

ENROLLED ACT NO. 15, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

AN ACT relating to labor and employment; establishing a short time compensation program within the department of workforce services; specifying duties for the director of the department of workforce services; providing for administration of the program; specifying requirements for employer program enrollment and employee benefits; authorizing rulemaking; authorizing the department of workforce services to seek and receive federal funds as specified; authorizing a position; requiring reporting; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 27-3-801 through 27-3-811 are created to read:

ARTICLE 8
SHORT TIME COMPENSATION PROGRAM

27-3-801. Definitions.

(a) As used in this article:

(i) "Affected unit" means a specified plant, department, shift or other definable unit of an employer that includes two (2) or more employees to which an approved short time compensation plan applies;

(ii) "Director" means the director of the department of workforce services or the director's designee responsible for approving applications for participation in a short time compensation plan;

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(iii) "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 the Internal Revenue Code that are incidents of employment in addition to the cash remuneration earned;

(iv) "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 benefits otherwise payable under this act;

(v) "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 employees in an affected unit of the employer to avert layoffs;

(vi) "Unemployment compensation" means the 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;

(vii) "Usual weekly hours of work" means the usual hours of work for full-time or part-time employees in the affected unit when that affected unit is operating on the unit's regular basis, not to exceed forty (40) hours and not including hours of overtime work.

27-3-802. Participation in the short time compensation program; director approval.

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(a) An employer seeking to participate in the short time compensation program shall submit a signed written short time compensation plan in a form acceptable to the department for approval by the director. No plan shall be approved under this article unless the employer is in good standing with the department.

(b) The department shall develop an application form for an employer to request approval of a short time compensation plan and an approval process. The director may approve a short time compensation plan only if the plan:

(i) Describes the affected unit covered by the plan, including the number of full-time and part-time employees in the unit and the percentage of employees in the unit covered by the plan;

(ii) Identifies each employee in the affected unit by name, social security number and any other information required by the director to identify the plan participants;

(iii) Provides a description of how employees in the affected unit will be notified of the employer's participation in the short time compensation plan, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer is unable to provide advance notice to employees in the affected unit, the employer shall explain in the application why it is not feasible to provide the notice required under this paragraph;

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(iv) Identifies the usual weekly hours of work for the employer's employees in the affected unit and the specific percentage by which the employees' hours shall be reduced during all weeks covered by the plan. A short time compensation plan shall only be approved if the percentage by which the employees' hours will be reduced is not less than ten percent (10%) and not more than sixty percent (60%). If the plan includes any week for which the employer regularly provides no work then the week shall be identified by the employer;

(v) Certifies that if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the short time compensation plan, the benefits will continue to be provided to employees participating in 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. In addition, the following shall apply:

(A) 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;

(B) A short time compensation plan may satisfy the certification requirement under this paragraph when a reduction in health and retirement benefits

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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.

(vi) Certifies that the aggregate reduction in work hours is in lieu of layoffs. The plan shall include an estimate of the number of employees who would have been laid off in the absence of the short time compensation plan;

(vii) Certifies that the employer agrees to furnish reports to the department relating to the administration of the plan and authorizes the department to access all records necessary for the director to assess a short time compensation plan for approval and to monitor and evaluate the administration of the plan. The employer shall also agree to follow any other directives necessary for the department to implement the plan and which are consistent with the requirements of this article;

(viii) Certifies that the employer's participation in the short time compensation plan and the plan's implementation are consistent with the employer's obligations under applicable federal and state laws;

(ix) Certifies that the plan shall expire not later than the end of the twelfth full calendar month after the effective date of the plan;

(x) Satisfies any other requirements specified by the department that the United States secretary of labor determines to be appropriate for purposes of a short time compensation program.

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27-3-803. Approval of a short time compensation plan.

The director shall approve or deny a short time compensation plan submitted by an employer within thirty (30) days of receipt of the plan and promptly notify the employer of the decision. A decision denying a plan shall clearly identify the reasons for the denial. The director's decision shall be final. An employer whose plan is not approved shall be allowed to submit another short time compensation plan for approval in accordance with rules specified by the commission.

27-3-804. Effective date and duration of the short time compensation plan.

(a) An approved short time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the director. The plan shall expire at the end of the twelfth full calendar month after the plan's effective date or an earlier date proposed in the approved short time compensation plan. The effective date and expiration date of an approved plan shall be specified in a notice of approval provided to the employer by the department.

(b) If a short time compensation plan is revoked by the director under W.S. 27-3-806, the plan shall terminate on the date specified in the director's written order of revocation.

(c) An employer may terminate a short time compensation plan at any time upon written notice to the director as specified by rule of the commission. Upon receipt of such notice from the employer, the director shall promptly notify each employee of the affected unit of

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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 of a previous plan.

27-3-805. Modification of an approved short time compensation plan.

(a) An employer may request a substantial modification of an approved short time compensation plan by submitting a written request to the department. The request shall specify the proposed provisions to be modified and explain why the modification is appropriate. Subject to subsection (b) of this section, the director shall approve or deny in writing the proposed modification within twenty (20) days of receipt and promptly notify the employer.

(b) The director may approve a substantial modification request under subsection (a) of this section based on conditions that have changed since the short time compensation plan was originally approved provided that the modification is consistent with and supports the purposes for which the plan was initially approved. A modification shall not extend the expiration date of the original plan. If the director approves a substantial plan modification request, the effective date of the modification shall be included in the notice provided to the employer.

(c) An insubstantial plan modification shall not require director approval but the employer shall promptly report every change to the plan in writing to the director. If the director determines that the reported change is substantial, the department shall require the employer to submit a substantial plan modification request. The director may revoke an employer's plan if the employer

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fails to meet the reporting requirement under this subsection.

27-3-806. Revocation of short time compensation plan approval.

(a) 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. Good cause shall include an employer's failure to comply with the assurances and certifications given in the employer's plan under W.S. 27-3-802, unreasonable revision of productivity standards for an 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.

(b) Any revocation by the director of a short time compensation plan shall be provided to the employer in writing and shall specify the reasons for the revocation and the date the revocation is effective. A revocation under this section shall be subject to review under the Wyoming Administrative Procedure Act.

(c) The department may periodically review the operation of short time compensation plans to assure that no good cause exists for revocation of approved plans.

27-3-807. Eligibility for short time compensation benefits.

(a) An employee shall only be eligible to receive short time compensation with respect to any week if:

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(i) The employee is monetarily eligible for unemployment compensation;

(ii) The employee is not otherwise disqualified for unemployment compensation;

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

(b) Notwithstanding any other provision of this act relating to an employee's availability for work and actively seeking work, the employee is eligible to receive shared work benefits for a week in which the employee is able to work and is available for additional hours of work or for full-time work with the employee's short time compensation employer. Participating in training as approved by the department to enhance job skills or participating in employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act shall satisfy the requirements of this section.

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

(d) Notwithstanding any other provision of law, an eligible employee shall not be denied short time

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compensation benefits because of any provision of this act that provides requirements concerning:

- (i) Availability for work;
- (ii) Actively searching for work;
- (iii) Any refusal to apply for or accept work with an employer other than the participating employer whose plan is approved under this article.

27-3-808. Benefits.

(a) The short time compensation weekly benefit amount available to employees under an approved plan shall be the product of the employee's regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the employee's usual weekly hours of work.

(b) An employee may be eligible for short time compensation or unemployment compensation except no employee shall be:

(i) Eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation;

(ii) Paid short time compensation benefits for more than fifty-two (52) weeks under a short time compensation plan.

(c) The short time compensation paid to an employee shall be deducted from the maximum entitlement amount of

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regular unemployment compensation established for that employee's benefit year.

(d) Provisions applicable to unemployment compensation claimants under this act shall apply to short time compensation claimants to the extent that they are not inconsistent with W.S. 27-3-801 through 27-3-810. The department shall issue a monetary determination to any employee who files an initial claim for short time compensation benefits.

(e) Employees who work in an affected unit of a short time compensation employer and another employer during weeks covered by the approved short time compensation plan shall be subject to the following:

(i) If the combined hours of work in a week for both employers do not result in a reduction of at least ten percent (10%) of the usual weekly hours of work with the short time employer, the employee shall not be entitled to benefits under the short time compensation plan;

(ii) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent (10%) of the usual weekly hours of work for the short time compensation employer, the short time compensation benefit amount payable to the employee shall be reduced for that week in an amount 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 ten percent (10%) or more of the employee's usual weekly hours of work. A week for which benefits are paid under this paragraph shall be reported as a week of short time compensation;

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(iii) If an employee 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 employee did not work any hours for the other employer either because of the lack of work with that employer or because the employee is excused from work with the other employer, the employee shall be eligible for short time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (a) of this section.

(f) An employee 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.

(g) An employee 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 unemployment compensation.

27-3-809. 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 this act. The department may relieve an employer of charges or not require reimbursement for short time compensation benefits if the benefits are subject to one hundred percent (100%)

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reimbursement by the federal government or as otherwise specified by law.

27-3-810. Extended benefits.

An employee 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 W.S. 27-3-315 and if otherwise eligible under those provisions shall be eligible to receive extended benefits.

27-3-811. Reporting requirements.

Not later than November 1 of each year until November 1, 2026, the department shall report to the joint appropriations committee on the short time compensation program established pursuant to this article. The report shall describe the administration of the short time compensation program, the number of employers participating in the program and the amount of funds that have been expended by the department on the program.

Section 2. W.S. 27-3-102(a)(intro) and (xxv) is amended to read:

27-3-102. Definitions generally.

(a) Except as otherwise provided, as used in this act:

(xxv) "This act" means W.S. 27-3-101 through ~~27-3-706~~ 27-3-811.

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Section 3. In accordance with W.S. 9-2-1005(b)(ii) and (iii) and for the purposes of this act, the department is authorized to apply for, receive and expend any federal funds made available under and subject to any requirements and limitations imposed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. No. 116-136, or from any other available federal funding related to the COVID-19 emergency response. Any federal funds that are accepted for the purpose of this act shall be reported pursuant to W.S. 9-2-1013(b).

Section 4. The department of workforce services is authorized one (1) full-time equivalent position for purposes of implementing the program established by this act. The authorization for the position created by this section is in effect beginning on the effective date of this act. The position shall be funded from available federal funds for the program established by this act as they may be available.

Section 5. The unemployment insurance commission shall promulgate any rules necessary to implement this act.

ORIGINAL HOUSE
BILL NO. HB0009

ENGROSSED

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Section 6. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk