

THE FLORIDA BAR
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WAGE & HOUR UPDATE

SHORT TIME COMPENSATION PLANS

A Tool For Business Slow Downs & Re-Openings

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Introduction

- Short-Time Compensation (or “Workshare”) programs are not new.
- Recent popularity due to CARES Act funding.
- Florida’s program was enacted in 2008 and has historically been underutilized.
- Alternative for Florida employers with new start-up operations or who are facing temporary slowdowns, shutdowns, and gradual re-openings.

What is a Short-Time Compensation Plan?

- A Short-Time Compensation (STC) plan (or “Workshare” plan) is a voluntary program initiated by an employer to retain staff by reducing weekly working hours during temporary slowdowns or start-ups instead of laying off employees.
- STC programs are an alternative to layoffs for employers experiencing a reduction in available hours.
- Employees keep their jobs while collecting partial unemployment benefits from the state unemployment fund, even when they otherwise would be ineligible to do so because their income, even as reduced, is too high.
- During re-start-up operations, an STC plan may assist employers to gradually bring staff back on board towards full-time employment.

Federal Assistance for STC Programs

- The CARES Act (Coronavirus Aid, Relief, and Economic Security Act) included incentives for states which already have such programs, such as Florida, to encourage the use of STCs by providing federal funding.
- See Section 2108, CARES ACT provided for 100% funding for STC payments made under existing state sponsored programs.
 - Extended through March 14, 2021 by the December 2020 additional federal stimulus package
- In order to receive federal funding under the CARES Act, state programs must meet the provisions of Section 3306(v) of the Internal Revenue Code. Florida's STC program, administered by the Florida Department of Economic Opportunity (DEO), meets this requirement.

Florida STC Programs

- Florida Statute 443.1116 authorizes the Florida DEO to approve and monitor STC plans submitted by qualified employers and sets forth certain requirements for STC plans.
- Florida STC programs are not available as a subsidy to seasonal employers during the off-season or as a subsidy to employers who traditionally use only part-time employees. Fla. Stat. §443.1116(2)(h).
- Each plan is submitted to the Short Time Compensation Coordinator, Reemployment Assistance Services at the DEO.

Florida STC Programs (con't.)

- Each STC program requires individualized review, evaluation and submission because it must be tailored to each employer. Employment and labor attorneys can assist a qualified employer to craft a suitable and approvable STC plan to the DEO.
- Basic parameters all plans must adhere to:
 - Employer must provide the method intended to give notice to affected employees and identify such employees by name and social security number
 - Employer must estimate number of layoffs that would have occurred absent an STC
 - At least 10 percent of employees from the total staff or a particular business unit must be working reduced hours. (For a staff or unit of less than 20 employees, the minimum is 2 employee participants.)
 - Normal weekly hours worked can only be reduced by 10% to 40% (based on 40-hour work week)

Employee Requirements

- Employees who are participating in an STC plan must:
 - Be a full-time employee of a participating employer
 - Cannot be employees paid at piece rate or on commission
 - File a reemployment assistance claim with the DEO (after the STC plan is approved)
 - Report the number of hours worked, as well as any paid leave time taken, every two weeks

Benefits of an STC Plan

Employers:

- Avoid expense of recruiting, hiring and training new employees when business conditions improve
- Retain more of their workforce by encouraging work share arrangements rather than having to layoff employees during difficult economic times
- Increase morale, loyalty and retention by providing partial wage replacement for work hours reduction from the state's reemployment assistance program

Employees:

- Eligibility for partial reemployment assistance benefits without experiencing full unemployment or having to look for new employment
- Maintain connectivity to employers and are available when work conditions allow for full-time employment to resume
- Continuation of employer-provided receive fringe benefits (health insurance, retirement benefits, 401(k)) where eligible under the same terms and conditions as if working full time

Are Partial UC Benefits Available Without an STC Plan?

- Not without significant reduction in work hours; even then benefits will be minimal.
- Example: Employee earning over \$28,500 annually is capped at \$275 weekly UC benefit and will not start receiving partial benefits until reduced weekly earnings are \$332 or lower – a 45% reduction in hours.
 - Reduced weekly wage must be less than full weekly benefit (capped at \$275/week).
 - State disregards first \$58 in earnings (8 x federal minimum wage of \$7.25/hr):
- Eligibility for at least \$1 Florida unemployment benefits = eligibility for the full expanded CARES Act federal benefits (currently \$300/week through March 14, 2021).

Sample Partial Benefit Calculations – 20% Hours Reduction

Employee earns \$15/hr, works 40 hrs per week, regular weekly earnings \$600/week:

No STC Plan

Regular earnings: \$600/week (40 hrs x \$15/hr)

Reduced earnings: \$480/week (32 hrs x \$15/hr)

Reduced Weekly Wages (statutory definition):

$$\$480/\text{week} - \$58 = \$422/\text{week}$$

Partial UC Benefit Amount: Zero

$$\$422/\text{week} > \$275/\text{week max. benefit}$$

CARES Act = Zero

$$\text{Total weekly earnings} = \$480$$

Approved STC Plan

Regular earnings: \$600/week (40 hrs x \$15/hr)

Reduced earnings: \$480/week (32 hrs x \$15/hr)

Partial UC Benefit Amount: \$55/week

$$20\% \times \$275/\text{week max benefit}$$

CARES Act = \$300/week (through 3/14/21)

Total weekly earnings thru 3/14/21 = \$835

Total weekly earnings post 3/14/21 = \$535

Sample Partial Benefit Calculations – 40% Hours Reduction

Employee earns \$15/hr, works 40 hrs per week, regular weekly earnings \$600/week:

No STC Plan

Regular earnings: \$600/week (40 hrs x \$15/hr)

Reduced earnings: \$360/week (24 hrs x \$15/hr)

Reduced Weekly Wages (statutory definition):

$$\$360/\text{week} - \$58 = \$302/\text{week}$$

Partial UC Benefit Amount: Zero

$$\$302/\text{week} > \$275/\text{week max. benefit}$$

CARES Act = Zero

$$\text{Total weekly earnings} = \$360$$

Approved STC Plan

Regular earnings: \$600/week (40 hrs x \$15/hr)

Reduced earnings: \$360/week (24 hrs x \$15/hr)

Partial UC Benefit Amount: \$110/week

$$40\% \times \$275/\text{week max benefit}$$

CARES Act = \$300/week (through 3/14/21)

Total weekly earnings thru 3/14/21 = \$770

Total weekly earnings post 3/14/21 = \$470

Questions?

Thank **you.**