WEST VIRGINIA CODE: §21A-6B-2

§21A-6B-2. Application to participate in short-time compensation program.

(a) The commissioner shall establish and implement a short-time compensation program by July 1, 2023. The program shall meet the requirements of 26 U.S.C. § 3306(v) and all other applicable federal and state laws.

(b) An employer that wishes to participate in the program shall submit to the commissioner a signed, written work sharing plan for approval. The commissioner shall develop an application form to request approval of a plan and an approval process. The application shall include:

(1) The affected unit covered by the plan, including the number of employees in the unit; the percentage of employees 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 commissioner to identify plan participants.

(2) A description of how employees in the affected unit will be notified of the employer's participation in the plan if such application is approved, 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 does not intend to provide advance notice to employees 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, in the application, 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. The percentage of reduction for which a work sharing plan application may be approved shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including incidences due to a holiday or other work closure, then such week shall be identified in the application.

(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, such 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 work of such 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 less due to the reduction in the employee's

WV Legislature

compensation.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the plan. The employer shall also certify that new employees will not be hired in or transferred to an affected unit for the duration of the plan.

(6) Certification by the employer that, to the best of the employer's available knowledge, participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

(7) Agreement by the employer to: (i) Furnish reports to the commissioner relating to the proper conduct of the plan; (ii) allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, monitor and evaluate the plan; and (iii) follow any other directives the commissioner deems necessary to implement the plan and that are consistent with the requirements for plan applications.

(8) Any other provision added to the application by the commissioner that the U.S. Secretary of Labor determines to be appropriate for purposes of a work sharing plan.

WV Legislature