

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - SEPTEMBER 22, 2016

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 employee means any person hired to the affected unit if the hiring would increase the number of employees from the number on the short time compensation (STC) plan application.
- B. Operating on its regular basis means the average usual weekly hours worked by an employee in the affected unit for the 12 months immediately prior to submission of the STC plan.
- C. STC Employer means the employer participating in an approved STC plan.

003. Short-time compensation plan

- A. Any employer wishing to participate in the STC program shall complete and submit an STC plan application in a form and manner designated by the commissioner.
- B. The commissioner will approve or deny an STC plan within 30 days of receiving a completed STC plan application. If an STC plan application is approved, the commissioner shall notify the STC employer of the effective date of the STC plan.
- C. An STC plan may only apply to an affected unit that consists of three or more employees.
- D. An STC plan may only apply to permanent employees of the STC employer in the affected unit. Workers hired through an employee-leasing company are not eligible for STC benefits.
- E. An STC plan must provide that all members of an affected unit and any other workers performing similar services within the affected unit will have their usual weekly hours worked reduced by the same percentage, which must be between 10 percent and 60 percent.
- F. An employee may only be in one affected unit for purposes of an employer's STC plan and may not be included in more than one STC plan for the same employer.

APPROVED

OCT 11 2022

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- G. In calculating an employee's usual weekly hours worked, an STC employer shall use the following principles:
  - i. If the employee is paid on an hourly basis, the usual weekly hours worked shall be based on the actual average weekly hours worked when the STC employer was operating on its regular basis but shall be no more than 40.
  - ii. If the employee is paid on a salary basis, the employee's percentage of hours reduced must match the percentage the employee's salary is reduced by the STC employer, but the usual weekly hours worked shall be no more than 40.
  - iii. If the employee is paid on any basis other than hourly or salary, the STC employer must explain in its plan application how it will establish a percentage of hours reduced for the purpose of the STC plan. The usual weekly hours worked shall be no more than 40.

004. Changes and Modifications to an Approved STC Plan

- A. An STC employer making any change, which is not a substantial change, to an approved STC plan shall promptly notify the commissioner in a form and manner designated by the commissioner.
- B. An STC employer proposing a substantial change to an approved STC plan shall seek a plan modification using a form and method designated by the commissioner.
- C. A change to an STC plan shall be presumed to be a substantial change if the change impacts the entire affected unit and lasts or is expected to last more than two consecutive weeks.
- D. If an STC employer makes a change to an approved STC plan that impacts an entire affected unit for more than two consecutive weeks without an approved plan modification, the STC employer shall show good cause why this does not constitute a substantial change. Failure to show good cause may result in plan revocation.
- E. An STC employer shall notify all employees in an affected unit of any substantial change to an STC plan.

005. Additional Employees

A STC employer shall not hire any additional employee for the affected unit or contract for the performance of similar services within the affected unit while the STC plan is in effect. An employer may, if necessary, hire a replacement employee to replace any employee who was in the affected unit at the time of the STC plan application but left the affected unit during the STC plan. The usual weekly hours of the replacement employee shall be the same as the usual hours of the replaced employee.

OCT 11 2022

006. Weekly Benefit Process

A. STC Employer Requirements

- i. Following each benefit week during which an STC employer has an active, approved STC plan, the STC employer shall submit a weekly certification for all employees covered by the STC plan in a form and manner directed by the commissioner. This weekly certification shall be submitted no later than the Saturday following the benefit week being certified.
- ii. An STC employer's failure to submit a weekly certification prior to the deadline set by the commissioner may provide the commissioner with good cause to revoke the STC plan.

B. Participating Employee Requirements

- i. To elect to receive benefits under an STC plan, an employee in an affected unit must file an application for unemployment compensation in a form and manner directed by the commissioner.
- ii. An individual electing to participate in an STC plan must provide any information requested by the commissioner to determine the individual's eligibility for STC benefits or the individual's weekly benefit amount. Failure to provide information as directed may result in denial of STC benefits.
- iii. If an individual is not eligible for STC benefits during a benefit week, the individual may receive regular unemployment compensation for that week if otherwise eligible. To receive any regular unemployment compensation for which the individual may be eligible, the individual shall timely file a weekly certification under the rules and regulations governing regular unemployment compensation.

C. Eligibility and Weekly Benefit Amount

- i. An individual is available for all usual hours of work if, for all usual hours of work, the Participant was either actually available to work or on leave approved by the STC employer.
- ii. Leave taken during a benefit week with approval of the STC employer, including but not limited to sick leave, holiday leave, personal time off, and vacation leave, shall be treated as actual hours worked during that week for the purpose of calculating STC benefits.
- iii. If an individual is covered by more than one approved STC plan, each with a different employer, for a benefit week, the individual's usual hours worked shall be the individual's combined usual hours worked for all STC employers but shall not be more than 40 hours. The individual's actual hours worked for a benefit week will be the combined hours the individual worked for all employers during that week.

OCT 11 2022

- iv. If an individual's weekly benefit amount is based primarily on wages earned from an STC employer, a separation from employment with a non-STC employer after the effective date of an approved STC plan will not result in assessment of a time disqualification for the individual.

007. STC Plan Review

- A. The commissioner may audit an STC plan at any time to review compliance.
- B. The commissioner may redetermine an individual's eligibility for STC benefits or benefit amount for any benefit week if the commissioner determines that the original determination was based on inaccurate information or an error in calculation. The commissioner shall make no redetermination after two years from the date of the original determination.
- C. If at any time an STC employer fails to meet the eligibility requirements in *Neb. Rev. Stat. §48-675*, the commissioner shall notify the STC employer and the STC employer shall be required to respond, in a form and manner directed by the commissioner, to show good cause. Failure to show good cause may result in plan revocation.

008. Employer Plan Termination

- A. An employer may terminate its STC Plan at any time by providing written notice in a form and manner directed by the commissioner. The commissioner shall issue a notice of plan termination indicating the effective date of the termination.
- B. When a plan is terminated, revoked, or expired according to its terms, the STC employer is required to post a notice of plan termination in a conspicuous place available to all employees in an affected unit covered by the STC Plan for 30 days following the plan termination.

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