

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 559

Introduced by Mello, 5.

Read first time January 23, 2013

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to the Employment Security Law; to amend section
- 2 48-601, Reissue Revised Statutes of Nebraska; to adopt
- 3 the short-time compensation program; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-601, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-601 Sections 48-601 to 48-671 and sections 2 to 14 of
4 this act shall be known and may be cited as the Employment Security
5 Law.

6 Sec. 2. Sections 2 to 14 of this act create the short-
7 time compensation program.

8 Sec. 3. For purposes of sections 2 to 14 of this act:

9 (1) Affected unit means a specified plant, department,
10 shift, or other definable unit which includes three or more employees
11 to which an approved short-time compensation plan applies;

12 (2) Commissioner means the Commissioner of Labor or any
13 delegate or subordinate responsible for approving applications for
14 participation in a short-time compensation plan;

15 (3) Health and retirement benefits means employer-
16 provided health benefits and retirement benefits under a defined
17 benefit plan, as defined in section 414(j) of the Internal Revenue
18 Code, or contributions under a defined contribution plan, as defined
19 in section 414(i) of the Internal Revenue Code, which are incidents
20 of employment in addition to the cash remuneration earned;

21 (4) Short-time compensation means the unemployment
22 benefits payable to employees in an affected unit under an approved
23 short-time compensation plan, as distinguished from the unemployment
24 benefits otherwise payable under the Employment Security Law;

25 (5) Short-time compensation plan means a plan submitted

1 by an employer, for written approval by the commissioner, under which
2 the employer requests the payment of short-time compensation to
3 workers in an affected unit of the employer to avert layoffs;

4 (6) Usual weekly hours of work means the usual hours of
5 work for full-time or part-time employees in the affected unit when
6 that unit is operating on its regular basis, not to exceed forty
7 hours and not including hours of overtime work; and

8 (7) Unemployment compensation means the unemployment
9 benefits payable under the Employment Security Law other than short-
10 time compensation and includes any amounts payable pursuant to an
11 agreement under any federal law providing for compensation,
12 assistance, or allowances with respect to unemployment.

13 Sec. 4. An employer wishing to participate in the short-
14 time compensation program shall submit a signed written short-time
15 compensation plan to the commissioner for approval. The commissioner
16 shall develop an application form to request approval of a short-time
17 compensation plan and an approval process. The application shall
18 include:

19 (1) The affected unit or units covered by the plan,
20 including the number of full-time or part-time employees in such
21 unit, the percentage of employees in the affected unit covered by the
22 plan, identification of each individual employee in the affected unit
23 by name, social security number, and the employer's unemployment tax
24 account number and any other information required by the commissioner
25 to identify plan participants;

1 (2) A description of how employees in the affected unit
2 will be notified of the employer's participation in the short-time
3 compensation plan if such application is approved, including how the
4 employer will notify those employees in a collective bargaining unit
5 as well as any employees in the affected unit who are not in a
6 collective bargaining unit. If the employer will not provide advance
7 notice to employees in the affected unit, the employer shall explain
8 in a statement in the application why it is not feasible to provide
9 such notice;

10 (3) A requirement that the employer identify the usual
11 weekly hours of work for employees in the affected unit and the
12 specific percentage by which their hours will be reduced during all
13 weeks covered by the plan. An application shall specify the
14 percentage of reduction for which a short-time compensation
15 application may be approved which shall be not less than ten percent
16 and not more than sixty percent. If the plan includes any week for
17 which the employer regularly provides no work due to a holiday or
18 other plant closing, then such week shall be identified in the
19 application;

20 (4)(a) Certification by the employer that, if the
21 employer provides health and retirement benefits to any employee
22 whose usual weekly hours of work are reduced under the program, such
23 benefits will continue to be provided to employees participating in
24 the short-time compensation program under the same terms and
25 conditions as though the usual weekly hours of work of such employee

1 had not been reduced or to the same extent as other employees not
2 participating in the short-time compensation program.

3 (b) For defined benefit retirement plans, the hours that
4 are reduced under the short-time compensation plan shall be credited
5 for purposes of participation, vesting, and accrual of benefits as
6 though the usual weekly hours of work had not been reduced. The
7 dollar amount of employer contributions to a defined contribution
8 plan that are based on a percentage of compensation may be less due
9 to the reduction in the employee's compensation.

10 (c) Notwithstanding subdivisions (4)(a) and (4)(b) of
11 this section, an application may contain the required certification
12 when a reduction in health and retirement benefits scheduled to occur
13 during the duration of the plan will be applicable equally to
14 employees who are not participating in the short-time compensation
15 program and to those employees who are participating;

16 (5) Certification by the employer that the aggregate
17 reduction in work hours is in lieu of layoffs, temporary or permanent
18 layoffs, or both. The application shall include an estimate of the
19 number of employees who would have been laid off in the absence of
20 the short-time compensation plan;

21 (6) Certification by the employer that the short-time
22 compensation program shall not serve as a subsidy of seasonal
23 employment during the off-season, nor as a subsidy of temporary part-
24 time or intermittent employment;

25 (7) Agreement by the employer to: Furnish reports to the

1 commissioner relating to the proper conduct of the plan; allow the
2 commissioner access to all records necessary to approve or disapprove
3 the plan application and, after approval of a plan, to monitor and
4 evaluate the plan; and follow any other directives the commissioner
5 deems necessary for the agency to implement the plan and which are
6 consistent with the requirements for short-time compensation plan
7 applications;

8 (8) Certification by the employer that participation in
9 the short-time compensation plan and its implementation is consistent
10 with the employer's obligations under applicable federal and state
11 laws;

12 (9) The effective date and duration of the plan that
13 shall expire not later than the end of the twelfth full calendar
14 month after the effective date;

15 (10) Certification by the employer that it has obtained
16 the written approval of any applicable collective bargaining unit
17 representative and has notified all affected employees who are not in
18 a collective bargaining unit of the proposed short-time compensation
19 plan;

20 (11) Certification by the employer that it will not hire
21 additional part-time or full-time employees for the affected unit
22 while the short-time compensation plan is in effect; and

23 (12) Any other provision added to the application by the
24 commissioner that the United States Secretary of Labor determines to
25 be appropriate for purposes of a short-time compensation program.

1 Sec. 5. (1) The commissioner shall approve or disapprove
2 a short-time compensation plan in writing within thirty days after
3 its receipt and promptly communicate the decision to the employer. A
4 decision disapproving the plan shall clearly identify the reasons for
5 the disapproval. The disapproval shall be final, but the employer
6 shall be allowed to submit another short-time compensation plan for
7 approval not earlier than forty-five days after the date of the
8 disapproval.

9 (2) A short-time compensation plan will only be approved
10 for an employer that has filed all quarterly reports and other
11 reports required under the Employment Security Law and has paid all
12 obligation assessments, contributions, reimbursements in lieu of
13 contributions, interest, and penalties due through the date of the
14 employer's application.

15 Sec. 6. (1) A short-time compensation plan shall be
16 effective on the date that is mutually agreed upon by the employer
17 and the commissioner, which shall be specified in the notice of
18 approval to the employer. The plan shall expire on the date specified
19 in the notice of approval, which shall be either the date at the end
20 of the twelfth full calendar month after its effective date or an
21 earlier date mutually agreed upon by the employer and the
22 commissioner.

23 (2) If a short-time compensation plan is revoked by the
24 commissioner under section 7 of this act, the plan shall terminate on
25 the date specified in the commissioner's written order of revocation.

1 (3) An employer may terminate a short-time compensation
2 plan at any time upon written notice to the commissioner. Upon
3 receipt of such notice from the employer, the commissioner shall
4 promptly notify each member of the affected unit of the termination
5 date.

6 (4) An employer may submit a new application to
7 participate in another short-time compensation plan at any time after
8 the expiration or termination date.

9 Sec. 7. (1) The commissioner may revoke approval of a
10 short-time compensation plan for good cause at any time, including
11 upon the request of any of the affected unit's employees. The
12 revocation order shall be in writing and shall specify the reasons
13 for the revocation and the date the revocation is effective.

14 (2) The commissioner may periodically review the
15 operation of each employer's short-time compensation plan to assure
16 that no good cause exists for revocation of the approval of the plan.
17 Good cause shall include, but not be limited to, failure to comply
18 with the assurances given in the plan, unreasonable revision of
19 productivity standards for the affected unit, conduct or occurrences
20 tending to defeat the intent and effective operation of the short-
21 time compensation plan, and violation of any criteria on which
22 approval of the plan was based.

23 Sec. 8. (1) An employer may request a modification of an
24 approved plan by filing a written request to the commissioner. The
25 request shall identify the specific provisions proposed to be

1 modified and provide an explanation of why the proposed modification
2 is appropriate for the short-time compensation plan. The commissioner
3 shall approve or disapprove the proposed modification in writing
4 within thirty days after receipt and promptly communicate the
5 decision to the employer.

6 (2) The commissioner may approve a request for
7 modification of the plan based on conditions that have changed since
8 the plan was approved provided that the modification is consistent
9 with and supports the purposes for which the plan was initially
10 approved. A modification does not extend the expiration date of the
11 original plan, and the commissioner shall promptly notify the
12 employer whether the plan modification has been approved and, if
13 approved, the effective date of the modification.

14 (3) An employer is not required to request approval of a
15 plan modification from the commissioner if the change is not
16 substantial, but the employer must report every change to the plan to
17 the commissioner promptly and in writing. The commissioner may
18 terminate an employer's plan if the employer fails to meet this
19 reporting requirement. If the commissioner determines that the
20 reported change is substantial, the commissioner shall require the
21 employer to request a modification to the plan.

22 Sec. 9. An individual is eligible to receive short-time
23 compensation with respect to any week only if the individual is
24 monetarily eligible for unemployment compensation, not otherwise
25 disqualified for unemployment compensation, and:

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

6 (2) Notwithstanding any other provisions of the
7 Employment Security Law relating to availability for work and
8 actively seeking work, the individual is available for the
9 individual's usual hours of work with the short-time compensation
10 employer, which may include, for purposes of this section,
11 participating in training to enhance job skills that is approved by
12 the commissioner such as employer-sponsored training or training
13 funded under the federal Workforce Investment Act of 1998, 29 U.S.C.
14 2801 et seq.; and

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

21 Sec. 10. (1) The short-time compensation weekly benefit
22 amount shall be the product of the regular weekly unemployment
23 compensation amount for a week of total unemployment multiplied by
24 the percentage of reduction in the individual's usual weekly hours of
25 work.

1 (2) An individual may be eligible for short-time
2 compensation or unemployment compensation, as appropriate, except
3 that no individual shall be eligible for combined benefits in any
4 benefit year in an amount more than the maximum entitlement
5 established for regular unemployment compensation, nor shall an
6 individual be paid short-time compensation benefits for more than
7 fifty-two weeks under a short-time compensation plan.

8 (3) The short-time compensation paid to an individual
9 shall be deducted from the maximum entitlement amount of unemployment
10 compensation established for that individual's benefit year.

11 (4) Provisions applicable to unemployment compensation
12 claimants shall apply to short-time compensation claimants to the
13 extent that they are not inconsistent with short-time compensation
14 provisions. An individual who files an initial claim for short-time
15 compensation benefits shall receive a monetary determination.

16 (5) The following provisions apply to individuals who
17 work for both a short-time compensation employer and another employer
18 during weeks covered by the approved short-time compensation plan:

19 (a) If combined hours of work in a week for both
20 employers does not result in a reduction of at least ten percent, or,
21 if higher, the minimum percentage of reduction required to be
22 eligible for a short-time compensation, of the usual weekly hours of
23 work with the short-time employer, the individual shall not be
24 entitled to short-time compensation;

25 (b) If the combined hours of work for both employers

1 results in a reduction equal to or greater than ten percent, or, if
2 higher, the minimum percentage reduction required to be eligible for
3 a short-time compensation, of the usual weekly hours of work for the
4 short-time compensation employer, the short-time compensation payable
5 to the individual is reduced for that week and is determined by
6 multiplying the weekly unemployment benefit amount for a week of
7 total unemployment by the percentage by which the combined hours of
8 work have been reduced by ten percent, or, if higher, the minimum
9 percentage reduction required to be eligible for a short-time
10 compensation, or more of the individual's usual weekly hours of work.
11 A week for which benefits are paid under this subdivision shall be
12 reported as a week of short-time compensation; and

13 (c) If an individual worked the reduced percentage of the
14 usual weekly hours of work for the short-time compensation employer
15 and is available for all his or her usual hours of work with the
16 short-time compensation employer, and the individual did not work any
17 hours for the other employer, either because of the lack of work with
18 that employer or because the individual is excused from work with the
19 other employer, the individual shall be eligible for short-time
20 compensation for that week. The benefit amount for such week shall be
21 calculated as provided in subsection (1) of this section.

22 (6) An individual who is not provided any work during a
23 week by the short-time compensation employer, or any other employer,
24 and who is otherwise eligible for unemployment compensation shall be
25 eligible for the amount of unemployment compensation to which they

1 would otherwise be eligible.

2 (7) An individual who is not provided any work by the
3 short-time compensation employer during a week, but who works for
4 another employer and is otherwise eligible may be paid unemployment
5 compensation for that week subject to the disqualifying income and
6 other provisions applicable to claims for regular compensation.

7 Sec. 11. Short-time compensation shall be charged to the
8 employer's experience account in the same manner as unemployment
9 compensation is charged. Employers liable for payments in lieu of
10 contributions shall have short-time compensation attributed to
11 service in their employ in the same manner as unemployment
12 compensation is attributed.

13 Sec. 12. An individual who has received all of the short-
14 time compensation or combined unemployment compensation and short-
15 time compensation available in a benefit year shall be considered an
16 exhaustee for purposes of extended benefits under section 48-628.02
17 and, if otherwise eligible under such sections, shall be eligible to
18 receive extended benefits.

19 Sec. 13. (1) The department shall apply for federal grant
20 funds before December 31, 2014, for implementation of the short-time
21 compensation program and to promote use of the short-time
22 compensation program by employers.

23 (2) The department shall submit an annual report to the
24 Governor and the Legislature on the short-time compensation program
25 trends, including the number of employers filing short-time

1 compensation program plans, the number of layoffs averted through the
2 use of the short-time compensation program, the amount of short-time
3 compensation program benefits paid, and other information pertinent
4 to the short-time compensation program.

5 Sec. 14. If any provision of sections 2 to 14 of this act
6 is held invalid by the United States Department of Labor, such
7 provision shall not apply to the short-term compensation program.

8 Sec. 15. Original section 48-601, Reissue Revised
9 Statutes of Nebraska, is repealed.