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A Breakthrough for Work Sharing:

A Summary of the Layoff Prevention Act of 2012

April 2012 | Neil Ridley and George Wentworth

On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act (H.R. 3630), extending the payroll tax cut and federal unemployment assistance through the end of 2012. Included in the $143 billion measure are provisions designed to expand a creative layoff aversion strategy called work sharing.[1]

Work sharing, also known as short-time compensation, is an option within the federal-state Unemployment Insurance (UI) system that provides employers with an alternative to layoffs during a business slowdown. For example, a business that faces a slump in demand can reduce employees' hours by 20 percent instead of laying off one-fifth of its workforce. In a state with a work sharing program, workers can apply for and receive prorated unemployment benefits to help compensate for reduced work hours if the employer files a plan with the workforce agency.[2]

Work sharing is widely known and used in other countries, especially Germany, where it is credited with preserving jobs and keeping unemployment from rising sharply during the recent recession.[3] Now it is gaining traction in the United States. Since 2009, six states (Colorado, Maine, New Hampshire, New Jersey, Oklahoma, and Pennsylvania) and the District of Columbia have adopted work sharing, bringing the total number of programs to twenty four.

The enactment of H.R. 3630 marks a major breakthrough for work sharing in the United States. The legislation updates and clarifies short-time compensation (STC) provisions in federal law for the first time in 20 years. In a significant boost to implementation, the Act also provides nearly $500 million in temporary funding to states that adopt or expand programs. The impetus for these work sharing changes came from Sen. Jack Reed (D-RI) and Rep. Rosa DeLauro (D-CT), who introduced the Layoff Prevention Act in the 112th Congress.[4]

Federal guidance, to be released soon, will provide a comprehensive explanation and interpretation of the new provisions and describe how states can receive temporary funding. This brief, prepared by CLASP and NELP, provides background information on the Act and a summary of its key provisions.

Work Sharing Provisions in Federal Law

Short-time compensation programs were permanently authorized as part of the Unemployment Compensation Amendments of 1992. However, the U.S. Department of Labor took the position that the definition of short-time compensation, as adopted in 1992, did not authorize certain elements in state laws that have been central to the operation of work sharing programs. For example, many states require employers to submit a plan for approval by the state workforce agency. Since 1992, states have adopted and operated programs without extensive federal guidance, and the U.S. Department of Labor has been unable to promote this layoff aversion strategy.[5]

The 2012 Act updates and clarifies work sharing provisions in federal law. It requires an employer to submit a written plan to the state workforce agency, and to certify that workers' health and retirement benefits will not be reduced due to participation in the work sharing program. The following table lists key elements of the new STC definition:

Elements of the New STC Definition

- Employer participation is voluntary.
- Employers reduce employee hours in lieu of layoffs.
- Employees whose hours are reduced by at least 10 percent but not more than 60 percent (as determined by the state) are not disqualified from unemployment compensation.
- Employees receive a prorated share of the unemployment benefits they would have received if totally unemployed.
- Employees meet work availability and work search requirements if they are available for their work week as required.
- Eligible employees may participate in appropriate training approved by the state UI agency.
- If health and retirement benefits are provided, employers must certify that those benefits will not be reduced due to participation in the STC program.
- The employer must submit a written plan to the state UI agency describing how it will implement requirements of the STC program (including a plan to give advance notice, where feasible, to employees whose work week will be reduced), as well as an estimate of the number of layoffs that would have occurred but for the STC program.
- The employer's plan must be consistent with employer obligations under applicable federal and state laws.

The Act includes a mechanism by which a state may request approval by the Secretary of Labor for other provisions in state law "that are determined to be appropriate for the purposes of a short-time compensation program." For example, most states require union consent to work-sharing plans if the employer has a collective bargaining agreement. The Act also provides for a transition period (extending two years and six months after the date of enactment) for states with existing STC programs that do not meet this new definition.

Temporary Funding of State Work Sharing Programs

States currently face a dual challenge: a weak economic recovery with high unemployment and continuing strains on state unemployment trust funds. The Act is intended to spur adoption of innovative STC programs in this difficult environment. It provides for two ways that states can use temporary federal funding to adopt work sharing or expand existing programs.

For states with STC programs in law:

The Act includes incentives for the 23 states and the District of Columbia that have existing programs and for additional states that are preparing to enact STC legislation. It provides for 100 percent reimbursement of the amount of STC paid under a state law that meets the new definition.[6] States with programs that do not meet all elements of the new definition are eligible to receive reimbursements during the transition period and may continue to receive temporary federal funding when their laws meet the new definition. The temporary federal financing is available to states for no more than three years (156 weeks) and can be drawn down no later than three years and six months following the date of enactment.

For states without STC programs in law:

Because it may take time to enact state laws, the Act allows states without existing STC laws and programs to enter into an agreement with the Secretary of Labor to make work sharing immediately available to employers. Under this temporary federal program, states with an approved agreement are reimbursed for one-half of the amount of benefits paid to individuals; participating employers must pay the remaining one-half.[7] Temporary federal financing under an agreement is available for no more than two years (104 weeks) and can be drawn down no later than two years and thirteen weeks following the date of enactment.

The following table summarizes key features of the two reimbursement options.

	Temporary Financing for Existing State STC Programs	Temporary Federal Program by Agreement with States
Eligible States	States with programs in law that meet the new STC definition. States with existing programs that do not meet all elements of the STC definition are automatically eligible to receive temporary funding during the transition period and may continue to receive such funding if their law meets the new STC definition.	States without programs in law. States must have a plan to distribute benefit payments in accordance with the new STC definition.
Amount of Federal Reimbursement	100 percent of the amount of STC paid under a state law.	50 percent of the amount of benefits paid under an agreement. Participating employers must pay the remaining 50 percent of benefits.
Limitations on Reimbursements to States	Reimbursements are provided for STC payments amounting to no more than 26 times the amount of regular compensation payable to an individual under state law. Reimbursements are not available for individuals employed on a seasonal, temporary, or intermittent basis.	Same
Duration of Reimbursements to States	No more than three years (156 weeks).	No more than two years (104 weeks).
Period of Availability	Beginning on or after the date of enactment and ending no later than three years and six months following enactment.	Beginning on or after the date of the agreement and ending no later than two years and thirteen weeks following enactment.

States can terminate participation in the 50 percent reimbursement option and become eligible to receive the 100 percent reimbursement when they enact a STC program that meets the new definition. Combined incentive payments under both options (50 percent and 100 percent) are available for no more than three years (156 weeks) and can be drawn down no later than three years and six months following enactment.

Grants for Program Enrollment and Administration

The Act includes $100 million in grants to make state STC programs more efficient and more effective for workers and employers. Although some states have promoted work sharing, it is generally a little-known option for employers. In addition, some functions of state work sharing programs, such as the submission and processing of plans, are labor intensive for state agencies and burdensome for employers. Grants available under the Act can be used for startup and implementation, improvements in program administration, and increased outreach to employers.

The Act requires the Secretary of Labor to oversee a process for certifying eligible states and awarding grants to states. It specifies a formula, similar to the one used to distribute incentive payments under the Unemployment Insurance Modernization Act, which must be used to determine the maximum amount of each state's grant. One-third of the grant must be used for implementation or program administration, and two-thirds must be dedicated to promotion and to enrolling employers in work sharing programs. The table below describes key features of the grant program.

Features of State Grant Program

Eligibility Criteria	States must have programs in law that meet the new STC definition, and their state laws must otherwise be in conformity with federal law. States may not have STC programs that are scheduled to sunset or that are not expected to take effect within 12 months of the Secretary of Labor's certification. Additional criteria to be determined by the Secretary of Labor
Use of Funds	One-third of the grant may be used for implementation or program administration, such as automating plan submission and approval or improving the processing of STC claims. -- Two-thirds of the grant may be used for promotion and enrollment activities, such as outreach to the business community or educating employers about the program.
Period of Grant Availability	States must apply for grants before December 31, 2014.

The Act also requires the Secretary of Labor to establish a process to recoup grant funds if it is determined that the state terminated the STC program or failed to meet program requirements during the five years beginning with the first date a grant was awarded to a state.

Technical Support to States

The Act authorizes the Department of Labor to provide enhanced assistance to states and actively promote the program at the national level. The Department of Labor is directed to:

- Develop model legislative language to be used by states;
- Provide guidance and technical support to states; and
- Establish reporting requirements to track the number of averted layoffs, the number of participating employers, and other indicators.

The Act also provides $1.5 million for the preparation of one or more reports on the implementation of work sharing programs.[8]

Conclusion

The enactment of H.R. 3630 is expected to raise the profile of work sharing, which until now has been available in fewer than half of states and has not been extensively used by employers. The incentives, together with new federal guidance and support, provide states with a historic opportunity to launch or expand STC programs. Although the economic recovery appears to be gaining steam, it is not too late to use work sharing to prevent layoffs in some sectors.[9] If implemented in conjunction with other layoff aversion strategies, work sharing can be a critical element in a state's response to an economic downturn in a region or within a specific industry. Equally important, states that move forward now can establish an important economic security program that benefits workers, businesses, and communities and have it in place when the next recession hits.

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[1] The section of the payroll tax cut and UI extension legislation related to work sharing is entitled the Layoff Prevention Act of 2012.

[2] Neil Ridley and David Balducchi, *Work Sharing, an Alternative to Layoffs: Frequently Asked Questions*, CLASP, September 2011, http://www.clasp.org/resources_and_publications/publication?id=1038&list=publications; also, Neil Ridley, *Work Sharing—an Alternative to Layoffs for Tough Times*, CLASP, March 26, 2009, http://www.clasp.org/admin/site/publications/files/0481.pdf.

[3] Dean Baker, "Work Sharing: The Quick Route Back to Full Employment," Center for Economic Policy and Research, June 2011, http://www.cepr.net/index.php/publications/reports/work-sharing-the-quick-route-back-to-full-employment.

[4] Sen. Jack Reed and Rep. Rosa DeLauro first introduced short-time compensation bills in August 2009 during the 111th Congress (S. 1646, H.R. 4135). They introduced another version in August 2010. They introduced the Layoff Prevention Act (S. 1333. H.R. 2421) in July 2011 during the 112th Congress.

[5] Alison Shelton, *Compensated Work Sharing Arrangements (STC) as an Alternative to Layoffs*, Congressional Research Service, September 2011.

[6] Under the new law, federal reimbursements to state UI trust funds for STC benefit payments do not alter federal requirements that states charge employers for UI benefits (including STC benefits) through a system of experience rating.

[7] The employer payment (that is, one-half of the amount of the payments under an agreement) serves the same function as the requirement in existing state laws to charge employers for UI benefits (including STC benefits) through a system of experience rating.

[8] The new reports are expected to build on existing research, which is surveyed in the following publication: Sara E. Rix, *Saving Jobs through Work Sharing*, Insight on the Issues 45, AARP Public Policy Institute, September 2010.

[9] Anastasia Christman and Christine Riordan, *Filling the Good Jobs Deficit: An Economic Recovery Agenda for Our States and Cities*, National Employment Law Project, October 2011, http://www.nelp.org/page/-/Job_Creation/Filling_Good_Jobs_Deficit_Recovery_Agenda.pdf?nocdn=1.