



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 2, 2011

To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Economic Revitalization & Business

The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor & Public Employment

Date: Thursday, February 3, 2011

Time: 11:00 a.m.

Place: Conference Room 312, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. 113 Relating to Unemployment Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB 113 establishes a voluntary work sharing program within the Department of Labor and Industrial Relations (DLIR). Like the partial benefit provisions in state laws, Short-time compensation (STC) or work sharing programs allows a worker who is employed for a portion of the week to collect benefits. Whereas the partial formula looks at the worker's earnings, work sharing looks at the hours of work. Under work sharing, an employer elects to avoid layoffs by reducing the number of regularly scheduled hours of work for all, or a group of, workers. If the employer's plan is approved, UI benefits are payable based on the percentage of hours of work reduced as a proportion of the weekly benefit amount (WBA).

Example A: Claimant earns \$500 per week, works 40 hours per week. Under work sharing, hours reduced by 20%, or a 32 hour work week. If UI WBA is \$310, claimant will receive $\$310 \times 20\% = \62 in UI benefits for each work share week. Total earnings for the week = \$462 (\$400 in wages + \$62 in UI payment). Alternatively, if claimant filed for partial benefits for that week, no UI benefits would be payable because the

weekly earnings from employment (\$400) exceeds the UI WBA of \$310.

Example B: Same as example A but claimant's reduction in hours under work sharing is 40%, or 24 hours per week. Claimant will receive $\$310 \times 40\% = \124 in UI benefits for each work share week. Total earnings for the week = \$424 (\$300 in wages + \$124 in UI payment). Alternatively, if claimant filed for partial benefits for that week, would receive \$450 (\$300 - \$150 earnings disregard = \$150 plus \$300 in wages).

II. CURRENT LAW

There is no provision in current law. STC is available in 20 states with provisions that vary from state to state.

III. HOUSE BILL

The Department supports the intent of this measure but has the following concerns:

1. To accommodate the provisions in this bill, the automated UI benefit system must be modified to create a special work sharing program that calculates a UI benefit payment based on the percentage of reduced hours in a workweek, as opposed to earnings payable during that week. Currently, an individual who works reduced hours is only eligible for partial UI payment if earnings for the week are less than the UI benefit amount, whereas under work sharing, UI benefits may be payable even if wages exceed the UI weekly benefit amount. Estimates of the time and cost to implement a computer change by ICSD are not available at this time.
2. The employer's experience rating is expected to go up as people who may not normally be paid benefits under the UI program may qualify for benefits under the work sharing program. Since the trust fund is currently insolvent, more monies must be borrowed from the federal government. If negative reserve employers are eligible for work sharing, the trust fund will be adversely affected as these employers are already at the maximum 5.4% rate and would not be contributing more to the fund.
3. Under the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, the Secretary of Labor was directed to develop model legislative language which could be used by the States in developing and enacting STC programs (see attachment). Congress specified certain guidelines for this program as a means of assuring minimum uniformity throughout the states. Additional time is needed to determine guidelines, make program modifications, promulgate rules, prepare

written procedures, educate employers and train staff.

The Department recommends that the language in this measure be replaced by the model USDOL language with an effective date of September 2012 in order to properly implement this new program in accordance with federal guidelines and with adequate computer developments to assure that the worksharing program will provide positive outcomes to fully benefit both employers and workers, during challenging economic periods.

UIPL 39-83, Attachment I

I. Draft Language and Commentary to Implement a Short Time Compensation Program

Draft Language

A. Definitions

1. "Affected Unit" means a specified plant, department, shift, or other definable unit consisting of not less than employees to which an approved short time compensation plan applies.
2. "Fringe Benefits" include, but are not limited to, such advantages as health insurance (hospital, medical, and dental services, etc.), retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974), paid vacation and holidays, sick leave, etc., which are incidents of employment in addition to the cash remuneration earned.
3. "Short-Time Compensation" or "STC" 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 conventional unemployment compensation provisions of a State law.
4. "Short-Time Compensation Plan" means a plan of an employer (or of an employers' association which association is a party to a collective bargaining agreement) under which there is a reduction in the number of hours worked by all employees of an affected unit rather than temporary layoffs of some such employees. The term "temporary layoffs" for this purpose means the separation of workers in the affected unit for an indefinite period expected to last for more than two months but not more than one year.
5. "Usual Weekly Hours of Work" means the normal hours of work for full-time and permanent part-time employees in the affected unit when that unit is operating on its normally full-time basis, not to exceed forty hours and not including overtime.
6. "Unemployment Compensation" means the unemployment benefits payable under this Act other than short-time compensation and includes any amounts payable pursuant to an agreement under any Federal law providing for compensation, assistance, or allowances with respect to unemployment.

7. "Employers' Association" means an association which is a party to a collective bargaining agreement under which the parties may negotiate a short-time compensation plan.
- B. Criteria for Approval of a Short-Time Compensation Plan. An employer or employers' association wishing to participate in an STC program shall submit a signed written short-time compensation plan to the Director for approval. The Director shall approve an STC plan only if the following criteria are met.
1. The plan applies to and identifies specified affected units.
 2. The employees in the affected unit or units are identified by name, social security number and by any other information required by the Director.
 3. The usual weekly hours of work for employees in the affected unit or units are reduced by not less than 10 percent and not more than ___ percent.
 4. Health benefits and retirement benefits under defined benefit pension plans (as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974), will continue to be provided to employees in affected units as though their work weeks had not been reduced.
 5. The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least 10 percent of the employees in the affected unit or units to which the plan applies and which would have resulted in an equivalent reduction in work hours.
 6. During the previous four months the work force in the affected unit has not been reduced by temporary layoffs of more than 10 percent of the workers.
 7. The plan applies to at least 10 percent of the employees in the affected unit, and when applicable applies to all employees of the affected unit equally.
 8. In the case of employees represented by an exclusive bargaining representative, the plan is approved in writing by the collective bargaining agent; in the absence of such an agent, by representatives of the employees in the affected unit.
 9. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.
 10. The employer agrees to furnish reports relating to the proper conduct of the plan and agrees to allow the Director authorized representatives access to all records necessary to verify the plan prior to approval and, after approval, to monitor and evaluate application of the plan.

In addition to the matters specified above, the Director shall take into account any other factors which may be pertinent to proper implementation of the plan.

C. Approval or Rejection of the Plan

The Director shall approve or reject a plan in writing within ___ days of its receipt. The reasons for rejection shall be final and non-appealable, but the employer shall be allowed to submit another plan for approval not earlier than ___ days from the date of the earlier rejection.

D. Effective Date and Duration of Plan

A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the Director. It shall expire at the end of the 12th full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the Director. If a plan is revoked by the Director, it shall terminate on the date specified in the Director's written order of revocation.

E. Revocation of Approval

The Director may revoke approval of a plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons therefor.

Good cause shall include, but not be limited to, 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.

Such action may be taken at any time by the Director on his/her own motion, on the motion of any of the affected unit's employees or on the motion of the appropriate collective bargaining agent(s); provided, that the Director shall review the operation of each qualified employer, plan at least once during the 12-month period the plan is in effect to assure its compliance with the requirements of these provisions.

F. Modification of an Approved Plan

An operational approved STC plan may be modified by the employer with the acquiescence of employee representatives if the modification is not substantial and in conformity with the plan approved by the Director, but the modifications must be reported promptly to the Director. If the hours of work are increased or decreased substantially beyond the level in the original plan, or any other conditions are changed substantially, the Director shall approve or disapprove such modifications, without changing the expiration date of the original plan. If

the substantial modifications do not meet the requirements for approval, the Director shall disallow that portion of the plan in writing as specified in section E.

G. Eligibility for Short Time Compensation

1. An individual is eligible to receive STC benefits with respect to any week only if, in addition to monetary entitlement, the Director finds that:
 - (a) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan which was approved prior to that week, and the plan is in effect with respect to the week for which STC is claimed.
 - (b) The individual is able to work and is available for the normal work week with the short time employer.
 - (c) Notwithstanding any other provisions of this Act to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to him as an employee in an affected unit for 90 percent or less than his normal weekly hours of work as specified under the approved short-time compensation plan in effect for the week.
 - (d) Notwithstanding any other provisions of this Act to the contrary, an individual shall not be denied STC benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the short-time employer.

H. Benefits

1. The short-time weekly benefit amount shall be the product of the regular weekly unemployment compensation amount multiplied by the percentage of reduction of at least 10 percent in the individual's usual weekly hours of work.
2. An individual may be eligible for STC benefits or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for unemployment compensation, nor shall an individual be paid STC benefits for more than 26 weeks (whether or not consecutive) in any benefit year pursuant to a short-time plan.
3. The STC benefits paid an individual shall be deducted from the maximum entitlement amount established for that individual's benefit year.

4. Claims for STC benefits shall be filed in the same manner as claims for unemployment compensation or as prescribed in regulations by the Director.
5. Provisions applicable to unemployment compensation claimants shall apply to STC claimants to the extent that they are not inconsistent with STC provisions. An individual who files an initial claim for STC benefits shall be provided, if eligible therefor, a monetary determination of entitlement to STC benefits, and shall serve a waiting week.
 6. (a) If an individual works in the same week for an employer other than the short-time employer and his combined hours of work for both employers are equal to or greater than the usual hours of work with the short-time employer, he or she shall not be entitled to benefits under these short-time provisions or the unemployment compensation provisions.

(b) If an individual works in the same week for both the short-time employer and another employer and his or her combined hours of work for both employers are equal to or less than 90 percent of the usual hours of work for the short-time employer, the benefit amount payable for that week shall be the weekly unemployment compensation amount reduced by the same percentage that the combined hours are of the usual hours of work. A week for which benefits are paid under this provision shall count as a week of short-time compensation.

(c) If an individual did not work during any portion of the work week, other than the reduced portion covered by the short-time plan, with the approval of the employer, he or she shall not be disqualified for such absence or deemed ineligible for STC benefits for that reason alone.
7. An individual who performs no services during a week for the short-time employer and is otherwise eligible, shall be paid the full weekly unemployment compensation amount. Such a week shall not be counted as a week with respect to which STC benefits were received.
8. An individual who does not work for the short-time employer during a week but works for another employer and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of the State law. Such a week shall not be counted as a week with respect to which STC benefits were received.

I. Charging Shared Work Benefits

STC benefits shall be charged to employers' experience rating accounts in the same manner as unemployment compensation is charged under the State law. Employers liable for payments in lieu of contributions shall have STC benefits attributed to service in their employ in the same manner as unemployment compensation is attributed.

J. Extended Benefits

An individual who has received all of the STC benefits or combined unemployment compensation and STC benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits, as provided under the provisions of section __, and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.