

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - NEW CHAPTER

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 19 - SHORT-TIME COMPENSATION PROGRAM

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607; 48-672 through 48-683.

002. Definitions

- A. Additional part-time or full-time employee means any person hired to the affected unit if the hiring would increase the number of employees from the number of employees on the application for short-time compensation.
- B. Available for all usual hours of work means all hours the claimant was actually available for all usual hours of work or on approved leave.
- C. Change means any deviation from the plan that affects only one individual or any deviation from the plan that affects an entire unit or units to last for two or fewer consecutive weeks.
- D. Operating on its regular basis means the average usual hours worked within the affected unit for the 12 months immediately prior to submission of the STC plan.
- E. Substantial change means any deviation from the plan that affects an entire unit and is expected to last for three or more consecutive weeks or has already occurred for three or more consecutive weeks.
- F. STC Employer means the employer participating in an approved short-time compensation plan.

003. Short-time compensation plan

- A. Any employer wishing to participate in the short-time compensation program shall complete and submit the short-time compensation plan application through the Department of Labor's website or submit a paper application on a form provided by the Department of Labor.
- B. A short-time compensation plan may only apply to any employees of the STC employer who are in an affected unit that consists of three or more employees.
- C. A short-time compensation plan may only apply to any employees of the STC employer who are permanent employees.
- D. Once a STC employer designates an affected unit, all members of the affected unit and any other workers performing similar services within the affected unit must have their usual hours worked reduced by the same percentage.
- E. An employee of an employer may only be in one affected unit for purposes of the employer's short-time compensation plan.
- F. If an employee in an affected unit is an employee paid on an hourly basis, his or her percentage of hours reduced will be based on his or her usual weekly hours worked being forty hours or less.
- G. If an employee in an affected unit is an employee paid on a salary basis, his or her percentage of hours reduced must match the percentage his or her salary is reduced by the STC employer. His or her usual weekly hours worked shall be forty or less.
- H. If an employee in an affected unit is an employee paid on any basis other than hourly or salary, the employer must explain in its plan application how it will establish an hourly rate for the purposes of the short-time compensation program. His or her usual weekly hours worked shall be forty or less.
- I. The effective date of an approved short-time compensation plan shall be the first Sunday following the plan approval date or in the alternative a date mutually agreed upon between the STC employer and the Commissioner of Labor.
- J. A STC employer shall notify all affected employees of any substantial changes to the plan covering their affected unit.
- K. If a STC employer has a change to the plan that impacts an entire unit for more than two consecutive weeks, the STC employer shall provide good cause to the commissioner as to why this is not a substantial change to the plan.
- L. No modifications to the plan will be approved retroactively. Eligible employees not originally part of the approved plan will be added to the plan the first Sunday following notification to the Department of the eligible employee's name and social security number. Notification shall be provided in a method and manner directed by the Commissioner of Labor.

- M. The Department will approve or deny a plan within 30 days of receiving a completed application.
- N. A STC employer shall use the Department of Labor's website or the paper forms available from the Department to report changes to an approved STC plan, request modification of an approved STC plan, or revoke an approved STC plan.
- O. A STC employer may have more than one plan affecting different units at the same time, but employees of the STC employer may only be covered by one of the employer's STC plans at a time.

#### 004. Additional Employees

A STC employer shall not hire additional part-time or full-time employees for the affected unit or contract for the performance of similar services within the affected unit while the short-time compensation plan is in effect. An employer may if necessary, hire new part-time or full-time employees for the affected unit to replace employees of the affected unit who were with the affected unit during the STC plan and are no longer employed in the affected unit. The usual hours of the new worker shall be the same as the usual hours of the worker he or she is replacing.

#### 005. Continuing Plan Eligibility

If at any time a STC employer fails to meet the eligibility requirements in Neb. Rev. Stat. §48-675, the commissioner may notify the STC employer and the STC employer shall be required to respond to the commissioner with good cause for why the STC plan shall not be revoked within seven calendar days of notification from the commissioner.

#### 006. Weekly Benefit Calculation

- A. Approved leave including but not limited to: sick; holiday; personal time off or vacation taken during a week covered by an STC employer's short-time compensation plan shall be treated as actual hours worked for purposes of the short-time compensation weekly benefit amount calculation.
- B. If a claimant is covered by multiple approved STC Plans with different employers at the same time, the claimants usual hours worked will be the combined usual hours worked of all of the approved STC employers not exceeding a maximum total of 40 hours. The claimants actual hours worked will be the combined hours worked for all employers.
- C. Weekly benefits shall be calculated using only hours worked from all employment, including approved leave hours from an STC employer during the week being claimed.

#### 007. Weekly Certification Process

- A. STC Employer requirements:
  - i. For each week that an STC employer has an active short-time compensation plan, the STC employer shall submit a certification of hours worked by employees covered by an approved STC plan through the

Department of Labor's website in the form and manner directed by the Commissioner for each employee covered by the employer's approved STC plan on a weekly basis.

- ii. The first employer weekly certification shall be due no later than the second Wednesday after the effective date of the employer's STC plan. All subsequent weekly employer certifications shall be due by the Wednesday immediately following the benefit week.
- iii. If a STC employer fails to submit the weekly employer certification by the Wednesday immediately following the benefit week, the commissioner will have good cause to terminate the employer's STC plan.

B. Claimant requirements

- i. For each week that a claimant is a participant in an active short-time compensation plan, the claimant must complete a weekly certification in the form and manner directed by the Commissioner to be eligible for a weekly short-time compensation benefit amount or a regular unemployment compensation benefit amount.
- ii. A claimant's weekly certification for a benefit week may be submitted from the first Sunday to Friday immediately following the benefit week through an electronic media claim transaction. A claimant must submit the electronic media claim transaction by the Friday following the most recent week ending date. Failure to file a timely weekly certification shall be the basis for a denial of that week's benefits unless good cause for the late transaction can be shown. Any intervening weeks until the week in which the transaction was completed and received by the Department shall also be denied, regardless of cause.
- iii. If a claimant on an approved STC Plan is offered hours and is ineligible for STC unemployment insurance benefits for a week, then the claimant may be eligible for Regular unemployment insurance benefits for that week in accordance with rules and regulations of unemployment insurance benefits. If a STC employer reduces an employee's hours by less than 10% of the employee's usual weekly hours of work, then the employee will not be eligible for STC unemployment insurance benefits for that week.

008. Audit Process

The Department of Labor may audit STC Plans for compliance on a regular basis. If during the audit a variance between employer reported information and claimant reported information exists, the Department of Labor may redetermine the correct benefit amount.

009. Employer Plan Termination

An employer may terminate its STC Plan at any time upon written notice to the Commissioner. The termination of a plan will be effective the later of the date the termination notice is received or the termination effective date provided on the notification to the Commissioner. Notice of

terminations received after 5:00 p.m. Central Time shall be deemed received the next business day.

When a plan is terminated or ended according to its terms, the STC employer is required to post the Notice of Plan Termination document in a conspicuous place available to all employees in an affected unit covered by the STC Plan for 30 days following the plan termination. Nebraska Department of Labor will provide the Notice of Plan Termination document to the STC employer upon termination of the plan.

#### 010. Other Employment

If a claimant's benefit amount is based primarily upon wages earned from a STC employer, separations from employment from a non STC employer after the effective date of the approved plan will not result in a time disqualification being assessed upon the claimant.