same way for non-participating employees whose hours are not reduced;

6. Plans may apply selectively to “affected units” of employer’s operations, such as specific plants, facilities, departments, shifts or other definable units with two or more employees;

7. More extensive information about affected employees and the proposed reductions in work time are required for the employer’s program application;

8. Procedures, due process standards and minimum and maximum time limits are set with respect to the plans and division action regarding plans, including approval of plans and modification of plans and revocation of plan approval;

9. The maximum time period in which an employee may receive benefits under a plan is increased from 26 to 52 weeks, without increasing the maximum total amount of short-time and regular unemployment benefits which may be paid in a base year, which remains at 26 weeks; and

10. Specific provisions are made for the amount of benefits paid in various cases involving workers who are employed simultaneously by an employer with a shared work program and one without a program.

The amendments adopted by the committee:

1. Eliminate the current restriction that the short-time benefit programs be limited to full-time workers, by deleting, throughout the bill, all references to full-time and part-time workers;

2. Give a more expansive treatment of what job training programs are acceptable under short-time UI benefit programs, by including all division-approved, employer-provided training and all training funded through the federal Workforce Investment Act or the State Workforce Development Partnership program;

3. Clarify that workers, during the time that they are participating in a shared work program and receiving short-time benefits, are exempt not only from the requirements of the UI law to be “able” and “available” to work, but also from the requirement to be “actively seeking” work;

4. Stipulate that a participating worker may receive short-time benefits up to 52 weeks under a shared work program, not up to 52 weeks during a benefit year; and

5. Provide that if the USDOL finds that any provision of P.L.2011, c.154 is out of compliance with federal requirements, only that particular provision will be inoperative, not the entire law.

STATEMENT TO

[First Reprint]

SENATE, No. 2741

with Senate Floor Amendments
(Proposed by Senator BUCCO)

ADOPTED: NOVEMBER 18, 2013

These Senate amendments make the following changes to bring the provisions of the bill into compliance with federal law:

1. Delete the requirement that an individual must be employed for not less than 1,500 hours per year with an employer for purposes of short-time benefits eligibility; and

2. Delete a provision requiring that all short-time benefits paid to an individual must be charged to the account of the employer that employs the individual while receiving the short-time benefits. By deleting that provision, the amendments have the effect of charging short-time benefits to employer accounts in the same manner as any other unemployment benefits.

As amended, this bill is identical to Assembly Bill No. 4189 (2R).

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI-STC
	CORRESPONDENCE SYMBOL OUI/DL
	DATE December 21, 2012

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 22-12, CHANGE 1

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES
Assistant Secretary

SUBJECT: Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012

1. **Purpose.** To provide model legislation for states to use in implementing the provisions in Subtitle D of Title II of the Middle Class Tax Relief and Job Creation Act of 2012 on short-time compensation or "worksharing" programs, and to provide additional guidance to the state agencies about the new definition of short-time compensation in Federal unemployment compensation law.

2. **References.**
   - Section 194 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 (Public Law (Pub. L.) 97-248);
   - Section 401 of the Unemployment Compensation Amendments of 1992 (Pub. L.102-318);
   - The Layoff Prevention Act of 2012 (Subtitle D) Title II of the Middle Class Tax Relief and Job Creation Act of 2012, (Pub. L. 112-96),
   - Federal Unemployment Tax Act (FUTA; 26 U.S.C. 3301 et seq.);
   - Section 303(a)(5) of the Social Security Act (SSA);
   - Sections 414(i) and (j) of the Internal Revenue Code (IRC); and
   - Unemployment Insurance Program Letter (UIPL) No. 45-92. *Unemployment Compensation Amendments of 1992 (P.L. 102-318) - Provisions Affecting the Federal-State Unemployment Compensation (UC) Program*;
   - UIPL No. 22-12. *Short-Time Compensation Provisions in the Middle Class Tax Relief and Job Creation Act of 2012*

3. **Background.** Short-time compensation (STC), also known as work-sharing or shared work programs, preserves employees' jobs and employers' trained workforces from disruptions to a firm's regular business activity by reducing hours of work for an entire group of affected employees rather than by laying off some employees while others continue to work their regular work schedule. STC provides a portion of a weekly unemployment compensation (UC) payment to certain individuals whose work weeks have been reduced. STC cushions the adverse effect of the reduction in business activity on workers and ensures that these

RESCISSIONS	EXPIRATION DATE
None	Continuing

workers will be available to resume prior employment levels when business demand increases.

Initially, the TEFRA of 1982 authorized states to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF). In UIPL No. 39-83, the Department of Labor (Department) issued model legislation to the states to implement these temporary STC programs. This UIPL expired on September 30, 1985. The Unemployment Compensation Amendments of 1992 added permanent statutory authority for states to fund STC from their accounts in the UTF and established certain requirements in its definition of an STC program.

On February 22, 2012, the President signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (the Act), which contains many provisions concerning the UC program. In UIPL No. 22-12, the Department provided guidance to states about the minimum conformity requirements for the new definition of STC in the Act. Section 2165 of the Act also required the Secretary of Labor, after consultation with stakeholders, to develop model legislation, guidance, and reporting requirements for use by states in developing and enacting STC programs.

As required by Section 2165(c) of the Act, the Department consulted with employers, labor organizations, state workforce agencies, and other program experts about model legislative language, guidance, and reporting. A Notice of Listening Sessions on Implementation of Unemployment Insurance Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) was published at 77 Federal Register 16074 (March 19, 2012) and two listening sessions were held. Recordings of these sessions are at: https://www.workforce3one.org/view/5001206850055897580/info and https://www.workforce3one.org/view/5001206850373490082/info.

4. **The Listening Sessions.** In these sessions, the Department explained that the term "short-time compensation" is defined in new subsection (v) of Section 3306, FUTA, which became effective on the date of enactment of the Act, February 22, 2012. States are not required to enact an STC program into law; however, states enacting a new STC law may not operate an STC program that does not conform to this definition. The Act provides states with current STC laws a transitional period to conform to the new requirements, which is discussed in UIPL No. 22-12. Section 3306(v)(10), FUTA, provides that "upon request by the State and approval by the Secretary of Labor" additional provisions may be included in a State STC law if these are "determined to be appropriate for purposes of a short-time compensation program."

   During the listening sessions, some stakeholders expressed the opinion that the model language should be limited to that which is necessary to conform to the new definition and that no other requirements be included in the model legislation. Some states have STC laws that have been in place since the 1980s, and expressed an interest in keeping the model language as consistent with the model language in UIPL No. 39-83 as the new definition of Section 3306(v), FUTA, would allow. Some states inquired about the approval process

provided in Section 3306(v)(10), FUTA, if their current law contained additional provisions beyond the minimum conformity requirements.

5. **The Model Legislation**. The Department agrees with the stakeholders that the model legislation should be limited to what is necessary to conform to the new definition of an STC program. The Department also agrees that the model legislation be tailored in such a way that those states that currently have STC laws based on the 1983 guidance should not be required to amend their STC laws if these laws are appropriate for an STC program that meets the definition in Section 3306(v), FUTA. Therefore, the Department has developed model language based upon the 1983 model language that has been updated and revised to assist states in enacting conforming legislation. States are not required to use the model language but if a state enacts a law using the model language provided it will be in conformity with the new definition of a short-time compensation program in Section 3306(v), FUTA.

   As noted above, several states have operated STC programs since the 1980's consistent with the previous model language. These state laws may contain additional provisions for an STC program other than the provisions necessary to conform to the new definition of an STC program. These additional provisions concern the size of the affected unit in an STC program; limitations on participation in the STC program by employers who are either maximum rated employers in the state experience rating system or delinquent in the payment of contributions, penalties or interest; or include a requirement that, if the affected unit is covered under a collective bargaining agreement, the bargaining agent must agree to the plan. These provisions were recommended in the previous model language and were not addressed in the Act. The Department considers these provisions appropriate for the operation of an STC program, and a state law containing these optional provisions will be in conformity with the new definition of an STC program. The approval of these provisions is made under the Secretary's authority under Section 3306(v)(10), FUTA, to permit such additional provisions that are appropriate for an STC program. The model language clearly identifies these as optional provisions should a state wish to include them in any new enactment, or if a state currently has these provisions in its STC law.

6. **Approval of other additional provisions not included in model language that a state wishes to be considered appropriate for an STC program.** Section 3306(v)(10), FUTA, provides flexibility to states to request approval by the Secretary of Labor of other provisions that a state wishes to be considered appropriate for an STC program. This UIPL details the procedure for a state with an additional provision[s] in its STC law, or a state developing legislation to enact a new STC law that wishes to add such an additional provision in its STC law, to request approval by the Secretary of Labor. We strongly encourage states to consult with the Department before enacting any optional provisions other than those identified in the model legislation. Any additional provision must be consistent with how an STC program is defined in Sections 3306(v)(1) through (9), FUTA.

   An authorized representative of the state (normally this would be the Administrator of the State Agency) must request, in writing, that the Department approve any additional optional provisions as appropriate for a STC program.

Any request to approve an additional provision a state considers appropriate for a STC program must include the text of the additional provision; a citation where the state proposes to codify the additional provision in its state law; a description of the provision and a detailed rationale as to why the state considers the provision appropriate for a STC program; and a request that the Department approve the provision.

The request must be addressed to:

Gay Gilbert
Administrator
Office of Unemployment Insurance
200 Constitution Ave N.W. Room S-4524
Washington, D.C., 20210

A PDF of the request may also be sent electronically to:

STC_Applications@dol.gov

7. **Action Requested.** State Administrators are requested to provide this information to appropriate staff.

8. **Inquiries.** Inquiries should be directed to the appropriate regional office.

9. **Attachment.** Draft Language and Commentary to Implement a Short-Time Compensation Program.

Draft Language and Commentary to Implement a Short-Time Compensation Program

I. Draft Language

A. Definitions

1. The term "affected unit" means a specified plant, department, shift, or other definable unit which includes ____ or more workers to which an approved short-time compensation plan applies.

2. The term "Director" means the state agency official designated to perform primary oversight of the unemployment compensation program, or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan.

3. The term "health and retirement benefits" means employer-provided health benefits, and retirement benefits under a defined benefit pension plan (as defined in section 414(j) of the Internal Revenue Code or contributions under a defined contribution plan (defined in section 414(i) of such Code), which are incidents of employment in addition to the cash remuneration earned.

4. The term "short-time compensation" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the unemployment compensation provisions of a State law.

5. The term "short-time compensation plan" means a plan submitted by an employer, for approval by the Director, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs.

6. The term "usual weekly hours of work" means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

7. The term "unemployment compensation" means the unemployment benefits payable under this Act other than short-time compensation and includes any amounts payable pursuant to an agreement under any

Federal law providing for compensation, assistance, or allowances with respect to unemployment.

B. Application to Participate in the Short-Time Compensation Program

An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the Director for approval. The Director shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

1. The affected unit (or units) covered by the plan, including the number of full-time or part-time workers in such unit, the percentage of workers in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number and any other information required by the Director to identify plan participants.

2. A description of how workers in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those workers in a collective bargaining unit as well as any workers in the affected unit who are not in a collective bargaining unit. If the employer will not provide advance notice to workers in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

3. A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation application may be approved which shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly provides no work (due to a holiday or other plant closing), then such week shall be identified in the application.

4. Certification by the employer that, if the employer provides health benefits and retirement benefits under defined benefit pension plans (as defined in section 414(j) of the Internal Revenue Code) or contributions under a defined contribution plan (defined in section 414(i) of such Code) to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating the short-time compensation program under the same terms and conditions as though the usual

weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program.

For defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

Notwithstanding the above, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating.

5. Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs (temporary or permanent layoffs, or both). The application shall include an estimate of the number of workers who would have been laid off in the absence of the short-time compensation plan.

6. Agreement by the employer to: furnish reports to the Director relating to the proper conduct of the plan; allow the Director or his authorized representatives access to all records necessary to approve or disapprove the plan application, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the Director deems necessary for the agency to implement the plan and which are consistent with the requirements for plan applications.

7. Certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable Federal and State laws.

8. The effective date and duration of the plan that shall expire not later than the end of the 12th full calendar month after the effective date.

9. Any other provision added to the application by the Director that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

C. Approval and Disapproval of the Short-time Compensation Plan

The Director shall approve or disapprove a short-time compensation plan in writing within __ days of its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-time compensation plan for approval not earlier than __ days from the date of the disapproval.

D. Effective Date and Duration of the Short-time Compensation Plan

A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the Director, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the Director. However, if a short-time compensation plan is revoked by the Director under paragraph E of this Act, the plan shall terminate on the date specified in the Director's written order of revocation. An employer may terminate a short-time compensation plan at any time upon written notice to the Director. Upon receipt of such notice from the employer, the Director shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

E. Revocation of Approval

The Director may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

The Director may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

F. Modification of an Approved Short-time Compensation Plan

An employer may request a modification of an approved plan by filing a written request to the Director. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The Director shall approve or disapprove the proposed modification in writing within days of receipt and promptly communicate the decision to the employer.

The Director, in his or her discretion, may approve a request for modification of the plan based on conditions that have changed since the plan was approved provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the Director must promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

An employer is not required to request approval of a plan modification from the Director if the change is not substantial, but the employer must report every change to the plan to the Director promptly and in writing. The Director may terminate an employer's plan if the employer fails to meet this reporting requirement. If the Director determines that the reported change is substantial, the Director shall require the employer to request a modification to the plan.

G. Eligibility for Short-Time Compensation

An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

(1) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed.

(2) Notwithstanding any other provisions of this Act relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the Director such as employer-sponsored training or training funded under the Workforce Investment Act of 1998.

(3) Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

H. Benefits

1. The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

2. An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than 52 weeks under a short-time compensation plan.

3. The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that individual's benefit year.

4. Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

5. The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan.

   (a) If combined hours of work in a week for both employers does not result in a reduction of at least 10 percent (or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation benefit as provided in State law) of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to benefits under these short-time compensation provisions.

   (b) If the combined hours of work for both employers results in a reduction equal to or greater than 10 percent (or, if higher, the minimum percentage reduction required to be eligible for a short-time

compensation benefit as provided in state law) of the usual weekly hours of work for the short-time compensation employer, the short-time compensation benefit amount payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10 percent (or, if higher, the minimum percentage reduction required to be eligible for a short-time compensation benefit as provided in state law) or more of the individual's usual weekly hours of work. A week for which benefits are paid under this provision shall be reported as a week of short-time compensation.

(c) If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in 1 of this section.

6. An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which they would otherwise be eligible.

7. An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

I. Charging Short-Time Compensation Benefits

Short-time compensation shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under the State law. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.[1]

[1] For a limited time period, as discussed in UIPL No. 22-12, a state may relieve an employer of charges or not require reimbursement for STC benefits if they are subject to 100 percent reimbursement by the Federal government.

J. Extended Benefits

An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided under the provisions of section __ , and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

II. Commentary on Draft Language for a Short-Time Compensation Program

A State is not required to operate a short-time compensation or "STC" program. However, if it does so, the program must be consistent with the requirements of Section 3306(v) of the Federal Unemployment Tax Act (FUTA) as added by The Layoff Prevention Act of 2012 (Subtitle D of Title II of Public Law (Pub. L.) 112-96). Section 3306(v), FUTA, provides the criteria that a State must follow to assure that approval of an STC plan is consistent with Federal requirements. The model legislation incorporates those criteria and identifies provisions that are necessary to implement state STC programs. The implementation provisions address eligibility conditions, criteria for approval and revocation of STC plans, and entitlement of individuals who work in the employ of employers other than the STC employer.

States may need to change various provisions of the model legislation in order to meet their own statutory formats and requirements. Any substantive modifications or additions must, however, be consistent with requirements of the FUTA and Title III of the Social Security Act. Additionally, states should examine whether the provisions of State law relating to withdrawal of money from the unemployment fund include authorization to withdraw money to pay STC benefits. States may need to update such provisions if the provisions limit the withdrawal to pay STC under the authority of either Section 194 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) or Section 401 of the Unemployment Compensation Amendments of 1992 (Pub. L. 102-318).

The following is a section by section commentary on the provisions contained in the model legislation.

A. Definitions

1. Affected Unit – The employer must identify the affected unit to which the application to participate in the STC plan applies to help the Director administer the plan. Since the employer must certify that its application to participate in the STC program is in lieu of making temporary or permanent "layoffs" within the affected unit, then the affected unit must, at a minimum, include two workers. However, for purposes of the State STC program, a State may

choose to increase the minimum number of workers in an affected unit to a higher number, and the blank in the model language is intended to afford some flexibility for the State. However, a State should not set such a high minimum number that would inhibit meaningful participation of the state employers in the STC program.

2. Director - The state official with oversight responsibility for the unemployment compensation program, or the designate of the official, with authority to approve an STC application.

3. Health and Retirement Benefits – The term refers to health benefits and retirement benefits under specific types of pension plans identified in the section 3306(v), FUTA definition by reference to the IRC. The requirements in connection with these benefits are described fully in the requirements for the plan application.

4. Short-Time Compensation (STC) – The term refers to a payment made to workers who are working reduced hours under an STC plan, and the payment is different from regular unemployment compensation in the amount payable and the conditions of entitlement.

5. Short-Time Compensation Plan (STC Plan) – The term refers to a plan approved by the Director when an employer requests approval for the payment of STC to employees within an affected unit of the employer when the employer reduces the hours of work in the affected unit in lieu of "layoffs." The layoffs may be temporary or permanent.

6. Usual Weekly Hours of Work – The usual hours of work of full-time and regular part-time workers in the affected unit. Overtime hours are not included as part of usual weekly hours of work.

   The model language specifically includes regular part-time workers as individuals in an affected unit who may be included as participants in an approved STC plan. These part-time workers must be regular employees of the employer who normally work part-time hours as distinguished from part-time workers who work on a seasonal, temporary or intermittent basis. A state STC law may not limit participation only to full-time workers.

7. Unemployment compensation (UC) – The term is used here solely for purposes of distinguishing benefits paid under the regular unemployment compensation program from those paid under the STC program. It applies to any regular, extended, or additional

unemployment compensation payable under State law, and any amounts payable in accordance with agreements between the State and the Secretary of Labor under any Federal unemployment compensation law. The distinction made here does not alter the designation of STC as a form of unemployment compensation for other applicable purposes.

B. Applications to Participate in the Short-Time Compensation Program

This section prescribes the content of an STC plan application under the requirements of Section 3306(v), FUTA:

1. The application must require the employer to describe the affected unit(s) in enough detail so that the Director may properly administer such claims. For example, both of the following are acceptable: Plant A at 123 Walnut Street; the finishing department at Plant A, 123 Walnut Street.

   The employees covered by the plan need to be identified so that their claim records can be distinguished from non-STC plan claimants employed by the same employer. STC plan claimants will be entitled to a different weekly benefit amount than regular claimants. The number of weeks for which STC benefits are payable and the expiration date of the plan must be noted.

2. Section 3306(v)(8), FUTA, requires that an application to participate in an STC plan include "a plan for giving advance notice, where feasible, to an employee whose usual weekly hours of work is to be reduced ...." If all of the employees in an affected unit are covered by the same collective bargaining agreement, a description of how notice will be provided to the collective bargaining representative will suffice. However, if the affected unit includes members not covered by a collective bargaining agreement, the employer must include in the application a description of how the employer will provide notice of the plan to those workers.

   Although the Department anticipates that employers will provide the required notice, if advance notification to the workers is not considered feasible by the employer, a detailed explanation must be provided in the application.

3. The application shall require the employer to specify the specific percentage of reduction in hours worked by the affected employees. The range of reduction that a state will approve in a STC plan must be in accord with the Section 3306(v)(3), FUTA,

requirement that an STC plan is one where the workers hours are reduced by at least 10 percent but no more than 60 percent.

A State law may specify a narrower range of the reduction in the usual hours of work that it will approve an STC plan. For example, a state may change the range of reduction in the hours of work from 20 percent to 50 percent.

4. The certification in the application relating to the continued provision of health and retirement benefits implements Section 3306(v)(7), FUTA, which requires an employer to certify that "if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) [of the Internal Revenue Code] or contributions under a defined contribution plan (as defined in section 414(i)) to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program."

   The employer may not reduce the health or specified retirement benefits to individuals participating in the STC program. However, this provision does not apply if a reduction in such health and specified retirement benefits applies to all employees, and is not limited to STC participants.

   The employer may not reduce health insurance benefits it provides to employees in the affected unit based upon the reduction in hours that is part of the employer's participation in the plan.

   The following two paragraphs of this commentary provide general information about retirement plans and are not intended to be a comprehensive statement of the complex laws on retirement plans.

   In general, a defined contribution retirement plan is a retirement investment account. Section 414(i) of the Internal Revenue Code defines such a contribution plan as "a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants may be allocated to such participant's account."

   In general, a defined benefit retirement benefit plan (as defined in

Section 414(j) of the Internal Revenue Code) is not a contribution plan but one where the monthly retirement benefit amount is determined based on a computation formula specified in the plan. The retirement benefit is "defined" because the formula for computing benefits is known in advance of retirement and it is not contingent on investment income.

5. As part of any approval of an employer to participate in an STC program, the state must verify that the application includes a certification by the employer that maintains a retirement plan (either a defined benefit plan or a defined contribution plan) for an employee who has a reduction in the usual weekly hours of work under the employer's proposed plan that benefits (in the case of a defined benefit plan) and employer contributions (in the case of a defined contribution plan) will continue to be provided to the employee under the same terms and conditions as though the employee's usual weekly hours of work were not reduced.

   For purposes of granting approval of the STC plan, employees participating in the employer's STC plan must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the STC plan. The hours that were reduced under the STC plan must be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation

   The certification by the employer that that the aggregate reduction in work hours is in lieu of layoffs, coupled with the requirement for the employer to estimate the number of workers who would have been laid off in the absence of the STC plan, is intended to demonstrate that the STC plan will be used solely to avert layoffs. The estimate of the numbers of averted layoffs also is needed for the states to be able to fulfill the reporting requirement of the Act, which section 2165(a)(3)(A) of the Layoff Prevention Act of 2012 requires the Secretary of Labor to establish.

   The term "layoffs" in the model legislation, as used in the sentence that the application include a certification by the employer that the aggregate reduction in hours under the STC plan is "in lieu of layoffs", means the temporary or permanent layoff of employees within an affected unit. Previously, Federal law required the employer to request approval to implement an STC plan only when the layoffs made by the employer in the absence of

an STC plan would have been on a "temporary" basis. There no longer is any Federal requirement for the employer to determine that the layoffs within the affected unit would have been temporary when applying to participate in the state STC program and the state may not limit approval to plans that are in lieu of temporary layoffs.

6. The required agreement by the employer to furnish reports to the Director is intended to address the potential need to examine company records if needed in order to approve an application in accordance with the provisions of the Act. Additionally, access to employer records may be necessary to determine whether the plan is operating as approved or whether approval should be revoked.

7. The STC employer must attest that participation in the plan is consistent with its obligations under Federal and State laws.

8. The application must include a date that the employer proposes to begin the plan and a date when it proposes to end the plan.

9. The application must include any other provisions added by the Director that are included in the State law and, pursuant to a request from the State, have been determined by the Secretary of the United States Department of Labor to be appropriate for an STC plan.

C. Approval and Disapproval of the Plan

The Act must specify the period of time for the Director to approve or disapprove a plan. This requirement is intended to facilitate prompt implementation of an approved STC plan by an employer.

If the STC plan is disapproved, the Director must specify the reason(s) for disapproval. These are good administrative practices, and informing the applicant-employer of the reason(s) for the plan's disapproval provides the employer the opportunity to remedy them in a revised application if the employer wishes to reapply to participate in the STC program.

If a state chooses to provide for administrative appeal by the employer-applicant, the model provision for approval or disapproval of a plan should be modified to provide for appeal rights under the current administrative review provisions of its State law.

The model language provides for the establishment of a minimum period of time before an employer whose application has been rejected may submit another plan. The intent is to preclude a hasty second submission

without adequate correction of the reason(s) causing disapproval of the earlier plan, but States may consider limiting such period to the minimum necessary to meet that intent in order to encourage participation in the STC program.

D. Effective Date and Duration of Plan

Both the employer and the agency need time to prepare for implementation of the plan once it is approved. Therefore, the effective date of the plan will be determined by agreement between the employer and the Director and the mutually agreed upon effective date will be included in the notice of approval to the employer.

The needs of employers and employees, and economic conditions may change dramatically in one year's time and developing a plan for multiple years that effectively forecasts such needs and conditions is extremely difficult. Accordingly, the model legislation limits the approval of an STC plan to no longer than a 12-month period. At the end of such period, an employer may submit a new STC plan and the Director can review it based upon current economic conditions.

Since participation in an STC plan is voluntary, an employer may terminate a plan at any time but must send written notice to the Director of the termination. The Director will then promptly notify workers covered by the STC plan of the termination of the plan by the employer. Just as the plan is required to indicate how employees will be notified when their hours will be reduced under the plan, the employer should also notify employees of the termination of the plan.

E. Revocation of Approval

The model language would provide the Director with the authority to revoke approval of the STC plan based on good cause, including the failure to comply with assurances provided in the plan such as that the aggregate reduction in hours is in lieu of layoffs. This provision authorizes the Director to periodically monitor the operation by the employer of the approved plan to assure no good cause exists for revocation.

F. Modification of an Approved Plan

An employer may seek modifications to an approved short-time compensation plan. For example, the conditions under which a plan was initially submitted and approved may change. These provisions permit such revisions under specified conditions. A State may, on the other hand, prefer to require the submission and approval of a new plan in lieu of plan modifications. If this approach is chosen, these provisions will need to be

changed accordingly.

If a modification is desired, an employer must identify the provisions to be modified and explain why the modifications are necessary and consistent with the purposes for which the plan was approved. The Director is to evaluate this information and may approve or deny the request for modification.

For example, economic conditions might improve, and the employer may wish to increase the workers' hours. If the state STC law permits a reduction of hours between 10 percent and 60 percent and the plan was approved based on a 30 percent reduction in hours, the employer may subsequently request instead a 15 percent reduction of hours in the affected unit.

Conversely, an employer may request to modify an STC plan because economic conditions have worsened for the employer. If an STC plan was initially approved based on an estimate that 5 layoffs will be avoided if there is a 25 percent reduction in hours by the employees in the affected unit, but the employer's business suffers more losses than expected, the employer may request a modification to avert the layoff of additional members of the affect unit by increasing the percentage of reduction of the number of hours worked by individuals in the affected unit.

In addition, the Director may be asked to modify an STC plan when one employer submitted the application and there has been a sale or succession of the business to a different employer. The Director may require the new employer to submit a new application or the Director may permit the new employer to modify the approved STC plan to substitute it as the employer if the substitution is consistent with the purposes for which the plan was approved. The substituted employer must agree to abide by all the terms of the approved plan.

If a modification to a plan is not substantial, then a formal process of approval may not be necessary. For example, if an employee in the affected unit finds a new job and separates from the employer, the plan would not generally have to be formally modified in order for the employer to remove the employee's name from the plan. In addition, an unexpected one week reduction in hours may not require a modification. For example, if the plan requires a 25 percent reduction in hours of workers in the affected unit, the employer would not necessarily be required to request a modification to the plan to reduce the hours worked by a greater percentage (but no more than 60 percent) for only one week during the term of the plan.

However, the employer must promptly notify the Director of this temporary deviation from the terms of the approved plan. If the Director determines such change to be substantial, the Director shall require that the employer submit a formal request to the Director for approval of the modifications.

G. Eligibility for Short-Time Compensation

To qualify for STC, an individual must meet certain eligibility requirements for regular UC. The model language provides that an individual must be monetarily eligible for unemployment compensation and not otherwise disqualified. Among these requirements are the wage qualification requirement, disqualification provisions, waiting period and modified claim filing and reporting procedures.

In addition to the requirements applicable to regular UC, the model language specifies a number of other eligibility requirements that are specific to STC.

First, the individual must be employed in the affected unit identified under an approved STC plan, and may be eligible for benefits only for those weeks in which the plan is in effect.

Second, notwithstanding the able to work, available for work, and work search requirements that would otherwise be applicable under regular UC, the individual may be eligible for STC for any week during the approved STC plan that the individual is available for their usual weekly hours of work with the STC employer. The hours an individual participates in training approved by the Director (which may include employer-provided training or training funded under the Workforce Investment Act) will be credited towards the availability of an individual for the usual weekly hours.

Third, notwithstanding the definition of unemployment in the State law which would not permit an STC employee to be deemed unemployed because of the amount of services performed and wages earned, an individual may be eligible for STC if the individual receives remuneration in accordance with the reduction in the usual weekly hours of work specified in the STC plan. However, as further explained in Section H -6 below, an STC employee who works for another employer in addition to the hours worked for the STC employer in the same week may not be eligible for STC depending on the number of hours worked.

H. Benefits

1. The STC weekly benefit amount is the product of the unemployment compensation weekly benefit amount for a week of total unemployment multiplied by the percentage by which the usual weekly hours of work are reduced as long as the usual weekly hours of work are reduced in accordance with the reduction in the usual weekly hours of work specified in the approved short-time compensation plan. This STC weekly benefit amount is payable for each week for which the claimant is otherwise eligible, regardless of the individual's earnings and the deductible income provisions under State law.

   Example A: The weekly benefit amount is $100 based on usual hours of work and earnings of $200. The STC plan provides for a 30 percent reduction in weekly hours and the STC weekly benefit amount is $30. An individual in the affected unit who works the reduced hours with the STC employer will be paid pro rata wages of $140 and the STC weekly benefit amount of $30.

   Example B: The weekly benefit amount is $100 based on *usual hours of work* and earnings of $200. The STC plan provides for usual weekly hours of work to be reduced by 30 percent and the STC weekly benefit amount to be $30. However, an individual in the affected unit works the same reduced hours with the STC employer but the *earnings* for that week are variable as a result of a raise or *other compensation* from the employer and results in pro rata wages of $155. The individual will still receive the STC weekly benefit amount of $30 because the STC benefit is based on the portion of reduced hours and not the weekly earnings.

2. An individual may be eligible for STC or regular UC, as appropriate, but the maximum benefit amount for the combination of STC and UC is the total amount of UC an individual is entitled to collect when a claim is filed and a benefit year is established.

   For example, if individuals are eligible for 26 weeks of regular UC and an STC plan permits the payment of 52 weeks of STC based on a percentage of reduction in hours greater than 50 percent an individual will exhaust the entitlement to STC in fewer than 52 weeks since the individual is subject to the maximum benefit amount for regular UC. If individuals are eligible for less than 26 weeks of regular UC, in this scenario, they would be eligible for even fewer weeks of STC payments.

3. STC payments must be deducted from the maximum amount an individual may receive in regular unemployment compensation

during a benefit year.

4. Claims for STC benefits may, in general, follow the procedures for regular UC. Special procedures to reflect unusual situations should be adopted for STC claims as they are for unemployment compensation claims in special situations. The Director may suitably modify procedures to promote the efficient processing of STC claims.

   State law eligibility and disqualification provisions and claim filing requirements that apply to regular UC claimants may apply or may be modified to apply to STC claimants. The availability and actively seeking work requirements and the partial benefit provisions do not, however, apply except to the extent prescribed under the STC program eligibility requirements. Thus, it does not matter whether the employee's usual weekly hours of work for the STC employer was 40 hours, or the worker was working a permanent part time schedule and the usual weekly hours of work was less than 40 hours before the STC plan was in effect. The following provisions address situations where workers have employment with employers (either on a part time or full time basis) in addition to the STC employer.

5. The following provisions address situations where workers have employment with employers (either on a part time or full time basis) in addition to the STC employer.

   (a) When an individual works for an STC employer and another employer, and the combined work hours exceed the percentage of the usual weekly hours of work with the STC employer specified in the STC plan, the individual is not entitled to STC or regular UC because there is no reduction in the usual hours of work.

   For example, in an STC plan, the hours of an individual in full-time work for the STC employer are reduced from 40 to 32. The individual also works 10 hours with another employer. Since the combined hours of work (42) exceed the individual's usual hours of work with the STC employer, there is no STC benefit entitlement.

   (b) When an individual works for an STC employer and another employer, and the combined work hours is equal to a reduction of at least 10 percent (or, if higher, the minimum reduction required to be eligible for an STC benefit under State law) of the individual's usual weekly hours of work with the STC employer, the individual is eligible for a reduced STC benefit calculated

based on the combined percentage reduction below the usual weekly hours of work with the STC employer.

For example, in an STC plan, the affected unit consists of individuals who work full-time and the plan is approved for a 20 percent reduction in hours from 40 hours to 32 hours by the STC employer. Workers in the affected unit who only work for the STC employer will be paid a STC benefit equal to the 20 percent reduction in hours multiplied by the amount of UC payable if the individuals were totally unemployed.

If the individual has combined work of 4 hours with another employer, the combined hours of work would be 36 hours, which is 10 percent less than the usual weekly hours of work of 40 hours with the STC employer. Since the percentage reduction of combined hours of work is less than the individual's usual hours of work with the STC employer, the STC benefit is reduced to an amount equal to the 10 percent reduction multiplied by the amount of UC payable if the individuals were totally unemployed.

An individual may not be paid a reduced STC benefit that is below the minimum range of reduction in hours permitted in the State STC law.

6. If an individual has concurrent employment with an STC employer and another employer, and is not provided any work for either employer during a week covered by the STC plan, the individual is eligible for the full amount of regular UC to which he or she would otherwise be eligible. Such week is reported as a week of regular UC and not as a week of STC.

7. If an individual has concurrent employment with an STC employer and another employer, and the STC employer does not provide any work during a week covered by a plan but the individual works for the other employer and is determined eligible for regular UC under the provisions of State law governing partial unemployment, then that week is reported as a week of regular UC and not as a week of STC.

I. Charging Short-Time Benefits

Federal law permits states to reduce employers' state unemployment tax rates from a "standard" rate only on the basis of their "experience with respect to unemployment or other factors bearing a direct relation to unemployment risk..." (Section 3303(a), FUTA). As states generally measure employers' experience with unemployment through UC

payments made to their former employees, states charge UC benefits (including STC) to employers' accounts when unemployment is in the direct or indirect control of the employer, or when the unemployment is due to general economic, trade, or other business reasons. Similarly, Federal law provides that employers who opt to reimburse UC benefits (including STC) rather than pay experience-rated state unemployment taxes must reimburse "the amounts of compensation attributable under the State law to such service" (Section 3309(a)(2), FUTA). Therefore, the Department requires states to require reimbursing employers to reimburse the STC costs attributable to the service for these employers.

However, if the Federal Government reimburses the state for STC payments made to an STC employer's workers under the Layoff Prevention Act of 2012, a state may choose not to charge or require reimbursement, for the STC benefits that are reimbursed by the Federal government. If a state chooses to do so, it must so provide in its STC law. This option is fully discussed in UIPL No. 22-12. Because Federal reimbursement is temporary, no model language is provided for this provision.

J. Extended Benefits

For purpose of the extended benefits program required under the provisions of the Federal-State Extended Unemployment Compensation Act of 1970, any STC received by an individual is considered to be "regular compensation" as the term is used under that Act. Consequently, an individual who has received all of the STC or combined short-time and UC payments that are available in a benefit year would be an "exhaustee," entitled to extended benefits if otherwise eligible. Such extended benefits must be charged or noncharged in the same manner and to the same extent as extended benefits paid to an exhaustee of unemployment compensation and to the same extent as extended benefits are attributed or non-attributed to a reimbursing employer.

K. Optional Provisions.

Section 3306(v)(10), FUTA, provides that "upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program."

This is a new provision intended to give states the flexibility to include, upon state request and approval by the Secretary, additional STC requirements if the Secretary determines they are appropriate for an STC program. Many state STC laws currently contain additional requirements for employer or employee participation in the STC program. Some of

these provisions were part of the model legislation previously issued by the Secretary of Labor. Others were added to state STC laws after the guidance providing the previous model language expired.

We have reviewed these provisions. Many of them are common in state STC laws and are not inconsistent with the specific requirements of an STC program under Section 3306(v)(1) through (9), FUTA. Accordingly, the following optional provisions are pre-approved under Section 3306(v)(10), FUTA. States are not required to keep or include these provisions in their state STC laws as a conformity requirement. However, if a state law currently contains these provisions, or a state adds them in a new enactment, they will present no conformity issue.

We are not providing model legislative language for optional provisions. However, we provide below generic examples of state laws containing these provisions. Additionally, a state wishing to add these provisions may request individual technical assistance from the Department of Labor or consult with other states that have such provisions in their STC laws before adding them to any new state STC law.

1. A requirement that, if the affected unit is covered by a collective bargaining agreement, the bargaining representative must agree to the plan.

   An affected unit may include employees covered by a collective bargaining agreement, or more than one collective bargaining agreement. Depending on the variety of skills of the workers in an affected bargaining unit, there may be more than one individual craft union agreement or single industrial union type of agreement. A state STC law may require agreement by the collective bargaining representative(s) involved to ensure that both labor and management are satisfied with the plan and to minimize possible problems in connection with implementation of the plan.

   Example of a state law containing this provision, as well as the mandatory notice provision:

   A.- The employer certifies that it has obtained the approval of any applicable collective bargaining unit representative and has notified all affected employees who are not in a collective bargaining unit of the proposed short-time compensation plan.

2. A requirement that the employer provide assurances to the Director that it will not hire new employees in the affected unit during the term of the plan.

Since an STC plan involves the reduction in hours of members in the affected unit in lieu of layoffs, it is appropriate for an employer to restore the hours of members of the affected unit to the levels that existed before the beginning of the plan before hiring new personnel in the affected unit when business activity increases for that employer.

Example of a state law containing this provision:

A.- The employer certifies that it will not hire additional part-time or full-time employees for the affected work force while the program is in operation.

B.- The employer provides assurances that it will not hire new employees in, or transfer employees to, the affected unit during the effective period of the short-time compensation plan.

3. Limitations on tenure of workers in affected unit in an STC plan.

As specified in the model language, a state may require that an affected unit contain a reasonable minimum number of employees (but not fewer than 2). These limitations on the size of an affected unit are intended to reduce problems of administering numerous plans, each for relatively few workers. Any size limitation should take into consideration the benefits of layoff aversion and must not be so large as to limit effective participation in STC programs by a state's employers or to exclude all but the largest employers in a state.

Additionally, some state STC laws contain a limitation that workers in the affected unit must be regularly employed by the employer and require that each worker in the affected unit previously have worked some specified number of hours or weeks for the employer. This limitation is appropriate because an STC plan is not intended to address seasonal variations in economic activities which are an inherent part of the industry or occupation. Therefore, a state may exclude from participation in an STC plan workers who are seasonal, temporary or intermittent employees.

4. A limitation that the STC plan is being implemented to avoid the layoffs of a certain minimum percentage of workers in the affected unit.

Since STC plans are implemented in lieu of layoffs, it is appropriate for a state to require the employer to specify that implementation of the plan will avert the layoffs of a minimum

percentage of members of the affected unit. Requiring the employer to demonstrate that the plan will avert the layoff of a certain minimum percentage of workers in the affected unit allows the state to make a proper evaluation of the effectiveness of the plan as a true layoff aversion strategy.

Examples of state STC laws containing this provision:

A.- The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours. The plan applies to at least 10 percent of the employees in the affected unit.

B.- The employer's certification that the implementation of a short-time compensation plan is in lieu of layoffs that would affect at least 15 percent of the employees in the affected unit and would result in an equivalent reduction in work hours.

5. A prohibition against STC plan participation by employers who are delinquent in the payment of contributions, penalties or interest.

It is appropriate for a state to limit participation in the STC program to only those employers who are meeting their obligations under State law, and who are not delinquent in the payment of taxes, penalties, or interest to ensure that there is not a negative impact on the state's account in the unemployment trust fund so the Director can properly administer the UC program in the state.

Example of a state STC law containing this provision:

A. - A short-time compensation plan will only be approved for an employer that meets all of the following requirements:

B. - The employer has filed all quarterly reports and other reports required under this act and has paid all obligation assessments, contributions, reimbursements in lieu of contributions, interest, and penalties due through the date of the employer's application.