

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 325

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO UNEMPLOYMENT; ALLOWING EMPLOYERS TO REDUCE WORK
HOURS OF CERTAIN EMPLOYEES IN LIEU OF LAYOFFS; ALLOWING CERTAIN
EMPLOYEES TO COLLECT UNEMPLOYMENT BENEFITS IN PROPORTION TO A
REDUCTION OF WORK HOURS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Unemployment Compensation
Law is enacted to read:

"[NEW MATERIAL] SHORT-TIME COMPENSATION PROGRAM--
CREATION--PLAN.--

A. As used in this section:

(1) "affected unit" means a specified plant,
department, shift or other definable unit to which an approved
short-time compensation plan applies;

(2) "health and retirement benefits" means

1 employer-provided health benefits and retirement benefits under
2 a defined benefit pension plan as defined in Section 414(j) of
3 the Internal Revenue Code of 1986 or contributions under a
4 defined contribution plan as defined in Section 414(i) of the
5 Internal Revenue Code of 1986, which are incidents of
6 employment in addition to the cash remuneration earned;

7 (3) "plan" means a short-time compensation
8 plan submitted by an employer, for approval by the secretary,
9 under which the employer requests the payment of short-time
10 compensation to employees in an affected unit of the employer
11 to avert layoffs;

12 (4) "program" means the short-time
13 compensation program;

14 (5) "short-time compensation" means the
15 unemployment benefits payable to employees in an affected unit
16 under an approved plan, as distinguished from the unemployment
17 benefits otherwise payable under the unemployment compensation
18 provisions of a state law;

19 (6) "unemployment compensation" means the
20 benefits payable under the Unemployment Compensation Law other
21 than short-time compensation and includes any amounts payable
22 pursuant to an agreement under any federal law providing for
23 compensation, assistance or allowances with respect to
24 unemployment; and

25 (7) "usual weekly hours of work" means the

1 usual hours of work for full-time or part-time employees in the
2 affected unit when that unit is operating on its regular basis,
3 not to exceed forty hours and not including hours of overtime
4 work.

5 B. An employer wishing to participate in the
6 "short-time compensation program" shall submit a signed written
7 plan to the secretary for approval. The secretary shall
8 develop an application form to request approval of a plan and
9 an approval process. The application shall include:

10 (1) the affected unit covered by the plan,
11 including the number of full-time or part-time employees in
12 such unit, the percentage of employees in the affected unit
13 covered by the plan, identification of each individual employee
14 in the affected unit, each employee's social security number,
15 the employer's unemployment tax account number and any other
16 information required by the secretary to identify plan
17 participants;

18 (2) a description of how employees in the
19 affected unit will be notified of the employer's participation
20 in the plan if such application is approved, including how the
21 employer will notify those employees in a collective bargaining
22 unit as well as any employees in the affected unit who are not
23 in a collective bargaining unit. If the employer will not
24 provide advance notice to employees in the affected unit, the
25 employer shall explain in a statement in the application why it

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1 is not feasible to provide such notice;

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

12 (4) certification by the employer that if the
13 employer provides health and retirement benefits to an employee
14 whose usual weekly hours of work are reduced under the program,
15 the benefits will continue to be provided to employees
16 participating in the program under the same terms and
17 conditions as though the usual weekly hours of work of such
18 employee had not been reduced or to the same extent as other
19 employees not participating in the program. For defined
20 benefit retirement plans, the hours that are reduced under the
21 plan shall be credited for purposes of participation, vesting
22 and accrual of benefits as though the usual weekly hours of
23 work had not been reduced. The dollar amount of employer
24 contributions to a defined contribution plan that are based on
25 a percentage of compensation may be less due to the reduction

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1 in the employee's compensation. Notwithstanding these
2 requirements, an application may contain the required
3 certification when a reduction in health and retirement
4 benefits scheduled to occur during the duration of the plan
5 will be applicable equally to employees who are not
6 participating in the program and to those employees who are
7 participating;

8 (5) certification by the employer that the
9 aggregate reduction in work hours is in lieu of layoffs,
10 whether temporary, permanent or both. The application shall
11 include an estimate of the number of employees who would have
12 been laid off in the absence of the plan;

13 (6) agreement by the employer to:

14 (a) furnish reports to the secretary
15 relating to the proper conduct of the plan;

16 (b) allow the secretary or the
17 secretary's authorized representatives access to all records
18 necessary to approve or disapprove the plan application, or,
19 after approval of a plan, to monitor and evaluate the plan; and

20 (c) follow any other directives that the
21 secretary deems necessary for the division to implement the
22 plan and that are consistent with the requirements for plan
23 applications;

24 (7) certification by the employer that
25 participation in the plan and its implementation is consistent

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1 with the employer's obligations under applicable federal and
2 state laws;

3 (8) the effective date and duration of the
4 plan that shall expire not later than the end of the twelfth
5 full calendar month after the effective date of the plan; and

6 (9) any other provision added to the
7 application by the secretary that the United States secretary
8 of labor determines to be appropriate for purposes of a
9 program.

10 C. The secretary shall approve or disapprove a plan
11 in writing within thirty days of its receipt and promptly
12 communicate the decision to the employer. A decision
13 disapproving the plan shall clearly identify the reasons for
14 the disapproval. The disapproval shall be final, but the
15 employer shall be allowed to submit another plan for approval
16 not earlier than thirty days from the date of the disapproval.

17 D. A plan shall be effective on the date that is
18 mutually agreed upon by the employer and the secretary, which
19 shall be specified in the notice of approval to the employer.
20 The plan shall expire on the date specified in the notice of
21 approval, which shall be either the date at the end of the
22 twelfth full calendar month after its effective date or an
23 earlier date mutually agreed upon by the employer and the
24 secretary. However, if a plan is revoked by the secretary, the
25 plan shall terminate on the date specified in the secretary's

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1 written order of revocation. An employer may terminate a plan
2 at any time upon written notice to the secretary. Upon receipt
3 of such notice from the employer, the secretary shall promptly
4 notify each member of the affected unit of the termination
5 date. An employer may submit a new application to participate
6 in another plan at any time after the expiration or termination
7 date.

8 E. The secretary may revoke approval of a plan for
9 good cause at any time, including upon the request of any of
10 the affected unit's employees. The revocation order shall be
11 in writing and shall specify the reasons for the revocation and
12 the date the revocation is effective. The secretary may
13 periodically review the operation of each employer's plan to
14 ensure that no good cause exists for revocation of the approval
15 of the plan. Good cause shall include, but not be limited to,
16 failure to comply with the assurances given in the plan,
17 unreasonable revision of productivity standards for the
18 affected unit, conduct or occurrences tending to defeat the
19 intended and effective operation of the plan and violation of
20 any criteria on which approval of the plan was based.

21 F. An employer may request a modification of an
22 approved plan by filing a written request to the secretary.
23 The request shall identify the specific provisions proposed to
24 be modified and provide an explanation of why the proposed
25 modification is appropriate for the plan. The secretary shall

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1 approve or disapprove the proposed modification in writing
2 within thirty days of receipt and shall promptly communicate
3 the decision to the employer. The secretary may approve a
4 request for modification of the plan based on conditions that
5 have changed since the plan was approved; provided that the
6 modification is consistent with and supports the purposes for
7 which the plan was initially approved. A modification does not
8 extend the expiration date of the original plan, and the
9 secretary shall promptly notify the employer whether the plan
10 modification has been approved, and, if approved, the effective
11 date of the modification. An employer is not required to
12 request approval of a plan modification from the secretary if
13 the change is not substantial, but the employer must report
14 every change to the plan to the secretary promptly and in
15 writing. The secretary may terminate an employer's plan if the
16 employer fails to meet this reporting requirement. If the
17 secretary determines that the reported change is substantial,
18 the secretary shall require the employer to request a
19 modification to the plan.

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

24 (1) during the week, the individual is
25 employed as a member of an affected unit under an approved

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1 plan, which was approved prior to that week, and the plan is in
2 effect with respect to the week for which short-time
3 compensation is claimed;

4 (2) notwithstanding any other provisions of
5 the Unemployment Compensation Law relating to availability for
6 work and actively seeking work, the individual is available for
7 the individual's usual hours of work with the short-time
8 compensation employer, which may include, for purposes of this
9 section, participating in training to enhance job skills that
10 is approved by the secretary or worker training funded under
11 the federal Workforce Investment Act of 1998; and

12 (3) notwithstanding any other provision of
13 law, the individual covered by a plan is deemed unemployed in
14 any week during the duration of the plan if the individual's
15 remuneration as an employee in an affected unit is reduced
16 based on a reduction of the individual's usual weekly hours of
17 work under an approved plan.

18 H. The short-time compensation weekly benefit
19 amount shall be the product of the regular weekly unemployment
20 compensation amount for a week of total unemployment multiplied
21 by the percentage of reduction in the individual's usual weekly
22 hours of work.

23 I. An individual may be eligible for short-time
24 compensation or unemployment compensation, as appropriate,
25 except that an individual shall not be eligible for combined

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1 benefits in any benefit year in an amount more than the maximum
2 benefit amount established for regular unemployment
3 compensation, nor shall an individual be paid short-time
4 compensation benefits for more than fifty-two weeks under a
5 plan. The short-time compensation paid to an individual shall
6 be deducted from the maximum benefit amount of regular
7 unemployment compensation established for that individual's
8 benefit year.

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

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

18 (1) if the combined hours of work in a week
19 for both employers does not result in a reduction of at least
20 ten percent of the usual weekly hours of work with the
21 short-time employer, the individual shall not be entitled to
22 short-time compensation benefits;

23 (2) if the combined hours of work for both
24 employers results in a reduction equal to or greater than ten
25 percent of the usual weekly hours of work for the short-time

1 compensation employer, the short-time compensation benefit
2 amount payable to the individual is reduced for that week and
3 is determined by multiplying the weekly unemployment benefit
4 amount for a week of total unemployment by the percentage by
5 which the combined hours of work have been reduced by ten
6 percent or more of the individual's usual weekly hours of work.
7 A week for which benefits are paid under this provision shall
8 be reported as a week of short-time compensation; and

9 (3) if an individual worked the reduced
10 percentage of the usual weekly hours of work for the short-time
11 compensation employer and is available for all usual hours of
12 work with the short-time compensation employer, and the
13 individual did not work any hours for the other employer,
14 either because of the lack of work with that employer, or
15 because the individual is excused from work with the other
16 employer, the individual shall be eligible for short-time
17 compensation for that week.

18 L. An individual who is not provided any work by
19 the short-time compensation employer during a week, but who
20 works for another employer and who is otherwise eligible, may
21 be paid unemployment compensation for that week subject to the
22 disqualifying income and other provisions applicable to claims
23 for regular compensation. An individual who is not provided
24 any work by the short-time compensation employer or any other
25 employer, and who is otherwise eligible for unemployment

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1 compensation, shall be eligible for the amount of regular
2 unemployment compensation for which the individual would
3 otherwise be eligible.

4 M. Short-time compensation shall be charged to
5 contributing employers in the same manner as unemployment
6 compensation is charged under the Unemployment Compensation
7 Law. Employers liable for payments in lieu of contributions
8 shall have short-time compensation attributed to service in
9 their employ in the same manner as unemployment compensation is
10 attributed. Contributing and reimbursable employers shall be
11 relieved of any short-time compensation benefit charges with
12 respect to short-time compensation benefits that are subject to
13 one hundred percent reimbursement from the federal government.

14 N. An individual who has received all of the
15 short-time compensation or combined unemployment compensation
16 and short-time compensation available in a benefit year shall
17 be considered an exhaustee for extended benefits and, if
18 otherwise eligible under those provisions, shall be eligible to
19 receive extended benefits.

20 O. If the United States secretary of labor
21 determines that a provision of this section does not comply
22 with federal law or rules of the United States department of
23 labor, the remainder of the section or its application to other
24 situations or persons shall not be affected."