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SENATE DRS45233-LR-80 (03/10)

Short Title: UI/Work Sharing Options for Employers. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A WORK SHARING OPTION FOR EMPLOYERS UNDER THE
3 UNEMPLOYMENT SECURITY LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Effective July 1, 2015, Chapter 96 of the General Statutes is
6 amended by adding a new Article to read:

7 "Article 4.

8 "Short-Time Compensation Program.

9 "§ 96-40. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Affected unit. – A specific plant, department, shift, or other definable unit of
12 an employing unit that has a least two employees to which an approved
13 short-time compensation plan applies.
- 14 (2) Approved short-time compensation plan. – A plan that is approved by the
15 Division as provided by this Article.
- 16 (3) Health and retirement benefits. – Employer-provided health benefits and
17 retirement benefits under a defined benefit pension plan as defined in section
18 414(j) of the Internal Revenue Code, contributions under a defined
19 contribution plan as defined in section 414(i) of the Internal Revenue Code
20 or that are incidents of employment in addition to the cash remuneration
21 earned.
- 22 (4) Program. – Short-time compensation program established pursuant to this
23 Article.
- 24 (5) Short-time compensation. – The unemployment benefits payable to
25 employees in an affected unit under an approved short-time compensation
26 plan, as distinguished from the unemployment benefits otherwise payable
27 under the unemployment compensation provisions of State law.
- 28 (6) Short-time compensation plan. – A plan submitted by an employer for
29 approval by an affected unit of the employer to avert layoffs.
- 30 (7) Unemployment compensation. – The unemployment benefits payable under
31 this Article other than short-time compensation and includes any amounts
32 payable pursuant to an agreement under any federal law providing for
33 compensation, assistance, or allowances with respect to unemployment.
- 34 (8) Usual weekly hours of work. – The usual hours of work for full-time or
35 part-time employees in the affected unit when that unit is operating on its



regular basis, not to exceed 40 hours and not including hours of overtime work.

"§ 96-41. Application to participate in short-time compensation program.

(a) An employer that wishes to participate in the Program shall submit to the Division a signed, written short-time compensation plan for approval. The Division shall develop an application form to request approval of a 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 the unit, 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 plan participants.
- (2) A description of how workers in the affected unit will be notified of the employer's participation in the plan if the 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 the 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 overall work reduction for which a short-time compensation application may be approved, which shall be not less than ten percent (10%) and not more than sixty percent (60%) of the usual work hours during that period. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then the week shall be identified in the application. Notwithstanding the other provisions of this subdivision, an employer shall be allowed some weeks of complete plant shutdown in appropriate industries or given certain modes of operation.
- (4) Certification by the employer that, if the employer provides health benefits and retirement benefits to any employee whose usual weekly hours of work are reduced under the Program, the benefits will continue to be provided to employees participating in the Program under the same terms and conditions as though the usual weekly hours of the employee had not been reduced or to the same extent as other employees not participating in the Program. For defined benefit retirement plans, the hours that are reduced under the 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 due less to the reduction in the employee's compensation. However, 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 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, whether temporary or permanent layoffs or both.
- (6) Agreement by the employer to (i) furnish reports to the Division relating to the proper conduct of the plan, (ii) allow the Division access to all records necessary to approve or disapprove the plan application and, after approval

1 of the plan, monitor and evaluate the plan, and (iii) follow any other
2 directives the Division deems necessary for the agency to implement the
3 plan and that are consistent with the requirements for plan applications.

4 (7) Certification by the employer that participation in the plan and its
5 implementation is consistent with the employer's obligations under
6 applicable federal and State laws.

7 (8) The effective date and duration of the plan, which shall expire no later than
8 the end of the 12th full calendar month after the effective date.

9 (9) Any other provision added to the application by the Division that the U.S.
10 Secretary of Labor determines to be appropriate for purpose of this Program.

11 (b) Regarding employers in appropriate industries or that have certain modes of
12 operation, and only if the employer demonstrates good cause, the Division may allow
13 flexibility in the application process in cases where it is reasonable not to require specific dates
14 and hours in the application, notwithstanding the provisions of subsection (a) of this section.

15 **"§ 96-42. Approval and disapproval of plan.**

16 The Division shall approve or disapprove a short-time compensation plan in writing within
17 30 days of its receipt and promptly communicate the decision to the employer. A decision
18 disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval
19 shall be final, but the employer shall be allowed to submit another plan for approval not earlier
20 than 90 days from the date of the disapproval.

21 **"§ 96-43. Effective date and duration of plan.**

22 A short-time compensation plan shall be effective on the date that is mutually agreed upon
23 by the employer and the Division, which shall be specified in the notice of approval to the
24 employer. The plan shall expire on the date specified in the notice of approval, which shall be
25 either the date at the end of the 12th full calendar month after its effective date or an earlier date
26 mutually agreed upon by the employer and the Division. However, if a short-time
27 compensation plan is revoked under G.S. 96-44, the plan shall terminate on the date specified
28 in the Division's written order of revocation. An employer may terminate a plan at any time
29 upon written notice to the Division. Upon receipt of notice from the employer, the Division
30 shall promptly notify each member of the affected unit of the termination date. An employer
31 may submit a new application to participate in another plan at any time after the expiration or
32 termination date.

33 **"§ 96-44. Revocation of approval of plan.**

34 (a) The Division may revoke approval of a short-time compensation plan for good
35 cause at any time. The revocation order shall be in writing and shall specify the reasons for the
36 revocation and the date the revocation is effective. The Division shall state clearly the reasons
37 for the revocation.

38 (b) The Division may periodically review the operation of each employer's plan to
39 assure that no good cause exists for revocation of the approval of the plan. Good cause shall
40 include, but not be limited to, failure to comply with the assurances given in the plan,
41 unreasonable revision of productivity standards for the affected unit, conduct or occurrences
42 tending to defeat the intent and effective operation of the plan, and violation of any criteria on
43 which approval of the plan was based.

44 **"§ 96-45. Modification of approved plan.**

45 (a) An employer may request a modification of an approved plan by filing a written
46 request to the Division. The request shall identify the specific provisions proposed to be
47 modified and provide an explanation of why the proposed modification is appropriate for the
48 plan. The Division shall approve or disapprove the proposed modification in writing within 30
49 days of receipt and promptly communicate the decision to the employer.

50 (b) The Division, in its discretion, may approve a request for modification of the plan
51 based on conditions that have changed since the plan was approved, provided that the

1 modification is consistent with and supports the purposes for which the plan was initially
2 approved. A modification shall not extend the expiration date of the original plan, and the
3 Division shall promptly notify the employer whether the plan modification has been approved
4 and, if approved, the effective date of modification.

5 (c) An employer is not required to request approval of a plan modification if the change
6 is not substantial, but the employer shall report every change to the plan to the Division
7 promptly and in writing. The Division may terminate an employer's plan if the employer fails to
8 meet this reporting requirement. If the Division determines that the reported change is
9 substantial, the Division shall require the employer to request a modification to the plan.

10 (d) The Division shall use its best efforts to provide for timely and flexible
11 modifications. The provisions of this section shall be liberally construed so as to provide the
12 most flexibility for employers and the Division in order to carry out the purposes of this
13 Article.

14 **"§ 96-46. Eligibility for short-time compensation.**

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

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

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

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

33 **"§ 96-47. Benefits.**

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

37 (b) An individual may be eligible for short-time compensation or unemployment
38 compensation, as appropriate, except that no individual shall be:

39 (1) Eligible for combined benefits in any benefit year in an amount more than
40 the maximum entitlement established for regular unemployment
41 compensation; and

42 (2) Paid short-time compensation benefits for more than 52 weeks under a plan.

43 (c) The short-time compensation paid to an individual shall be deducted from the
44 maximum entitlement amount of regular unemployment compensation established for the
45 individual's benefit year.

46 (d) Provisions applicable to unemployment compensation claimants shall apply to
47 short-time compensation claimants to the extent that they are not inconsistent with the
48 Program's provisions. An individual who files an initial claim for short-time compensation
49 benefits shall receive a monetary determination.

1 (e) The following provisions apply to individuals who work for both a short-time
2 compensation employer and another employer during weeks covered by the approved
3 short-time compensation plan:

4 (1) If combined hours of work in a week for both employers do not result in a
5 reduction of at least ten percent (10%) or, if higher, the minimum percentage
6 of reduction required to be eligible for a short-time compensation benefit as
7 provided in this title, of the usual weekly hours of work with the short-time
8 employer, the individual shall not be entitled to benefits under these
9 short-time compensation provisions.

10 (2) If the combined hours of work for both employers results in a reduction
11 equal to or greater than ten percent (10%) or, if higher, the minimum
12 percentage reduction required to be eligible for a short-time compensation
13 employer, the short-time compensation benefit amount payable to the
14 individual is reduced for that week and is determined by multiplying the
15 weekly unemployment benefit amount for a week of total unemployment by
16 the percentage by which the combined hours of work have been reduced by
17 ten percent (10%) or, if higher, the minimum percentage reduction required
18 to be eligible for a short-time compensation benefit as provided in this title,
19 or more of the individual's usual weekly hours of work. A week for which
20 benefits are paid under this subdivision shall be reported as a week of
21 short-time compensation.

22 (3) If an individual worked the reduced percentage of the usual weekly hours of
23 work for the short-time compensation employer and is available for all his or
24 her usual hours of work with the short-time compensation employer, and the
25 individual did not work any hours for the other employer, either because of
26 the lack of work with that employer or because the individual is excused
27 from work with the other employer, the individual shall be eligible for
28 short-time compensation for that week. The benefit amount for the week
29 shall be calculated as provided in subsection (a) of this section.

30 (f) An individual who is not provided any work during a week by the short-time
31 compensation employer, or any other employer, and who is otherwise eligible for
32 unemployment compensation shall be eligible for the amount of regular unemployment
33 compensation to which the individual would otherwise be eligible.

34 (g) An individual who is not provided any work by the short-time compensation
35 employer during a week, but who works for another employer and is otherwise eligible, may be
36 paid unemployment compensation for that week subject to the disqualifying income or other
37 provision applicable to claims for regular compensation.

38 **"§ 96-48. Changing short-time compensation benefits.**

39 Short-time compensation shall be charged to employers' experience rating accounts in the
40 same manner as unemployment compensation is charged under this Chapter. Employers liable
41 for payments in lieu of contributions shall have short-time compensation attributed to service in
42 their employ in the same manner as unemployment compensation is attributed.

43 **"§ 96-49. Extended benefits.**

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

48 **"§ 96-50. Severability.**

49 If any provision of this Article is found by the U.S. Department of Labor to be in violation
50 of federal law, the finding shall render the provision of this Article inoperative, but the finding

1 shall invalidate the remaining provisions of this Article and is confined in its operation to the
2 specific provision found to be in violation of federal law."
3

SECTION 2. This act is effective when it becomes law.