Important Requirements of a Short-Time Compensation (STC) Program for Reopening Businesses

State STC law must conform to all provisions of Section 3306(v) of the Federal Unemployment Tax Act (FUTA) in order for the state to use state unemployment trust fund dollars to pay STC costs, or to receive federal reimbursement for such costs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and its amendments. States without an existing STC program may provide STC benefits under an agreement with the Secretary of Labor to administer STC benefits in accordance with Section 3306(v), FUTA, and receive partial reimbursement for such benefit costs, pursuant to Section 2109 of the CARES Act.

The following paragraphs highlight how important requirements of an STC program may be satisfied in a plan to support an employer's reopening. This guidance applies when an employer has an affected unit within its operations. It does not require that the employer itself is fully closed. As provided in the draft legislative language of the attachment to Unemployment Insurance Program Letter (UIPL) No. 22-12, Change 1, the term "affected unit" may mean a specified plant, department, shift, or other definable unit which includes more than one worker to which an approved STC plan applies.

In lieu of layoffs. To comply with Section 3306(v)(2) of FUTA, an employer must reduce the number of hours worked by employees of an affected unit in lieu of continued layoffs of those employees. Because the reduction in hours must be in lieu of continued layoffs, only those employees in the affected unit who were employed immediately prior to the temporary closure of that affected unit may participate in the STC program for reopening.

Reduced workweek. To comply with Section 3306(v)(3) of FUTA, the employees' workweek must "have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the State to be appropriate (but in no case more than 60 percent)." Within the context of reopening, the state should compare these reduction percentages to the affected unit's employment immediately prior to the temporary layoff. If state law includes a cap on the number of hours reduced that is less than 60 percent, this may prevent certain employers from participating in the STC program as a tool for reopening. For example, if state law includes a cap of 50 percent and individuals are being brought back with the business reopening at a 60 percent reduction from their workweek immediately prior to the temporary layoff, such an employer would not be eligible to participate in an STC plan.

Pro rata portion of unemployment compensation. Section 3306(v)(4) of FUTA provides that the amount of payable unemployment compensation is a pro rata portion of the amount which would otherwise be payable to the employee if such employee were unemployed.

The Federal Pandemic Unemployment Compensation (FPUC) and Mixed Earners Unemployment Compensation (MEUC) payments are made in addition to the pro rata portion of unemployment compensation. As explained in UIPL No. 15-20, an individual who receives STC payments is entitled to receive an additional $600 per week from the FPUC program with respect to weeks of unemployment ending on or before July 31, 2020. The FPUC program was reauthorized with enactment of the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) and modified to provide $300 per week in supplemental benefits for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021. Additionally, the Continued Assistance Act created the MEUC program to provide a $100 supplemental benefit amount to certain individuals with self-employment income (*see* UIPL No. 15-20, Change 3). The FPUC and MEUC programs were further extended with enactment of the American Rescue Plan Act of 2021 (ARPA), through the week ending on or before September 6, 2021 (*see* UIPL No. 15-20, Change 4).

As noted in Question 19 of Attachment I to UIPL No. 14-20, Change 1, an individual may also continue to receive STC benefits after exhaustion of the regular UC claim while the individual is eligible to receive Pandemic Emergency Unemployment Compensation (PEUC) under Section 2107 of the CARES Act.

An individual whose benefit year has exhausted and who is not eligible for a new claim or PEUC is not eligible to participate in STC. This is because the STC payment amount is deducted from the individual's maximum benefit entitlement for a given benefit year and, in this case, the individual has exhausted their entitlement.

Continued health benefits and retirement benefits. To comply with Section 3306(v)(7) of FUTA, the state must require employers to provide health benefits and certain retirement benefits to any participating employee under the same terms and conditions as though the workweek had not been reduced. To use STC as a tool for reopening, benefits must be continued on the same terms and conditions as provided immediately before the temporary layoff.

Submission of a written plan. To comply with Section 3306(v)(8) of FUTA, the state must require an employer "to submit a written plan describing the manner in which the requirements of this subsection will be implemented (including 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 [STC] and such other information as the Secretary of Labor determines is appropriate." To use STC as a tool for reopening, the employer must: (1) submit an estimate of the number of layoffs that would have continued in the affected unit absent the ability to participate in STC; and (2) the state must approve the employer's STC plan **<u>before</u>** the affected unit returns for a reduced workweek.

Optional provision to exclude an employer that hires new employees. As described on page 21 of UIPL No. 22-12, Change 1, state law may include a requirement that the employer provide assurances to the state UC agency that it will not hire new employees in the affected unit during the term of the plan. If this optional provision is included in state law, certain employers may be prevented from utilizing the STC program as a tool for reopening.

Optional provision to exclude an employer that recently reduced its workforce. As described on page 3 of UIPL No. 22-12, Change 2, state law may include a provision that prohibits an employer from participating in STC if that employer recently reduced its workforce by a percentage and within a period specified in state law. If this optional provision is included in state law, certain employers may be prevented from utilizing the STC program as a tool for reopening.