

[Second Reprint]

ASSEMBLY, No. 4189

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 10, 2013

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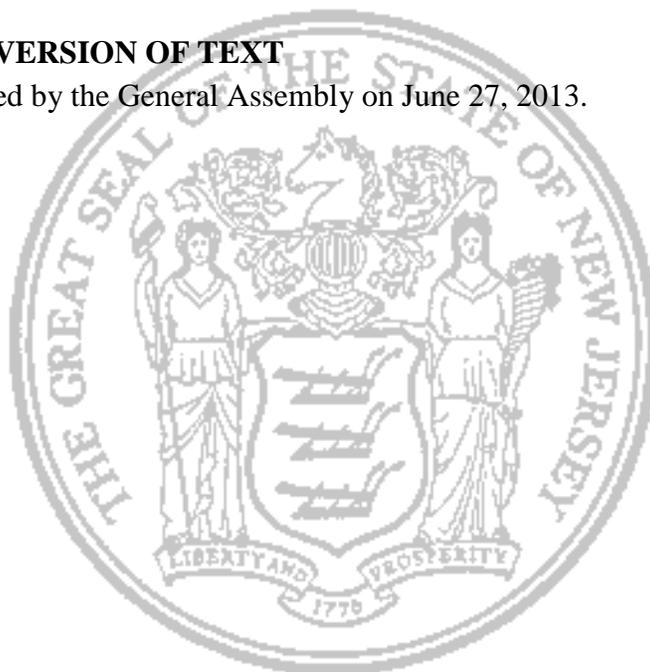
**Assemblyman Coughlin, Senators A.R.Bucco, Cunningham, Addiego and
Madden**

SYNOPSIS

Modifies short-time unemployment benefit law.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 27, 2013.



(Sponsorship Updated As Of: 1/14/2014)

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

3

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

6

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

9 1. For the purposes of this act:

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

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

19 **【**“Full-time hours” means not less than 30 and not more than 40
20 hours per week.**】**

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

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

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

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

43 “Usual weekly hours of work” means the usual hours of work for
44 an employee in the affected unit when that unit is operating on its

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 24, 2013.

²Assembly floor amendments adopted June 27, 2013.

1 regular basis, not to exceed forty hours and not including hours of
2 overtime work.

3 (cf: P.L.2011, c.154, s.1)

4

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

7 2. An employer who has not less than 10 employees¹ **【**, who are
8 each employed for not less than 1,500 hours per year,**】**¹ may apply
9 to the division for approval to provide a shared work program, the
10 purpose of which is to stabilize the employer's work force during a
11 period of economic disruption by permitting the sharing of the work
12 remaining after a reduction in total hours of work. Any subsidizing
13 of seasonal employment during off season, **【**of employers who
14 traditionally use part-time employees,**】** or of temporary **【**part-time**】**
15 or intermittent employment on an ongoing basis, is contrary to the
16 purpose of a shared work program approved pursuant to this act.
17 The application for a shared work program shall be made according
18 to procedures and on forms specified by the division and shall
19 include whatever information the division requires. The division
20 may approve the program for a period of not longer than one year
21 and may, upon employer request, renew the approval of the
22 program **【**annually**】** for additional periods, each period not to
23 exceed one year. The division shall not approve an application
24 unless the employer:

25 a. (1) Certifies to the division that **【**it**】** the aggregate reduction
26 in work hours is in lieu of layoffs; (2) provides an estimate of the
27 number of employees who would have been laid off in the absence
28 of the program; and (3) certifies that the employer will not hire
29 additional **【**part-time or full-time**】** employees while short-time
30 benefits are being paid;

31 ¹**【**benefits provided to participating employees before the
32 application was made, or make unreasonable revisions of workforce
33 productivity standards;**】**¹

34 b. **【**Agrees with**】** Certifies to the division **【**not to reduce**】** that
35 health insurance or pension coverage, paid time off, or other
36 benefits, including retirement benefits under a defined benefit plan,
37 as defined in section 414(j) of the Internal Revenue Code (26
38 U.S.C. 414(j)), or employer contributions under a defined
39 contribution plan, as defined in section 414(i) of the Internal
40 Revenue Code (26 U.S.C. 414(i)), will continue to be provided to
41 **【**participating employees before the application was made, or**】** any
42 employee whose workweek is reduced under the program, that
43 those benefits will continue to be provided to employees
44 participating in the program under the same terms and conditions as
45 though the workweek of the employee had not been reduced or to
46 the same extent as other employees not participating in the program,
47 except that employer contributions to a defined contribution plan, as

1 defined in section 414(i) of the Internal Revenue Code (26 U.S.C.
2 414(i)), may be reduced in proportion to the reduction of weekly
3 hours, and certifies to the division that the employer will not make
4 unreasonable revisions of workforce productivity standards;

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

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

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

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

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

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

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

43 (cf: P.L.2011, c.154, s.2)

44

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

47 3. a. The division, on its own initiative or upon request of the
48 affected unit's employees, may revoke approval of an employer's

1 application previously granted **【for good cause shown, including】**
2 for any failure to comply with any agreement or certification
3 required pursuant to section 2 of this act, or any other conduct or
4 occurrences which the division determines to defeat the purpose,
5 intent and effective operation of a shared work program. The notice
6 of revocation shall be in writing and shall specify the reasons for
7 the revocation and the date on which the revocation is effective.

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

22 (cf: P.L.2011, c.154, s.3)

23
24 4. Section 4 of P.L.2011, c.154 (C.43:21-20.6) is amended to
25 read as follows:

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

29 a. ¹**【The individual was employed by the employer for not less**
30 **than 1,500 hours during the individual's base year;】** (Deleted by
31 amendment, P.L. , c.) (pending before the Legislature as this
32 bill)¹

33 b. The individual works for the employer at an affected unit
34 less than the individual's **【normal full-time】** usual weekly hours
35 **【during the week】** of work, and the employer has reduced the
36 individual's weekly hours of work pursuant to a shared work
37 program in effect during that week and approved by the division
38 pursuant to section 2 of this act;

39 c. The percentage of the reduction of the individual's work
40 hours below the individual's **【normal full-time】** usual weekly hours
41 **【during a week】** of work is not less than 10% and not more than
42 60%, with a corresponding reduction of wages;

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

1 e. During the week, the individual is able to work and is
2 available **【to work】** for the individual's **【normal full-time】** usual
3 weekly hours **【for】** of work with the shared work employer or is
4 **【attending】** participating in a training program **【which is in**
5 **compliance with the provisions of paragraph (4) of】** approved by
6 the division, including division-approved employer-sponsored
7 training, division-approved training funded under the Workforce
8 Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.)
9 or the Workforce Development Partnership program established
10 pursuant to section 4 of P.L.1992, c.43 (C.34:15D-4), or any other
11 training approved by the division pursuant to subsection (c) of
12 R.S.43:21-4 **【and the agreements and certifications required**
13 **pursuant to the provisions of section 2 of this act】**.

14 If the individual complies with the requirements of subsection e.
15 of this section, the individual shall not be subject to any other
16 requirement of the "unemployment compensation law," R.S.43:21-1
17 et seq., to be available for work and actively seeking work.
18 (cf: P.L.2011, c.154, s.4)

19

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

22 5. The amount of short-time benefits paid to an eligible
23 individual shall, for any week, be equal to the individual's weekly
24 benefit rate multiplied by the percentage of reduction of his wages
25 resulting from reduced hours of work. The weekly benefit amount
26 shall be rounded off to the nearest dollar. An individual shall not
27 be paid short-time benefits **【in excess of 26】**, for more than 52
28 weeks **【during a benefit year, but the weeks】** under a shared work
29 program. Weeks of short-time benefits may be nonconsecutive. An
30 individual shall not receive short-time benefits during any benefit
31 week in which the individual receives any other unemployment
32 benefits, with respect to the employment with the shared work
33 employer.

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

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

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

46 b. If combined hours of work in a week for both employers
47 result in a reduction of 10% or more of the usual weekly hours of

1 work with the shared work employer, the short-time benefit payable
2 to the individual shall be reduced for that week and be determined
3 by multiplying the weekly unemployment benefit amount for a
4 week of total unemployment by the percentage by which the
5 combined hours of work have been reduced by 10% or more of the
6 individual's usual weekly hours of work;

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

14 An individual who is not provided any work during a week by a
15 shared work employer or any other employer and is otherwise
16 eligible for unemployment benefits shall be eligible for the full
17 amount of regular unemployment benefits to which the individual
18 otherwise would be eligible. An individual who is not provided any
19 work during a week by a shared work employer, but who works for
20 another employer and is otherwise eligible for unemployment
21 benefits shall be eligible for regular unemployment benefits for that
22 week subject to the disqualifying income and other provision
23 applicable to claims for regular unemployment benefits.

24 An individual who has received all of the short-time benefits or a
25 combination of all of the short-time benefits and regular
26 unemployment benefits available in a benefit year shall be
27 considered to be an exhaustee for the purposes of any extended
28 benefits provided pursuant to the provisions of the "Extended
29 Benefits Law," sections 5 through 11 of P.L.1970, c.324 (C.43:21-
30 24.11 et seq.), and, if otherwise eligible under those provisions,
31 shall be eligible to receive extended benefits.

32 (cf: P.L.2011, c.154, s.5)

33
34 6. Section 6 of P.L.2011, c.154 (C.43:21-20.8) is amended to
35 read as follows:

36 6. A shared work program and payment of short-time benefits
37 to individuals under the program shall **begin with the first week**
38 **following approval of an application by** go into effect on the date
39 mutually agreed upon by employer and the division **or the first**
40 **week specified by the employer, whichever is later**. A shared
41 work program shall expire on the date specified in the notice of
42 approval, which shall be either the date at the end of the 12th full
43 calendar month after its effective date or an earlier date mutually
44 agreed upon by the employer and the division. The program shall
45 also expire upon the date of any revocation of approval of the
46 program by the division. An employer of an approved program
47 may terminate the program at any time upon written notice to the
48 division, and the division shall notify participating employees of the

1 affected unit of the termination. If a shared work program expires
2 or the employer terminates the program, the employer may, at any
3 time after the expiration or termination date, submit a new
4 application for division approval of another shared work program.
5 (cf: P.L.2011, c.154, s.6)

6
7 ¹7. Section 7 of P.L.2011, c.154 (C.43:21-20.9) is amended to
8 read as follows:

9 7. **【All short-time benefits paid to an individual shall be**
10 **charged to the account of the shared work employer by which the**
11 **individual is employed while receiving the short-time benefits.】**
12 ²**【If the shared work employer is liable for payments in lieu of**
13 **contributions in the case of other unemployment benefits, that**
14 **employer shall be liable for payments in lieu of contributions for**
15 **the entire amount of the short-time benefits paid】** Any short-time
16 benefits paid to an individual shall be charged in the same manner
17 as other unemployment benefits pursuant to the “unemployment
18 compensation law,” R.S.43:21-1 et seq^{2.1}.
19 (cf: P.L.2011, c.154, s.7)

20
21 ¹**【7.】** ^{8.1} Section 9 of P.L.2011, c.154 (C.43:21-20.11) is
22 amended to read as follows:

23 9. If the United States Department of Labor finds any provision
24 of this act to be in violation of federal law, **【all provisions】** that
25 provision of this act shall be inoperative.
26 (cf: P.L.2011, c.154, s.9)

27
28 ¹**【8.】** ^{9.1} This act shall take effect immediately.