



1 §21A-12-9, §21A-12-10, §21A-12-11 and §21A-12-12, all to read as  
2 follows:

3 **ARTICLE 12. WORK SHARE WEST VIRGINIA.**

4 **§21A-12-1. Definitions.**

5 As used in this article:

6 (1) "Affected unit" means a specified plant, department,  
7 shift, or other definable unit which includes two or more workers  
8 to which an approved work-sharing plan applies.

9 (2) "Commissioner" means the Commissioner of the Bureau of  
10 Employment Programs.

11 (3) "Health and retirement benefits" means employer-provided  
12 health benefits, and retirement benefits under a defined benefit  
13 pension plan (as defined in section 414(j) of the Internal Revenue  
14 Code or contributions under a defined contribution plan (defined  
15 in section 414(i) of such code), which are incidents of employment  
16 in addition to the cash remuneration earned.

17 (4) "Participating employee" means an employee who works a  
18 reduced number of hours under an approved work-sharing plan.

19 (5) "Participating employer" means an employer who has a work-  
20 sharing plan.

21 (6) "Work-sharing benefits" means unemployment benefits  
22 payable to employees in an affected unit under an approved work-  
23 sharing plan, as distinguished from the unemployment benefits  
24 otherwise payable under the unemployment compensation law.

1       (7) "Work-sharing plan" means a plan submitted by an employer,  
2 for approval by the commissioner, under which the employer requests  
3 the payment of work-sharing benefits to workers in an affected unit  
4 of the employer to avert layoffs.

5       (8) "Usual weekly hours of work" means the usual hours of work  
6 for full-time or part-time employees in the affected unit when that  
7 unit is operating on its regular basis, not to exceed forty hours  
8 and not including hours of overtime work.

9       (9) "Unemployment insurance" means the unemployment benefits  
10 payable under the state unemployment compensation law other than  
11 work-sharing and includes any amounts payable pursuant to an  
12 agreement under any federal law providing for compensation,  
13 assistance, or allowances with respect to unemployment.

14 **§21A-12-2. Creation of the Work Share West Virginia Program.**

15       (a) The "Work Share West Virginia" program is created. The  
16 Work Share West Virginia program is a short-time compensation  
17 program in which an employer who participates in the program  
18 reduces the number of hours worked by the employees of the employer  
19 in lieu of layoffs. The Work Share West Virginia program is a  
20 completely voluntary program and an employer is under no obligation  
21 to participate.

22       (b) The commissioner shall enforce the requirements of the  
23 Work Share West Virginia program in the same manner as the  
24 commissioner enforces the requirements of this chapter, including

1 the applicable provisions of article ten.

2 **§21A-12-3. Application to participate in the Work Share West**  
3 **Virginia program.**

4 (a) An employer wishing to participate in the work-sharing  
5 program shall submit a signed written work-sharing plan to the  
6 commissioner for approval.

7 (b) The commissioner shall develop an application form to  
8 request approval of a short-time compensation plan and an approval  
9 process.

10 (c) The application shall include:

11 (1) The affected unit (or units) covered by the plan,  
12 including the number of full-time or part-time workers in such  
13 unit, the percentage of workers in the affected unit covered by the  
14 plan, identification of each individual employee in the affected  
15 unit by name, social security number and the employer's  
16 unemployment tax account number and any other information required  
17 by the commissioner to identify plan participants.

18 (2) Certification by the employer that it has obtained the  
19 written approval of any applicable collective bargaining  
20 representative and has notified all affected employees who are not  
21 in a collective bargaining unit of the proposed work-sharing plan.

22 (3) A description of how workers in the affected unit will be  
23 notified of the employer's participation in the work-sharing plan  
24 if the application is approved, including how the employer will

1 notify those workers in a collective bargaining unit as well as any  
2 workers in the affected unit who are not in a collective bargaining  
3 unit. If the employer will not provide advance notice to workers  
4 in the affected unit, the employer shall explain in a statement in  
5 the application why it is not feasible to provide the notice.

6 (4) A requirement that the employer identify the usual weekly  
7 hours of work for employees in the affected unit and the specific  
8 percentage by which their hours will be reduced during all weeks  
9 covered by the plan. An application shall specify the percentage  
10 of reduction for which a work-sharing application may be approved  
11 which shall be not less than ten percent and not more than sixty  
12 percent. If the plan includes any week for which the employer  
13 regularly provides no work (due to a holiday or other plant  
14 closing), then the week shall be identified in the application.

15 (5) Certification by the employer that, if the employer  
16 provides health benefits and retirement benefits under defined  
17 benefit pension plans (as defined in section 414(j) of the Internal  
18 Revenue Code) or contributions under a defined contribution plan  
19 (defined in section 414(i) of that Code) to any employee whose  
20 usual weekly hours of work are reduced under the program, the  
21 benefits will continue to be provided to employees participating in  
22 the work-sharing program under the same terms and conditions as  
23 though the usual weekly hours of work of the employee had not been  
24 reduced or to the same extent as other employees not participating

1 in the work-sharing program.

2 For defined benefit retirement plans, the hours that are  
3 reduced under the work-sharing plan shall be credited for purposes  
4 of participation, vesting and accrual of benefits as though the  
5 usual weekly hours of work had not been reduced. The dollar amount  
6 of employer contributions to a defined contribution plan that are  
7 based on a percentage of compensation may be less due to the  
8 reduction in the employee's compensation. Notwithstanding the  
9 above, an application may contain the required certification when  
10 a reduction in health and retirement benefits scheduled to occur  
11 during the duration of the plan will be applicable equally to  
12 employees who are not participating in the short-time compensation  
13 program and to those employees who are participating.

14 (6) Certification by the employer that the aggregate reduction  
15 in work hours is in lieu of layoffs (temporary or permanent  
16 layoffs, or both temporary or permanent layoffs) of regularly  
17 employed employees in the affected unit. The application shall  
18 include an estimate of the number of workers who would have been  
19 laid off in the absence of the short-time compensation plan.

20 (7) Agreement by the employer to:

21 (A) Furnish reports to the commissioner relating to the proper  
22 conduct of the plan;

23 (B) Allow the commissioner or his or her authorized  
24 representatives access to all records necessary to approve or

1 disapprove the plan application and, after approval of a plan, to  
2 monitor and evaluate the plan; and

3 (C) Follow any other directives the commissioner considers  
4 necessary for the agency to implement the plan and which are  
5 consistent with the requirements for plan applications.

6 (8) Certification by the employer that it has filed all  
7 quarterly reports and other reports required under the state  
8 unemployment compensation law and has paid all quarterly  
9 contributions, reimbursements in lieu of contributions, interest  
10 and penalties due through the date of the employer's application.

11 (9) Certification by the employer that it will not hire new  
12 employees in, or transfer employees to, the affected unit during  
13 the effective period of the work-sharing plan.

14 (10) Certification by the employer that it will not lay off  
15 participating employees during the effective period of the work-  
16 sharing plan, or reduce participating employees' hours of work by  
17 more than the reduction percentage during the effective period of  
18 the work-sharing plan, except in cases of holidays, designated  
19 vacation periods, equipment maintenance or similar circumstances.

20 (11) Certification by the employer that participation in the  
21 work-sharing plan and its implementation is consistent with the  
22 employer's obligations under applicable federal and state laws.

23 (12) The effective date and duration of the plan that shall  
24 expire not later than the end of the twelfth full calendar month

1 after the effective date.

2 (13) Any other provision added to the application by the  
3 commissioner that the United States Secretary of Labor determines  
4 to be appropriate for purposes of administering the work-sharing  
5 program.

6 **§21A-12-4. Approval or disapproval of work-sharing plan.**

7 The commissioner shall approve or disapprove a work-sharing  
8 plan in writing within thirty days of its receipt and promptly  
9 communicate the decision to the employer. A decision disapproving  
10 the plan shall clearly identify the reasons for the disapproval.  
11 The disapproval is final, but the employer shall be allowed to  
12 submit another short-time compensation plan for approval not  
13 earlier than fifteen days from the date of the disapproval.

14 **§21A-12-5. Effective date and duration of the work-sharing plan.**

15 (a) A work-sharing plan is effective on the date that is  
16 mutually agreed upon by the employer and the commissioner, which  
17 shall be specified in the notice of approval to the employer.

18 (b) The plan shall expire on the date specified in the notice  
19 of approval, which shall be either the date at the end of the  
20 twelfth full calendar month after its effective date or an earlier  
21 date mutually agreed upon by the employer and the commissioner.  
22 However, if a work-sharing plan is revoked by the commissioner  
23 under section six of this article, the plan shall terminate on the  
24 date specified in the commissioner's written order of revocation.



1       (c) An employer may terminate a short-time compensation plan  
2 at any time upon written notice to the commissioner. Upon receipt  
3 of the notice from the employer, the commissioner shall promptly  
4 notify each member of the affected unit of the termination date.

5       (d) An employer may submit a new application to participate in  
6 another work-sharing plan at any time after the expiration or  
7 termination date.

8 **§21A-12-6. Revocation of approval.**

9       (a) The commissioner may revoke approval of a work-sharing  
10 plan for good cause at any time, including upon the request of any  
11 of the affected unit's employees. The revocation order shall be in  
12 writing and shall specify the reasons for the revocation and the  
13 date the revocation is effective.

14       (b) The commissioner may periodically review the operation of  
15 each employer's work-sharing plan to assure that no good cause  
16 exists for revocation of the approval of the plan.

17       (c) Good cause includes, but is not limited to, failure to  
18 comply with the assurances given in the plan, unreasonable revision  
19 of productivity standards for the affected unit, conduct or  
20 occurrences tending to defeat the intent and effective operation of  
21 the plan and violation of any criteria on which approval of the  
22 plan was based.

23 **§21A-12-7. Modification of an approved work-sharing plan.**

24       (a) An employer may request a modification of an approved plan

1 by filing a written request to the commissioner.

2 (b) The request shall identify the specific provisions  
3 proposed to be modified and provide an explanation of why the  
4 proposed modification is appropriate for the short-time  
5 compensation plan.

6 (c) The commissioner shall approve or disapprove the proposed  
7 modification in writing within ten working days of receipt and  
8 promptly communicate the decision to the employer.

9 (d) The commissioner may approve a request for modification of  
10 the plan based on conditions that have changed since the plan was  
11 approved provided that the modification is consistent with and  
12 supports the purposes for which the plan was initially approved.

13 (e) A modification does not extend the expiration date of the  
14 original plan. The commissioner must promptly notify the employer  
15 whether the plan modification has been approved and, if approved,  
16 the effective date of the modification.

17 (f) An employer is not required to request approval of a plan  
18 modification from the commissioner if the change is not  
19 substantial, but the employer must report every change to the plan  
20 to the commissioner promptly and in writing. The commissioner may  
21 terminate an employer's plan if the employer fails to meet this  
22 reporting requirement.

23 (g) If the commissioner determines that the reported change is  
24 substantial, the commissioner shall require the employer to request

1 a modification to the plan.

2 **§21A-12-8. Eligibility for work-sharing benefits.**

3 An individual is eligible to receive work-sharing benefits  
4 with respect to any week only if the individual is monetarily  
5 eligible for unemployment insurance, not otherwise disqualified for  
6 unemployment insurance, and:

7 (a) During the week, the individual is employed as a member of  
8 an affected unit under an approved work-sharing plan, which was  
9 approved prior to that week, and the plan is in effect with respect  
10 to the week for which work-sharing benefits are claimed;

11 (b) Notwithstanding any other provisions of this article  
12 relating to availability for work and actively seeking work, the  
13 individual is available for the individual's usual hours of work  
14 with the work-sharing employer, which may include, for purposes of  
15 this section, participating in training to enhance job skills that  
16 is approved by the commissioner such as employer-sponsored training  
17 or training funded under the Workforce Investment Act of 1998; and

18 (c) Notwithstanding any other provision of law, an individual  
19 covered by an approved work-sharing plan is considered unemployed  
20 in any week during the duration of the plan if the individual's  
21 remuneration as an employee in an affected unit is reduced based a  
22 reduction of the individual's usual weekly hours of work under an  
23 approved work-sharing plan.

24 **§21A-12-9. Benefits.**

1       (a) An individual's work-sharing benefit amount is the  
2 product of the regular weekly unemployment insurance amount for a  
3 week of total unemployment multiplied by the percentage of  
4 reduction in the individual's usual weekly hours of work.

5       (b) An individual may be eligible for work-sharing benefits  
6 or unemployment insurance, as appropriate, except that an  
7 individual may not be eligible for combined benefits in any benefit  
8 year in an amount more than the maximum entitlement established for  
9 regular unemployment insurance, nor may an individual be paid work-  
10 sharing benefits for more than fifty-two weeks under an approved  
11 work-sharing plan.

12       (c) The work-sharing benefits paid to an individual shall be  
13 deducted from the maximum entitlement amount of regular  
14 unemployment insurance established for that individual's benefit  
15 year.

16       (d) Provisions applicable to unemployment insurance claimants  
17 apply to work-sharing claimants to the extent that they are not  
18 inconsistent with the work-sharing provisions of this article . An  
19 individual who files an initial claim for work-sharing benefits  
20 shall receive a monetary determination.

21       (e) An individual who is eligible for work-sharing benefits  
22 is not subject to the provisions of the state's unemployment  
23 compensation law relating to partial unemployment benefits. Wages  
24 earned from an employer other than the work-sharing employer during

1 the week of work-sharing eligibility shall be disregarded in the  
2 calculation of the individual's weekly work-sharing benefit.

3 (f) An individual who is not provided any work during a week  
4 by the work-sharing employer, or any other employer, and who is  
5 otherwise eligible for unemployment insurance is eligible for the  
6 amount of regular unemployment insurance to which the individual  
7 would otherwise be eligible.

8 (g) An individual who is not provided any work by the work-  
9 sharing employer during a week, but who works for another employer  
10 and is otherwise eligible may be paid unemployment insurance for  
11 that week subject to the disqualifying income provisions of article  
12 six of this chapter relating to partial unemployment benefits.

13 **§21A-12-10. Charging work-sharing benefits.**

14 (a) Except as provided in subsection (b) of this section,  
15 work-sharing benefits shall be charged to an employers' experience  
16 rating account in the same manner as unemployment insurance is  
17 charged under article five of this chapter. Employers liable for  
18 payments in lieu of contributions shall have work-sharing benefits  
19 attributed to service in their employ in the same manner as  
20 unemployment insurance is attributed under the provisions of the  
21 state's unemployment compensation law relating to the financing of  
22 benefits by employers using the reimbursing method.

23 (b) If federal funding is available to the state for the  
24 purpose of full reimbursement for the cost of funding work-sharing

1 benefits paid by the unemployment insurance agency pursuant to  
2 section 2162 of the Layoff Prevention Act of 2012 and an approved  
3 work-sharing plan under this article, those benefits may not be  
4 charged or billed to a participating employer.

5 **§21A-12-11. Extended Benefits.**

6 An individual who has received all of the work-sharing  
7 benefits or combined unemployment insurance and work-sharing  
8 benefits available in a benefit year is an exhaustee for purposes  
9 of extended benefits, as provided under the provisions of the  
10 state's unemployment compensation law relating to extended benefits  
11 contained in article six-a of this chapter, and, if otherwise  
12 eligible under those provisions, is eligible to receive extended  
13 benefits.

14 **§21A-12-12. Report to the Legislature.**

15 (a) Beginning one year after the effective date of this  
16 article, and every year thereafter, the commissioner shall prepare  
17 and submit a report evaluating the use and effectiveness of the  
18 Work Share West Virginia program created by section two of this  
19 article, and the impact of the program on the Unemployment  
20 Compensation Fund created in article eight of this chapter. The  
21 commissioner shall include in that report the number of employers  
22 and employees participating in the program, the amount of shared  
23 work benefits paid under the program during the immediately  
24 preceding year and any other information the commissioner considers

1 to be relevant.

2 (b) The commissioner shall submit the report to the Governor,  
3 the President of the Senate, and the Minority Leader of the Senate,  
4 the Speaker of the House of Delegates and the Minority Leader of  
5 the House of Delegates.

NOTE: The purpose of this bill is to create the Work Share West Virginia program in which a participating employer reduces the number of hours worked by its employees in lieu of laying off employees.

This article is new; therefore, it has been completely underscored.