

HOUSE BILL NO. HB0009

Short time compensation program.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to labor and employment; establishing a
2 short time compensation program within the department of
3 workforce services; specifying duties for the director of
4 the department of workforce services; providing for
5 administration of the program; specifying requirements for
6 employer program enrollment and employee benefits;
7 authorizing rulemaking; authorizing the department of
8 workforce services to seek and receive federal funds as
9 specified; authorizing a position; and providing for an
10 effective date.

11

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

13

14 **Section 1.** W.S. 27-3-801 through 27-3-810 are created
15 to read:

1

2

ARTICLE 8

3

SHORT TIME COMPENSATION PROGRAM

4

5

27-3-801. Definitions.

6

7

(a) As used in this article:

8

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

13

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

18

19 (iii) "Health and retirement benefits" means
20 employer provided health benefits and retirement benefits
21 under a defined benefit pension plan as defined in section
22 414(j) of the Internal Revenue Code or contributions under
23 a defined contribution plan defined in section 414(i) of

1 the Internal Revenue Code that are incidents of employment
2 in addition to the cash remuneration earned;

3

4 (iv) "Short time compensation" means the
5 unemployment benefits payable to employees in an affected
6 unit under an approved short time compensation plan, as
7 distinguished from the benefits otherwise payable under
8 this act;

9

10 (v) "Short time compensation plan" means a plan
11 submitted by an employer for approval by the director under
12 which the employer requests the payment of short time
13 compensation to employees in an affected unit of the
14 employer to avert layoffs;

15

16 (vi) "Unemployment compensation" means the
17 benefits payable under this act other than short time
18 compensation and includes any amounts payable pursuant to
19 an agreement under any federal law providing for
20 compensation, assistance or allowances with respect to
21 unemployment;

22

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

6

7 **27-3-802. Participation in the short time**
8 **compensation program; director approval.**

9

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

16

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

21

22 (i) Describes the affected unit covered by the
23 plan, including the number of full-time and part-time

1 employees in the unit and the percentage of employees in
2 the unit covered by the plan;

3

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

8

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

19

20 (iv) Identifies the usual weekly hours of work
21 for the employer's employees in the affected unit and the
22 specific percentage by which the employees' hours shall be
23 reduced during all weeks covered by the plan. A short time

1 compensation plan shall only be approved if the percentage
2 by which the employees' hours will be reduced is not less
3 than ten percent (10%) and not more than sixty percent
4 (60%). If the plan includes any week for which the employer
5 regularly provides no work then the week shall be
6 identified by the employer;

7

8 (v) Certifies that if the employer provides
9 health and retirement benefits to any employee whose usual
10 weekly hours of work are reduced under the short time
11 compensation plan, the benefits will continue to be
12 provided to employees participating in the short time
13 compensation program under the same terms and conditions as
14 though the usual weekly hours of work of such employee had
15 not been reduced or to the same extent as other employees
16 not participating in the short time compensation program.
17 In addition, the following shall apply:

18

19 (A) For defined benefit retirement plans,
20 the hours that are reduced under the short time
21 compensation plan shall be credited for purposes of
22 participation, vesting and accrual of benefits as though
23 the usual weekly hours of work had not been reduced. The

1 dollar amount of employer contributions to a defined
2 contribution plan that are based on a percentage of
3 compensation may be less due to the reduction in the
4 employee's compensation;

5

6 (B) A short time compensation plan may
7 satisfy the certification requirement under this paragraph
8 when a reduction in health and retirement benefits
9 scheduled to occur during the duration of the plan will be
10 applicable equally to employees who are not participating
11 in the short time compensation program and to those
12 employees who are participating.

13

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

19

20 (vii) Certifies that the employer agrees to
21 furnish reports to the department relating to the
22 administration of the plan and authorizes the department to
23 access all records necessary for the director to assess a

1 short time compensation plan for approval and to monitor
2 and evaluate the administration of the plan. The employer
3 shall also agree to follow any other directives necessary
4 for the department to implement the plan and which are
5 consistent with the requirements of this article;

6

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

11

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

15

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

20

21 **27-3-803. Approval of a short time compensation plan.**

22

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

10

11 **27-3-804. Effective date and duration of the short**
12 **time compensation plan.**

13

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

23

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

5
6 (c) An employer may terminate a short time
7 compensation plan at any time upon written notice to the
8 director as specified by rule of the commission. Upon
9 receipt of such notice from the employer, the director
10 shall promptly notify each employee of the affected unit of
11 the termination date. An employer may submit a new
12 application to participate in another short time
13 compensation plan at any time after the expiration or
14 termination of a previous plan.

15

16 **27-3-805. Modification of an approved short time**
17 **compensation plan.**

18

19 (a) An employer may request a substantial
20 modification of an approved short time compensation plan by
21 submitting a written request to the department. The request
22 shall specify the proposed provisions to be modified and
23 explain why the modification is appropriate. Subject to

1 subsection (b) of this section, the director shall approve
2 or deny in writing the proposed modification within twenty
3 (20) days of receipt and promptly notify the employer.

4

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

15

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

1 fails to meet the reporting requirement under this
2 subsection.

3

4 **27-3-806. Revocation of short time compensation plan**
5 **approval.**

6

7 (a) The director may revoke approval of a short time
8 compensation plan for good cause at any time including upon
9 the request of any of the affected unit's employees. Good
10 cause shall include an employer's failure to comply with
11 the assurances and certifications given in the employer's
12 plan under W.S. 27-3-802, unreasonable revision of
13 productivity standards for an affected unit, conduct or
14 occurrences tending to defeat the intent and effective
15 operation of the short time compensation plan and violation
16 of any criteria on which approval of the plan was based.

17

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

1

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

5

6 **27-3-807. Eligibility for short time compensation**
7 **benefits.**

8

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

11

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

14

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

17

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

23

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

13

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

20

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

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

3

4 (i) Availability for work;

5

6 (ii) Actively searching for work;

7

8 (iii) Any refusal to apply for or accept work
9 with an employer other than the participating employer
10 whose plan is approved under this article.

11

12 **27-3-808. Benefits.**

13

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

20

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

1

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

5

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

9

10 (c) The short time compensation paid to an employee
11 shall be deducted from the maximum entitlement amount of
12 regular unemployment compensation established for that
13 employee's benefit year.

14

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

22

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

5

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

11

12 (ii) If the combined hours of work for both
13 employers results in a reduction equal to or greater than
14 ten percent (10%) of the usual weekly hours of work for the
15 short time compensation employer, the short time
16 compensation benefit amount payable to the employee shall
17 be reduced for that week in an amount determined by
18 multiplying the weekly unemployment benefit amount for a
19 week of total unemployment by the percentage by which the
20 combined hours of work have been reduced by ten percent
21 (10%) or more of the employee's usual weekly hours of work.
22 A week for which benefits are paid under this paragraph
23 shall be reported as a week of short time compensation;

1

2 (iii) If an employee worked the reduced
3 percentage of the usual weekly hours of work for the short
4 time compensation employer and is available for all his
5 usual hours of work with the short time compensation
6 employer and the employee did not work any hours for the
7 other employer either because of the lack of work with that
8 employer or because the employee is excused from work with
9 the other employer, the employee shall be eligible for
10 short time compensation for that week. The benefit amount
11 for such week shall be calculated as provided in subsection
12 (a) of this section.

13

14 (f) An employee who is not provided any work during a
15 week by the short time compensation employer or any other
16 employer and who is otherwise eligible for unemployment
17 compensation shall be eligible for the amount of regular
18 unemployment compensation to which they would otherwise be
19 eligible.

20

21 (g) An employee who is not provided any work by the
22 short time compensation employer during a week but who
23 works for another employer and is otherwise eligible may be

1 paid unemployment compensation for that week subject to the
2 disqualifying income and other provisions applicable to
3 claims for regular unemployment compensation.

4

5 **27-3-809. Charging short time compensation benefits.**

6

7 Short time compensation shall be charged to employers'
8 experience rating accounts in the same manner as
9 unemployment compensation is charged under this act. The
10 department may relieve an employer of charges or not
11 require reimbursement for short time compensation benefits
12 if the benefits are subject to one hundred percent (100%)
13 reimbursement by the federal government or as otherwise
14 specified by law.

15

16 **27-3-810. Extended benefits.**

17

18 An employee who has received all of the short time
19 compensation or combined unemployment compensation and
20 short time compensation available in a benefit year shall
21 be considered an exhaustee for purposes of extended
22 benefits as provided under W.S. 27-3-315 and if otherwise

1 eligible under those provisions shall be eligible to
2 receive extended benefits.

3

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

6

7 **27-3-102. Definitions generally.**

8

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

11

12 (xxv) "This act" means W.S. 27-3-101 through
13 ~~27-3-706~~ 27-3-810.

14

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

1 the purpose of this act shall be reported pursuant to W.S.
2 9-2-1013(b).

3

4 **Section 4.** The department of workforce services is
5 authorized one (1) at-will contract position for purposes
6 of implementing the program established by this act. The
7 authorization for the position created by this section is
8 in effect beginning on the effective date of this act and
9 shall end on June 30, 2022. The department of workforce
10 services shall report to the joint appropriations committee
11 on the creation of the position authorized in this section
12 through the B-11 process as authorized by W.S.
13 9-2-1005(b)(ii) and reported pursuant to W.S. 9-2-1013(b).
14 It is the intent of the legislature that the position
15 authorized in this section not be included in the
16 department's standard budget for the immediately succeeding
17 fiscal biennium.

18

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

21

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

5

6

(END)