

Enabling school bus drivers employed by private companies to participate in short-term compensation programs (work share) during periods between successive academic years.

These two sections would be inserted into the bill. Note that additional conforming changes would be made to the bill title and to the second to last section.

2023 Kansas Statutes

- 44-706. Disqualification for benefits; examination by secretary; substance abuse program, approval of; job skills program, approval.** The secretary shall examine whether an individual has separated from employment for each week claimed. The secretary shall apply the provisions of this section to the individual's most recent employment prior to the week claimed. An individual shall be disqualified for benefits:
- (a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection. For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection if:
- (1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;
 - (2) the individual left temporary work to return to the regular employer;
 - (3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;
 - (4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;
 - (5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;
 - (6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined

individual for such week shall be made under this subsection; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) that an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection, the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection provided:

- (1) The individual was engaged in full-time employment concurrent with the individual's school attendance;
- (2) the individual is attending approved training as defined in K.S.A. 44-703(s), and amendments thereto; or
- (3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under K.S.A. 44-705(c), and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

- (1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.
- (2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

:
(1) That the individual is a participating employee in a short-term compensation program established pursuant to K.S.A. 44-757, and amendments thereto; or
(2)

2023 Kansas Statutes

44-757. Short-term compensation program; definitions; rules and regulations; promotion of program; procedures; employer plans, requirements, review and approval; benefits, eligibility and amount; benefit period. Shared work unemployment compensation program. (a) As used in this section:

- (1) "Affected unit" means a specified department, shift or other unit of two or more employees that is designated by an employer to participate in a shared work plan.
 - (2) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.
 - (3) "Fund" has the meaning ascribed thereto by K.S.A. 44-703(k), and amendments thereto.
 - (4) "Normal weekly hours of work" means the lesser of 40 hours or the average obtained by dividing the total number of hours worked per week during the preceding twelve-week period by the number 12.
 - (5) "Participating employee" means an employee who works a reduced number of hours under a shared work plan initiated by their employer and approved by the secretary.
 - (6) "Participating employer" means an employer who has applied to and been approved by the secretary for a shared work plan that is in effect.
 - (7) "Secretary" means the secretary of labor or the secretary's designee.
 - (8) "Shared work benefit" means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.
 - (9) "Shared work plan" means a short-term compensation program.
 - (10) "Short-term compensation program" means a shared work plan program designed to provide an alternative to layoffs for employers experiencing a reduction in available work. A "short-term compensation program" preserves employees' jobs and an employer's trained workforce during times of lowered economic activity by allowing an employer to reduce hours of work for employees rather than laying off some employees while others continue to work full time. Under a "short-term compensation program," employees experiencing a reduction in hours are allowed to collect a pro-rata share of their unemployment compensation benefits to replace a portion of the employee's lost wages.
- (b) The secretary shall establish a voluntary short-term compensation program as provided by this section. The secretary may adopt rules and regulations and establish procedures necessary to administer the short-term compensation program.
- (c) The secretary shall create and manage an annual promotional campaign for the short-term compensation program to encourage and improve business participation. The promotional campaign shall include the following elements:
- (A) Engagement in proactive educational communications with other state agencies and stakeholders, including the governor's office, legislators, workforce investment boards, labor unions and local, regional or state chambers of commerce;
 - (B) a dedicated department of labor employee or team to efficiently and timely answer employer's questions about the short-term compensation program;
 - (C) presentation materials that provide consistency of messaging about the benefits of using a short-term compensation program to provide stakeholders for distribution to employer groups, workforce investment boards or other interested parties;
 - (D) proactive engagement with employers experiencing economic stress or layoffs to share the benefits of the short-term compensation program and to ensure such employers are aware of the program; and
 - (E) an automated application, claims and weekly certification process for participating employers designed to facilitate participation, reduce an employer's administrative burden and promote the use of the short-term compensation program.
- (d) An employer who wishes to participate in the short-term compensation program must submit a written shared work plan to the secretary for the secretary's approval. As a condition for approval, a participating employer must agree to furnish the secretary with reports relating to the operation of the shared work plan as requested

by the secretary. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the secretary and shall report the findings to the secretary.

(e) The secretary may approve a shared work plan if:

- (1) The shared work plan applies to and identifies a specific affected unit;
 - (2) the employees in the affected unit are identified by name and social security number;
 - (3) the shared work plan reduces the normal weekly hours of work for an employee, including regular part-time employees, in the affected unit by not less than 10% and not more than 50%;
 - (4) the shared work plan applies to at least 10% of the employees in the affected unit;
 - (5) the shared work plan describes the manner that the participating employer treats the fringe benefits of each employee in the affected unit and the employer certifies that if the employer provides health benefits and retirement benefits under a defined benefit plan, as defined in 26 U.S.C. § 414(j), or contributions under a defined contribution plan, as defined in 26 U.S.C. § 414(i), to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the short-term compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-term compensation program;
 - (6) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours;
 - (7) the employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or if a reimbursing employer has made all payments in lieu of contributions due for all past and current periods;
 - (8) (A) a contributing employer must be eligible for a rate computation under K.S.A. 44-710a(a)(2), and amendments thereto, and the contributing employer, as determined by the secretary, does not adversely impact the state's eligibility under section 2108 of the federal CARES act, public law 116-136;
(B) if section 2108 of the federal CARES act, public law 116-136, is no longer in effect, a contributing employer eligible for a rate computation under K.S.A. 44-710(a)(2), and amendments thereto, that is a negative account employer as defined by K.S.A. 44-710a(d), and amendments thereto, may only be approved for a shared work application if the negative account employer's most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio;
 - (C) a rated governmental employer must be eligible for a rate computation under K.S.A. 44-710d(g), and amendments thereto;
 - (9) eligible employees may participate, as appropriate, in training, including without limitation, employer-sponsored training or worker training funded under the workforce investment act of 1998, to enhance job skills if such program has been approved by the state of Kansas;
 - (10) the employer includes a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced together with an estimate of the number of layoffs that would have occurred absent the ability to participate in shared work compensation and such other information as the secretary of labor determines is appropriate; and
 - (11) the terms of the employer's written plan and implementation are consistent with employer obligations under applicable federal and Kansas laws.
- (f) If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan must be approved in writing by the collective bargaining agent.
- (g) A shared work plan may not be implemented to subsidize seasonal employers during the off-season.
- (h) The secretary shall approve or deny a shared work plan no later than the 30th day after the day the shared work plan is received by the secretary. The secretary

This provision shall not be construed to apply to a shared work plan implemented for school bus drivers, pursuant to K.S.A. 44-706, and amendments thereto.

shall approve or deny a shared work plan in writing. If the secretary denies a shared work plan, the secretary shall notify the employer of the reasons for the denial.

(i) A shared work plan is effective on the date it is approved by the secretary, except for good cause a shared work plan may be effective at any time within a period of 14 days prior to the date such plan is approved by the secretary. The shared work plan expires on the last day of the 12th full calendar month after the effective date of the shared work plan.

(j) An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the secretary. The employer must report the changes made to the shared work plan in writing to the secretary before implementing the changes. If the original shared work plan is substantially modified, the secretary shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection (d). The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the secretary shall deny approval to the modifications as provided by subsection (g).

(k) Notwithstanding any other provisions of the employment security law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan in effect for that week. The secretary may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work or refusal to apply for or accept work with an employer other than the participating employer.

(l) An individual is eligible to receive shared work benefits with respect to any week in which the secretary finds that:

(1) The employee is determined to be eligible for unemployment compensation, except that while receiving shared work benefits, an employee shall not be required to meet work availability or work search requirements but shall be required to be available for the employee's normal work week;

(2) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(3) the individual is able to work and is available for additional hours of work or full-time work with the participating employer;

(4) the individual's normal weekly hours of work have been reduced by at least 10% but not more than 50%, with a corresponding reduction in wages; and

(5) the individual's normal weekly hours of work and wages have been reduced as described in subsection (k)(4) for a waiting period of one week that occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

(m) The secretary shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of \$1, the secretary shall reduce the amount to the next lowest multiple of \$1. All shared work benefits under this section shall be payable from the fund.

(n) An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount that exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided by K.S.A. 44-704(g), and amendments thereto.

(o) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under K.S.A. 44-704a and 44-704b, and amendments thereto, and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.

(p) The secretary may terminate a shared work plan for good cause if the secretary determines that the shared work plan is not being executed according to the terms and intent of the short-term compensation program.

(q) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than 52 calendar weeks during the 12-month period of the shared work plan. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the 12-month period of the shared work plan.

(r) No shared work benefit payment shall be made under any shared work plan or this section for any week that commences before April 1, 1989.

(s) This section shall be construed as part of the employment security law.

History: L. 1988, ch. 172, § 1; L. 1990, ch. 189, § 1; L. 1991, ch. 145, § 5; L. 1992, ch. 74, § 5; L. 2003, ch. 96, § 3; L. 2004, ch. 179, § 74; L. 2014, ch. 39, § 1; L. 2015, ch. 57, § 3; L. 2020, ch. 1, § 31 (Special Session); L. 2021, ch. 92, § 21; May 13.