WEST VIRGINIA CODE CHAPTER 21A ARTICLE 6B

WV Legislature

§21A-6B-1. Definitions:

As used in this article, unless the context requires a different meaning:

“Affected unit” means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved short-time compensation plan applies.

“Commissioner” means the Workforce West Virginia Commissioner, formerly known as the Bureau of Employment Programs’ Commissioner, as defined in §21A-1A-12 of this code.

“Exhaustee” has the same meaning as defined in §21A-6A-1 of this code.

“Health and retirement benefits” means employer-provided health benefits and retirement benefits under a defined benefit pension plan as defined in 26 U.S.C. §414(j) or contributions under a defined contribution plan as defined in 26 U.S.C. §414(i) that are incidents of employment in addition to the cash remuneration earned.

“Program” means the short-time compensation program established pursuant to this article.

“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 benefits provisions of this chapter.

“Work sharing plan” or “plan” means a plan submitted by an employer to the commissioner for approval to participate in the program.

WV Legislature

§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 compensation.

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of

WV Legislature

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

§21A-6B-3. Approval and disapproval of plan.

The commissioner shall approve or disapprove a work sharing plan in writing within 10 business 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. If a plan is disapproved, the employer may submit a different work sharing plan for approval.

WV Legislature

§21A-6B-4. Effective date of plan, revocation of plan, and modification of plan.

(a) A work sharing plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, 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 commissioner. However, if a work sharing plan is revoked by the commissioner under subsection (b) of this section, the plan shall terminate on the date specified in commissioner's written order of revocation. An employer may terminate a plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another plan at any time after the expiration or termination date.

(b) The commissioner may revoke approval of a work sharing 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 commissioner may periodically review the operation of each employer's plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include 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 plan, and violation of any criteria on which approval of the plan was based.

(c) An employer may request a modification of an approved plan by filing a written request to the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the plan. The commissioner shall approve or disapprove the proposed modification in writing within 10 working days and promptly communicate the decision to the employer. An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer shall report every change to the plan to the commissioner promptly and in writing.

WV Legislature

§21A-6B-5. Eligibility for short-time compensation.

(a) An employee is eligible to receive short-time compensation under a work sharing plan with respect to any week only if the employee is monetarily eligible for unemployment benefits, not otherwise disqualified for unemployment benefits, and:

(1) During the week, the employee is employed as a member of an affected unit under an approved work sharing 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; and

(2) Notwithstanding any other provisions of this title relating to availability for work and actively seeking work, the employee is available for the employee's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training, including employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, 128 Stat. 1425 (2014) to enhance job skills that is approved by the commissioner.

(b) Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that plan if the employee's remuneration as an employee in an affected unit is reduced based on a reduction of the employee's usual weekly hours of work under an approved work sharing plan.

(c) The short-term compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.

WV Legislature

§21A-6B-6. Benefits

(a) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment as defined in §21A-6-10 multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(b) An individual may be eligible for short-time compensation or unemployment benefits, as appropriate: *Provided*, 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 benefits: *Provided, however*, That no individual shall be paid short-time compensation benefits for more than 26 weeks under a plan.

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

(d) 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 benefits shall be eligible for the amount of regular unemployment compensation to which he or she would otherwise be eligible.

(e) 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 benefits for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment benefits.

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

(g) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

WV Legislature

§21A-6B-7. Rulemaking.

Workforce West Virginia shall promulgate and propose rules under §29A-3-1 *et seq*. of this code for implementing this article.

WV Legislature