

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1061

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

Sponsors: Representative Richardson.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 6, 2020

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS RELATING TO ATTACHED CLAIMS, THE BENEFITS DURATION SLIDING SCALE, AND THE CALCULATION OF THE WEEKLY BENEFIT AMOUNT; INCREASING THE MAXIMUM WEEKLY BENEFIT AMOUNT TO FOUR HUNDRED TWENTY-FIVE DOLLARS; AND PROVIDING FOR CREATION OF A WORK-SHARING PROGRAM FOR EMPLOYERS IN THIS STATE WITH AN APPROPRIATION OF FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-15.1(a1) reads as rewritten:

"(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. ~~An employer may file an attached claim for an employee only once during a benefit year, and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the Unemployment Insurance Fund.~~

~~An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Article 2B of this Chapter. If an employer does not have a positive credit balance in its account, the employer must remit to the Division an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim."~~

SECTION 2.(a) G.S. 96-14.2(a) reads as rewritten:

"(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the average of the wages paid to the individual in the last two completed quarters ~~two highest paid quarters~~ of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed three hundred fifty dollars (\$350.00)."

SECTION 2.(b) Effective August 1, 2020, G.S. 96-14.2(a) reads as rewritten:

"(a) Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in two highest completed quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars (\$15.00), the individual is not eligible for benefits. The



1 weekly benefit amount may not exceed ~~three hundred fifty dollars (\$350.00)~~ four hundred
 2 twenty-five dollars (\$425.00)."

3 **SECTION 2.(c)** Subsection (a) of this section is effective when it becomes law.
 4 Subsection (b) of this section becomes effective as indicated.

5 **SECTION 3.** G.S. 96-14.3 reads as rewritten:

6 "**§ 96-14.3. Duration of benefits.**

7 (a) ~~Duration.—The number of weeks an individual is allowed to receive unemployment~~
 8 ~~benefits depends on the seasonal adjusted statewide unemployment rate that applies to the~~
 9 ~~six-month base period in which the claim is filed. One six-month base period begins on January~~
 10 ~~1 and one six-month base period begins on July 1. For the base period that begins January 1, the~~
 11 ~~average of the seasonal adjusted unemployment rates for the State for the preceding months of~~
 12 ~~July, August, and September applies. For the base period that begins July 1, the average of the~~
 13 ~~seasonal adjusted unemployment rates for the State for the preceding months of January,~~
 14 ~~February, and March applies. The Division must use the most recent seasonal adjusted~~
 15 ~~unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and~~
 16 ~~not the rate as revised in the annual benchmark.~~

Seasonal Adjusted Unemployment Rate	Number of Weeks
17 Less than or equal to 5.5%	12
18 Greater than 5.5% up to 6%	13
19 Greater than 6% up to 6.5%	14
20 Greater than 6.5% up to 7%	15
21 Greater than 7% up to 7.5%	16
22 Greater than 7.5% up to 8%	17
23 Greater than 8% up to 8.5%	18
24 Greater than 8.5% up to 9%	19
25 Greater than 9%	20

26 (a1) Maximum Duration. – An eligible individual is entitled to receive unemployment
 27 benefits for a maximum period of 26 weeks, unless the benefit period is extended expressly by
 28 State or federal law.

29 (b) Total Benefits. – The total benefits paid to an individual equals the individual's
 30 weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed
 31 under subsection (a) of this section.26."

32 **SECTION 4.** Chapter 96 of the General Statutes is amended by adding a new Article
 33 to read:

34 "Article 6.

35 "Work-Sharing and Short-Time Compensation.

36 "**§ 96-45. Definitions.**

37 The following definitions apply in this Article:

- 38 (1) Affected unit. – A specific plant, department, shift, or other definable unit of
 39 an employing unit that has at least two employees to which an approved
 40 short-time compensation plan applies.
- 41 (2) Approved short-time compensation plan. – A plan that is approved by the
 42 Division as provided by this Article.
- 43 (3) Health and retirement benefits. – Employer-provided health benefits and
 44 retirement benefits under a defined benefit pension plan as defined in section
 45 414(j) of the Internal Revenue Code, or contributions under a defined
 46 contribution plan as defined in section 414(i) of the Internal Revenue Code or
 47 that are incidents of employment in addition to the cash remuneration earned.
- 48 (4) Program. – Short-time compensation program established pursuant to this
 49 Article.

- 1 (5) Short-time compensation. – The unemployment benefits payable to
2 employees in an affected unit under an approved short-time compensation
3 plan, as distinguished from the unemployment benefits otherwise payable
4 under the unemployment compensation provisions of State law.
- 5 (6) Short-time compensation plan. – A plan submitted by an employer for
6 approval by an affected unit of the employer to avert layoffs.
- 7 (7) Unemployment compensation. – The unemployment benefits payable under
8 this Article other than short-time compensation and includes any amounts
9 payable pursuant to an agreement under any federal law providing for
10 compensation, assistance, or allowances with respect to unemployment.
- 11 (8) Usual weekly hours of work. – The usual hours of work for full-time or
12 part-time employees in the affected unit when that unit is operating on its
13 regular basis, not to exceed 40 hours and not including hours of overtime
14 work.

15 **§ 96-46. Application to participate in short-time compensation program.**

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

- 20 (1) The affected unit or units covered by the plan, including the number of
21 full-time or part-time workers in the unit, identification of each individual
22 employee in the affected unit by name, social security number, and the
23 employer's unemployment tax account number, and any other information
24 required by the Division to identify plan participants.
- 25 (2) A description of how workers in the affected unit will be notified of the
26 employer's participation in the plan if the application is approved, including
27 how the employer will notify those workers in a collective bargaining unit, as
28 well as any workers in the affected unit who are not in a collective bargaining
29 unit. If the employer will not provide advance notice to workers in the affected
30 unit, the employer shall explain in a statement in the application why it is not
31 feasible to provide the notice.
- 32 (3) A requirement that the employer identify the usual weekly hours of work for
33 employees in the affected unit and the specific percentage by which their
34 hours will be reduced during all weeks covered by the plan. An application
35 shall specify the overall work reduction for which a short-time compensation
36 application may be approved, which shall be not less than ten percent (10%)
37 and not more than sixty percent (60%) of the usual work hours during that
38 period. If the plan includes any week for which the employer regularly
39 provides no work due to a holiday or other plant closing, then the week shall
40 be identified in the application. Notwithstanding the other provisions of this
41 subdivision, an employer shall be allowed some weeks of complete plant
42 shutdown in appropriate industries or given certain modes of operation.
- 43 (4) Certification by the employer that, if the employer provides health benefits
44 and retirement benefits to any employee whose usual weekly hours of work
45 are reduced under the Program, the benefits will continue to be provided to
46 employees participating in the Program under the same terms and conditions
47 as though the usual weekly hours of the employee had not been reduced or to
48 the same extent as other employees not participating in the Program. For
49 defined benefit retirement plans, the hours that are reduced under the plan
50 shall be credited for purposes of participation, vesting, and accrual of benefits
51 as though the usual weekly hours of work had not been reduced. The dollar

1 amount of employer contributions to a defined contribution plan that are based
2 on a percentage of compensation may be less due to the reduction in the
3 employee's compensation. However, an application may contain the required
4 certification when a reduction in health and retirement benefits scheduled to
5 occur during the duration of the plan will be applicable equally to employees
6 who are not participating in the Program and to those employees who are
7 participating.

8 (5) Certification by the employer that the aggregate reduction in work hours is in
9 lieu of layoffs, whether temporary or permanent layoffs or both.

10 (6) Agreement by the employer to (i) furnish reports to the Division relating to
11 the proper conduct of the plan, (ii) allow the Division access to all records
12 necessary to approve or disapprove the plan application and, after approval of
13 the plan, monitor and evaluate the plan, and (iii) follow any other directives
14 the Division deems necessary for the agency to implement the plan and that
15 are consistent with the requirements for plan applications.

16 (7) Certification by the employer that participation in the plan and its
17 implementation is consistent with the employer's obligations under applicable
18 federal and State laws.

19 (8) The effective date and duration of the plan, which shall expire no later than
20 the end of the twelfth full calendar month after the effective date.

21 (9) Any other provision added to the application by the Division that the U.S.
22 Secretary of Labor determines to be appropriate for the purpose of this
23 Program.

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

28 **"§ 96-47. Approval and disapproval of plan.**

29 The Division shall approve or disapprove a short-time compensation plan in writing within
30 30 days of its receipt and promptly communicate the decision to the employer. A decision
31 disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall
32 be final, but the employer shall be allowed to submit another plan for approval not earlier than
33 90 days from the date of the disapproval.

34 **"§ 96-48. Effective date and duration of plan.**

35 A short-time compensation plan shall be effective on the date that is mutually agreed upon
36 by the employer and the Division, which shall be specified in the notice of approval to the
37 employer. The plan shall expire on the date specified in the notice of approval, which shall be
38 either the date at the end of the twelfth full calendar month after its effective date or an earlier
39 date mutually agreed upon by the employer and the Division. However, if a short-time
40 compensation plan is revoked under G.S. 96-44, the plan shall terminate on the date specified in
41 the Division's written order of revocation. An employer may terminate a plan at any time upon
42 written notice to the Division. Upon receipt of notice from the employer, the Division shall
43 promptly notify each member of the affected unit of the termination date. An employer may
44 submit a new application to participate in another plan at any time after the expiration or
45 termination date.

46 **"§ 96-49. Revocation of approval of plan.**

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

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

7 **"§ 96-50. Modification of approved plan.**

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

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

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

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

27 **"§ 96-51. Eligibility for short-time compensation.**

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

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

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

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

46 **"§ 96-52. Benefits.**

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

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

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

4 (2) Paid short-time compensation benefits for more than 52 weeks under a plan.
5 (c) The short-time compensation paid to an individual shall be deducted from the
6 maximum entitlement amount of regular unemployment compensation established for the
7 individual's benefit year.

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

12 (e) The following provisions apply to individuals who work for both a short-time
13 compensation employer and another employer during weeks covered by the approved short-time
14 compensation plan:

15 (1) If combined hours of work in a week for both employers do not result in a
16 reduction of at least ten percent (10%) or, if higher, the minimum percentage
17 of reduction required to be eligible for a short-time compensation benefit as
18 provided in this Article, of the usual weekly hours of work with the short-time
19 employer, the individual shall not be entitled to benefits under these short-time
20 compensation provisions.

21 (2) If the combined hours of work for both employers results in a reduction equal
22 to or greater than ten percent (10%) or, if higher, the minimum percentage
23 reduction required to be eligible for a short-time compensation employer, the
24 short-time compensation benefit amount payable to the individual is reduced
25 for that week and is determined by multiplying the weekly unemployment
26 benefit amount for a week of total unemployment by the percentage by which
27 the combined hours of work have been reduced by ten percent (10%) or, if
28 higher, the minimum percentage reduction required to be eligible for a
29 short-time compensation benefit as provided in this Article, or more of the
30 individual's usual weekly hours of work. A week for which benefits are paid
31 under this subdivision shall be reported as a week of short-time compensation.

32 (3) If an individual worked the reduced percentage of the usual weekly hours of
33 work for the short-time compensation employer and is available for all his or
34 her usual hours of work with the short-time compensation employer, and the
35 individual did not work any hours for the other employer, either because of
36 the lack of work with that employer or because the individual is excused from
37 work with the other employer, the individual shall be eligible for short-time
38 compensation for that week. The benefit amount for the week shall be
39 calculated as provided in subsection (a) of this section.

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

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

48 **"§ 96-53. Changing short-time compensation benefits.**

49 Short-time compensation shall be charged to employers' experience rating accounts in the
50 same manner as unemployment compensation is charged under this Chapter. Employers liable

1 for payments in lieu of contributions shall have short-time compensation attributed to service in
2 their employ in the same manner as unemployment compensation is attributed.

3 **"§ 96-54. Extended benefits.**

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

8 **"§ 96-55. Severability.**

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

13 **SECTION 5.** There is appropriated from the General Fund to the Department of
14 Commerce, Division of Employment Security, the sum of one hundred thousand dollars
15 (\$100,000) for the 2020-2021 fiscal year to carry out the provisions of Section 4 of this act.

16 **SECTION 6.** Section 5 of this act becomes effective July 1, 2020. The remainder of
17 this act is effective when it becomes law and applies to claims for unemployment insurance
18 benefits arising on or after that date, except as otherwise provided.