

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 751

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

Sponsors: Senator Nickel (Primary Sponsor).

Referred to: Rules and Operations of the Senate

May 18, 2020

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A WORK SHARING OPTION FOR EMPLOYERS UNDER THE
3 UNEMPLOYMENT SECURITY LAWS OF NORTH CAROLINA AND
4 APPROPRIATING FUNDS FOR IMPLEMENTATION OF THE PROGRAM.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 96 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 6.

9 "Short-Time Compensation Program.

10 "**§ 96-45. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Affected unit. – A specific plant, department, shift, or other definable unit of
13 an employing unit that has at least two employees to which an approved
14 short-time compensation plan applies.
- 15 (2) Approved short-time compensation plan. – A plan that is approved by the
16 Division as provided by this Article.
- 17 (3) Health and retirement benefits. – Employer-provided health benefits and
18 retirement benefits under a defined benefit pension plan as defined in section
19 414(j) of the Internal Revenue Code, contributions under a defined
20 contribution plan as defined in section 414(i) of the Internal Revenue Code or
21 that are incidents of employment in addition to the cash remuneration 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



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

3 **"§ 96-46. Application to participate in short-time compensation program.**

4 (a) An employer that wishes to participate in the Program shall submit to the Division a
5 signed, written short-time compensation plan for approval. The Division shall develop an
6 application form to request approval of a plan and an approval process. The application shall
7 include:

- 8 (1) The affected unit or units covered by the plan, including the number of
9 full-time or part-time workers in the unit, identification of each individual
10 employee in the affected unit by name, social security number, and the
11 employer's unemployment tax account number, and any other information
12 required by the Division to identify plan participants.
- 13 (2) A description of how workers in the affected unit will be notified of the
14 employer's participation in the plan if the application is approved, including
15 how the employer will notify those workers in a collective bargaining unit, as
16 well as any workers in the affected unit who are not in a collective bargaining
17 unit. If the employer will not provide advance notice to workers in the affected
18 unit, the employer shall explain in a statement in the application why it is not
19 feasible to provide the notice.
- 20 (3) A requirement that the employer identify the usual weekly hours of work for
21 employees in the affected unit and the specific percentage by which their
22 hours will be reduced during all weeks covered by the plan. An application
23 shall specify the overall work reduction for which a short-time compensation
24 application may be approved, which shall be not less than ten percent (10%)
25 and not more than sixty percent (60%) of the usual work hours during that
26 period. If the plan includes any week for which the employer regularly
27 provides no work due to a holiday or other plant closing, then the week shall
28 be identified in the application. Notwithstanding the other provisions of this
29 subdivision, an employer shall be allowed some weeks of complete plant
30 shutdown in appropriate industries or given certain modes of operation.
- 31 (4) Certification by the employer that, if the employer provides health benefits
32 and retirement benefits to any employee whose usual weekly hours of work
33 are reduced under the Program, the benefits will continue to be provided to
34 employees participating in the Program under the same terms and conditions
35 as though the usual weekly hours of the employee had not been reduced or to
36 the same extent as other employees not participating in the Program. For
37 defined benefit retirement plans, the hours that are reduced under the plan
38 shall be credited for purposes of participation, vesting, and accrual of benefits
39 as though the usual weekly hours of work had not been reduced. The dollar
40 amount of employer contributions to a defined contribution plan that are based
41 on a percentage of compensation may be less due to the reduction in the
42 employee's compensation. However, an application may contain the required
43 certification when a reduction in health and retirement benefits scheduled to
44 occur during the duration of the plan will be applicable equally to employees
45 who are not participating in the Program and to those employees who are
46 participating.
- 47 (5) Certification by the employer that the aggregate reduction in work hours is in
48 lieu of layoffs, whether temporary or permanent layoffs or both.
- 49 (6) Agreement by the employer to (i) furnish reports to the Division relating to
50 the proper conduct of the plan, (ii) allow the Division access to all records
51 necessary to approve or disapprove the plan application and, after approval of

1 the plan, monitor and evaluate the plan, and (iii) follow any other directives
2 the Division deems necessary for the agency to implement the plan and that
3 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 applicable
6 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 twelfth 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 the purpose of this
11 Program.

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

16 **"§ 96-47. Approval and disapproval of plan.**

17 The Division shall approve or disapprove a short-time compensation plan in writing within
18 30 days of its receipt and promptly communicate the decision to the employer. A decision
19 disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall
20 be final, but the employer shall be allowed to submit another plan for approval not earlier than
21 90 days from the date of the disapproval.

22 **"§ 96-48. Effective date and duration of plan.**

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

34 **"§ 96-49. Revocation of approval of plan.**

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

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

45 **"§ 96-50. Modification of approved plan.**

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

1 **(b)** The Division, in its discretion, may approve a request for modification of the plan
2 based on conditions that have changed since the plan was approved, provided that the
3 modification is consistent with and supports the purposes for which the plan was initially
4 approved. A modification shall not extend the expiration date of the original plan, and the
5 Division shall promptly notify the employer whether the plan modification has been approved
6 and, if approved, the effective date of modification.

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

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

15 **"§ 96-51. Eligibility for short-time compensation.**

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

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

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

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

34 **"§ 96-52. Benefits.**

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

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

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

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

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

47 **(d)** Provisions applicable to unemployment compensation claimants shall apply to
48 short-time compensation claimants to the extent that they are not inconsistent with the Program's
49 provisions. An individual who files an initial claim for short-time compensation benefits shall
50 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 short-time
3 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 Article, of the usual weekly hours of work with the short-time
8 employer, the individual shall not be entitled to benefits under these short-time
9 compensation provisions.

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

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

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

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

37 **"§ 96-53. Changing short-time compensation benefits.**

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

42 **"§ 96-54. Extended benefits.**

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

47 **"§ 96-55. Severability.**

48 If any provision of this Article is found by the U.S. Department of Labor to be in violation of
49 federal law, the finding shall render the provision of this Article inoperative, but the finding shall
50 not invalidate the remaining provisions of this Article and is confined in its operation to the
51 specific provision found to be in violation of federal law."

1 **SECTION 2.** There is appropriated from the General Fund to the Department of
2 Commerce, Division of Employment Security, the sum of one hundred thousand dollars
3 (\$100,000) for the 2020-2021 fiscal year to fund a personnel position to implement the provisions
4 of Section 1 of this act.

5 **SECTION 3.** Section 1 of this act becomes effective 60 days from the effective date
6 of this act and applies retroactively to claims arising, and to plans submitted, on or after February
7 15, 2020. Section 2 of this act becomes effective July 1, 2020. The remainder of this act is
8 effective when it becomes law.