

## CHAPTER 279

AN ACT concerning short-time unemployment benefits and amending P.L.2011, c.154.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2011, c.154 (C.43:21-20.3) is amended to read as follows:

C.43:21-20.3 Definitions relative to unemployment insurance benefits.

1. For the purposes of this act:

“Affected unit” means a specified plant or other facility, department, shift or other definable unit which includes two or more employees to which an approved short-time benefits program applies.

“Division” means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development, or any representative of the division responsible for approval or other division responsibilities regarding a shared work program.

“Health insurance and pension coverage” means employer-provided health benefits, and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. 414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. 414(i)), which are incidents of employment in addition to the cash remuneration earned.

“Shared work employer” means an employer who is providing a shared work program approved by the division pursuant to section 2 of this act.

“Shared work program” means a program submitted by an employer for approval by the division pursuant to section 2 of P.L.2011, c.154 (C.43:21-20.4) and approved by the division, under which the employer requests short-time benefits to employees in an affected unit of the employer to avert layoffs.

“Short-time benefits” means unemployment benefits payable to employees of an affected unit under an approved shared work program that are intended to be in lieu of layoffs and provided pursuant to sections 1 through 9 of this act, as distinguished from unemployment benefits otherwise payable under the New Jersey "unemployment compensation law," R.S. 43:21-1 et seq.

“Usual weekly hours of work” means the usual hours of work for an employee in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

2. Section 2 of P.L.2011, c.154 (C.43:21-20.4) is amended to read as follows:

C.43:21-20.4 Application to provide shared work program.

2. An employer who has not less than 10 employees may apply to the division for approval to provide a shared work program, the purpose of which is to stabilize the employer's work force during a period of economic disruption by permitting the sharing of the work remaining after a reduction in total hours of work. Any subsidizing of seasonal employment during off season, or of temporary or intermittent employment on an ongoing basis, is contrary to the purpose of a shared work program approved pursuant to this act. The application for a shared work program shall be made according to procedures and on forms specified by the division and shall include whatever information the division requires. The division may approve the program for a period of not longer than one year and may, upon employer request, renew the approval of the program for additional periods, each period not to exceed one year. The division shall not approve an application unless the employer:

a. (1) Certifies to the division that the aggregate reduction in work hours is in lieu of layoffs; (2) provides an estimate of the number of employees who would have been laid off in the absence of the program; and (3) certifies that the employer will not hire additional employees while short-time benefits are being paid;

b. Certifies to the division that health insurance or pension coverage, paid time off, or other benefits, including retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code (26 U.S.C. s.414(j)), or employer contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. s.414(i)), will continue to be provided to any employee whose workweek is reduced under the program, that those benefits will continue to be provided to employees participating in the program under the same terms and conditions as though the workweek of the employee had not been reduced or to the same extent as other employees not participating in the program, except that employer contributions to a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code (26 U.S.C. s.414(i)), may be reduced in proportion to the reduction of weekly hours, and certifies to the division that the employer will not make unreasonable revisions of workforce productivity standards;

c. Certifies to the division that any collective bargaining agent representing the employees has entered into a written agreement with the employer regarding the terms of the program, including terms regarding attendance in training programs while receiving short-time benefits, and provides a copy of the agreement to the division;

d. Provides, in the application, the effective date and duration of the program, a description of the affected unit or units covered by the program, including the number of employees in each unit, the percentage of employees in the affected unit covered by the program, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number and any other information required by the division to identify program participants;

e. Provides, in the application, a description of how the employees in the affected units will be notified of the employer's participation in the shared work program if the application is approved, including the means of notification for employees who are members of collective bargaining units and employees who are not members of a collective bargaining unit;

f. Identifies the usual weekly hours of work for the employees of the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the program;

g. Certifies that participation in the program and its implementation is consistent with the employer's obligations under all applicable federal and State laws; and

h. Agrees to provide the division with any reports or other information, including access to employer records, the division deems necessary to administer the shared work program and monitor compliance with all agreements and certifications required pursuant to this section.

The division shall approve or disapprove the program in writing not more than 60 days after the receipt of the application and promptly communicate the decision to the employer. A decision disapproving the application shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be permitted to submit another application for approval of a plan not earlier than 60 days from the date of disapproval.

3. Section 3 of P.L.2011, c.154 (C.43:21-20.5) is amended to read as follows:

## C.43:21-20.5 Revocation of approval.

3. a. The division, on its own initiative or upon request of the affected unit's employees, may revoke approval of an employer's application previously granted for any failure to comply with any agreement or certification required pursuant to section 2 of this act, or any other conduct or occurrences which the division determines to defeat the purpose, intent and effective operation of a shared work program. The notice of revocation shall be in writing and shall specify the reasons for the revocation and the date on which the revocation is effective.

b. An employer may request modifications of an approved shared work program by filing with the division a written request identifying the specific proposed modifications and explaining the need for the modifications. The division shall approve or disapprove the modifications within 30 days and promptly communicate to the employer the division's decision and the date on which the modification will take effect. The employer is not required to obtain division approval to make a plan modification which is not substantial, but is required to provide prompt, written notice of the modification to the division, which shall require the employer to request division approval of the modification if the division finds the modification to be substantial. The division may terminate the program if the employer fails to provide the notice required by this subsection.

4. Section 4 of P.L.2011, c.154 (C.43:21-20.6) is amended to read as follows:

## C.43:21-20.6 Eligibility for short-time benefits.

4. An individual who is employed by an employer with a shared work program approved by the division shall be eligible for short-time benefits during a week if:

a. (Deleted by amendment, P.L.2013, c.279)

b. The individual works for the employer at an affected unit less than the individual's usual weekly hours of work, and the employer has reduced the individual's weekly hours of work pursuant to a shared work program in effect during that week and approved by the division pursuant to section 2 of this act;

c. The percentage of the reduction of the individual's work hours below the individual's usual weekly hours of work is not less than 10% and not more than 60%, with a corresponding reduction of wages;

d. The individual would be eligible for unemployment benefits other than short-time benefits during the week, if the individual was entirely unemployed during that week and applied for unemployment benefits other than short-time benefits; and

e. During the week, the individual is able to work and is available for the individual's usual weekly hours of work with the shared work employer or is participating in a training program approved by the division, including division-approved employer-sponsored training, division-approved training funded under the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or the Workforce Development Partnership program established pursuant to section 4 of P.L.1992, c.43 (C.34:15D-4), or any other training approved by the division pursuant to subsection (c) of R.S.43:21-4.

If the individual complies with the requirements of subsection e. of this section, the individual shall not be subject to any other requirement of the "unemployment compensation law," R.S.43:21-1 et seq., to be available for work and actively seeking work.

5. Section 5 of P.L.2011, c.154 (C.43:21-20.7) is amended to read as follows:

## C.43:21-20.7 Amount of short-time benefits paid.

5. The amount of short-time benefits paid to an eligible individual shall, for any week, be equal to the individual's weekly benefit rate multiplied by the percentage of reduction of his wages resulting from reduced hours of work. The weekly benefit amount shall be rounded off to the nearest dollar. An individual shall not be paid short-time benefits for more than 52 weeks under a shared work program. Weeks of short-time benefits may be nonconsecutive. An individual shall not receive short-time benefits during any benefit week in which the individual receives any other unemployment benefits, with respect to the employment with the shared work employer.

Total unemployment benefits paid to an individual during any benefit year, including short-time benefits and all other unemployment benefits, shall not exceed the maximum amount to which the individual is entitled for all unemployment benefits other than short-time benefits.

The following provision shall apply to an individual who is employed by both a shared work employer and another employer during weeks covered by a shared work program:

a. If combined hours of work in a week for both employers result in a reduction of less than 10% of the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under the shared work program;

b. If combined hours of work in a week for both employers result in a reduction of 10% or more of the usual weekly hours of work with the shared work employer, the short-time benefit payable to the individual shall be reduced for that week and be determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by 10% or more of the individual's usual weekly hours of work;

c. If the individual worked a reduced percentage of the usual weekly hours of work for the shared work employer and is available for all of his usual hours of work with the shared work employer, and the individual did not work any hours for the other employer, either because of a lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time benefits for that week.

An individual who is not provided any work during a week by a shared work employer or any other employer and is otherwise eligible for unemployment benefits shall be eligible for the full amount of regular unemployment benefits to which the individual otherwise would be eligible. An individual who is not provided any work during a week by a shared work employer, but who works for another employer and is otherwise eligible for unemployment benefits shall be eligible for regular unemployment benefits for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment benefits.

An individual who has received all of the short-time benefits or a combination of all of the short-time benefits and regular unemployment benefits available in a benefit year shall be considered to be an exhaustee for the purposes of any extended benefits provided pursuant to the provisions of the "Extended Benefits Law," sections 5 through 11 of P.L.1970, c.324 (C.43:21-24.11 et seq.), and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

6. Section 6 of P.L.2011, c.154 (C.43:21-20.8) is amended to read as follows:

## C.43:21-20.8 Beginning, expiration of payment of benefits.

6. A shared work program and payment of short-time benefits to individuals under the program shall go into effect on the date mutually agreed upon by the employer and the division. A shared work program shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the division. The program shall also expire upon the date of any revocation of approval of the program by the division. An employer of an approved program may terminate the program at any time upon written notice to the division, and the division shall notify participating employees of the affected unit of the termination. If a shared work program expires or the employer terminates the program, the employer may, at any time after the expiration or termination date, submit a new application for division approval of another shared work program.

7. Section 7 of P.L.2011, c.154 (C.43:21-20.9) is amended to read as follows:

C.43:21-20.9 Manner of charging short-term benefits.

7. Any short-time benefits paid to an individual shall be charged in the same manner as other unemployment benefits pursuant to the “unemployment compensation law,” R.S.43:21-1 et seq.

8. Section 9 of P.L.2011, c.154 (C.43:21-20.11) is amended to read as follows:

C.43:21-20.11 Provisions in violation of federal law inoperative.

9. If the United States Department of Labor finds any provision of this act to be in violation of federal law, that provision of this act shall be inoperative.

9. This act shall take effect immediately.

Approved January 17, 2014.