

Report to the President and to the Congress:

Implementation of the Short-Time Compensation (STC) Program
Provisions in the Middle Class Tax Relief and Job Creation Act of 2012
(PL 112-96)

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Table of Contents

<u>Sections</u>	<u>Page</u>
Acknowledgements.....	iii
Executive Summary.....	iv-vi
1. Introduction to Short-Time Compensation (STC).....	1-1
1.1 How STC Works.....	1-1
1.2 History of the STC Program.....	1-3
1.3 The Middle Class Tax Relief and Job Creation Act of 2012.....	1-3
2. Use of STC in the United States.....	2-1
2.1 Number of Participating Employers.....	2-1
2.2 Number of Participating Employees.....	2-3
2.3 Variation with the Business Cycle.....	2-4
2.4 Number of Estimated Averted Layoffs.....	2-5
3. State Enactment of STC Provisions of the Act.....	3-1
3.1 The Statutory Definition of STC.....	3-1
3.2 Departmental Guidance and Assistance to States Regarding the New Definition of STC.....	3-6
3.3 State Laws That Conform to the New Definition of STC.....	3-8
3.4 State Perspective on Enacting Conforming Legislation.....	3-9
4. STC Program Implementation.....	4-1
4.1 States That Received STC Grants.....	4-1
4.1.1 Implementation or Improved Administration Grants.....	4-2
4.1.2 Program Promotion and Employer Enrollment Grants.....	4-2
4.2 States That Received STC Reimbursements.....	4-3
4.3 Implementation or Administrative Challenges.....	4-4
4.3.1 Antiquated IT Systems that Cannot Support Automation of the STC Program.....	4-4
4.3.2 Inability to Scale up the Program.....	4-4
4.3.3 Need for Process Improvement.....	4-5
4.3.4 The STC Program Name is Not Well Known.....	4-5
4.3.5 Flexibility Provided to Meet Employers’ Changing Needs.....	4-5

5. Employer Knowledge/Interest in the STC Program	5-1
5.1 How Employers Heard About the STC Program.....	5-3
5.2 Distribution of Information about STC and Motivations for Applying	5-3
5.3 Ease of Application.....	5-4
5.4 Employer Satisfaction of Communications with State Workforce Agencies	5-5
5.5 Likelihood of STC and Non-STC Employers to Participate in STC in the Future.....	5-6
5.6 Employer Feedback Interviews.....	5-7
6. STC Best Practices.....	6-1
6.1 Administration and Use of STC.....	6-1
6.1.1 Centralize Administration to Support Efficiency and Scalability	6-1
6.1.2 Adopt Scalable Operational Procedures	6-1
6.1.3 Use a Balance of Process Improvement and Automation of Application and Claims Processes	6-2
6.1.4 Increase Flexibility in STC Administration.....	6-3
6.1.5 Use a Dedicated STC Web Page and Promotional Materials with User-friendly Content.....	6-3
6.1.6 Provide Clear Communications.....	6-4
6.2 Promotion.....	6-4
6.2.1 Leverage State Agency Resources.....	6-4
6.2.2 Effectively Brand the STC Program.....	6-5
6.2.3 Use Experienced Marketing Personnel.....	6-5
6.2.4 Customize and Personalize Outreach and Promotion.....	6-6
6.3 Best Practices Recommended by Employers	6-6
7. Charting a Path Forward.....	7-1
Appendices	
Appendix A: Approved Optional Provisions for States’ STC Laws	A-1
Appendix B: State Laws that Conform to the New Definition of STC.....	B-1

Acknowledgements

The information and data used in this report are obtained from multiple sources, which include the following:

- A DOL sponsored four-state survey of STC employers and non-STC employers conducted in Kansas, Minnesota, Rhode Island and Washington. The survey was conducted by IMPAQ International. Information used in this report is obtained from data and information provided in the IMPAQ report (the IMPAQ Study);¹
- Interviews conducted by Westat with personnel from nine selected state workforce agencies that administer the STC program (Connecticut, Florida, Michigan, Ohio, Oregon, Rhode Island, Texas, Virginia, and Washington) and with employers who used STC in three states (Connecticut, Michigan, and Texas). Information used in this report is obtained from information in the Westat report, which contained the interview results as well as an examination of the STC program and data;²
- Information captured by the contractor of the Employment and Training Administration (ETA), Maher and Maher, during the STC Summit on November 17 and 18, 2015, which highlighted effective practices in the implementation and operation of the STC program, discussed past and present challenges for states operating STC programs, and strategized solutions and opportunities for future improvements to the program; and
- Data collected and maintained by the U.S. Department of Labor.

The U.S. Department of Labor thanks all those who contributed to this important report.

¹ The report is unpublished (IMPAQ International, Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States. Authors: David Balducchi, Stephen Wandner, Annelies Goger, Zachary Miller, Sandeep Shetty, Cassandra Agbayani, Jasmine Eucogco).

² The report is unpublished (Westat, Short-Time Compensation After Enactment of The Middle Class Tax Relief and Job Creation Act of 2012. Authors Frank Bennici and Stephen A. Wandner).

Executive Summary

The Short-Time Compensation (STC) is a variation of the Unemployment Insurance (UI) program and it is designed to avert layoffs. Also known as the work sharing or the shared-work program, it is overseen by the U.S. Department of Labor (DOL) and is administered by state UI agencies. During an economic or business downturn, employers can avoid a layoff(s) of one or more members of an affected unit of employees through a reduction in hours for all workers in the affected unit. Workers impacted by the reduction in hours receive a partial STC benefit commensurate with the percentage of reduction from their usual hours of work. STC is a program that is beneficial to both employers and employees and it saves jobs. STC allows employers to retain a skilled work force within an affected unit(s) through a partial reduction of employees' hours of work rather than laying-off some employees within the unit. STC preserves employees' jobs during times of lowered economic activity and cushions the negative impact of the reduced business activity within the unit by permitting employees to collect an STC payment to replace a portion of their lost wages. In addition, the STC program helps businesses remain viable, provides important assistance to workers and their families, and benefits local economies.

After the onset of the most recent recession, Congress enacted and the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) to promote additional state adoption of the STC program. The Act included a definition specifying the elements of the STC program. The Act provided financial incentives to states, which includes providing 100 percent reimbursement of benefits for a period of 3 ½ years and grants to help states implement or expand their existing programs. The Act also required USDOL to submit a report to Congress and to the President by February 22, 2016, to include state and employer best practices, an analysis of challenges related to state enactment and implementation of STC programs, and information on employer interest in participating in the program. This report is intended to meet this requirement and is based on data gathered from multiple sources including a four-state survey of STC employers and non-STC employers; a report containing interviews with state staff and STC employers; state data that is collected and maintained by the U.S. Department of Labor (DOL), and information obtained at a DOL 2015 STC Summit held in Washington, D.C.

Currently, 28 states have amended their STC laws, or enacted new STC provisions in their state UI laws, to conform to the new definition of STC in the Act. The size of the STC program has traditionally been measured by the number of employee participants, which are collected monthly. Since 1995, there have been four years in which more than 100,000 employees received STC. The greatest number of STC participants was 288,618 in 2009 during the height of the last recession. The number of STC claimants has increased during peak periods of economic recession (rising to 3.0 percent in 2008 and 6.4 percent in 2009). An estimated 570,000 jobs have been saved through the STC program since the beginning of the Great Recession.

With funding provided by the Act, DOL worked to support state adoption, implementation, and expansion of STC through a variety of means, including guidance to states, development of model legislative language to assist states in enacting or amending their laws, development of an STC website which provides states with many resources and tools to create and operate an STC program (<http://stc.workforce3one.org/>), hosting webinars, and providing one-on-one technical assistance to individual states.

DOL also worked with states to take advantage of the financial incentives available. The Act provided funding for grants to states for STC program promotion and enrollment of employers, and for implementation or improved administration. Only states that had conforming STC laws could be approved for grants, and the state STC program could not be subject to discontinuation. Sixteen states took advantage of available grant funds, totaling \$46.1 million and are using the grant funds to automate their systems or for other program improvement activities. States are using the promotion/enrollment grant funds to outreach to employers and stakeholders, design and update STC promotional materials, improve STC websites, hire/train staff, and develop a data warehouses to identify potential employers that may benefit from the STC program.

Twenty-two STC states received Federal STC benefit reimbursements totaling \$266.7 million between 2012 and 2015. Federal reimbursement of STC benefit costs ended in August 2015. The Act provided for 100 percent reimbursements of STC benefits paid. However, the reimbursement became subject to reductions as a result of Federal sequestration provisions.

In recent studies and at the 2015 STC Summit, states identified a number of challenges to successful enactment and administration of STC including: 1) antiquated IT systems that cannot support STC automation efforts; 2) lack of preparation to efficiently manage the spike in STC activity during the recession; 3) need for process improvements to make STC work better for employers and workers; 4) lack of a common and recognizable “brand” for the STC program; and, 5) the need for greater flexibility to meet employers’ changing business needs.

The lack of a common brand for the STC program makes it a challenge to employer awareness of the program. Some states use the term “short-time compensation” while other states label their STC program “work sharing” or “shared work”. STC employers had very high awareness of the term “unemployment insurance” but low awareness of the term “Short-Time Compensation.” However, once employers participate in the program and are familiar with it, most are likely to repeat participation when needed.

Recent STC studies and information obtained from the 2015 STC Summit indicate states have developed a number of best STC practices, which contribute to the success of their STC programs: 1) centralized STC administration to support efficiency; 2) procedures to ensure adequate staffing during periods of increased activity; 3) continuous process improvement strategies; 4) automated application and claims processes; 5) increased flexibility to employers to make weekly changes for STC workers whose work hours are not consistent; 6) clear communication with STC employers; and, 7) development and use of a dedicated STC web page and other actions to help increase awareness and program promotion.

The following best practices were offered by the employers based on their own STC experiences: 1) learn STC parameters to avoid misunderstandings; 2) inform STC employees of work schedules (days/hours to be worked); 3) confirm receipt of weekly claim certification forms; 4) accurately report work hours of STC employees; 5) work with union representatives, as appropriate; and, 6) ensure there is a designated back-up for the carrying out the STC reporting responsibilities.

In conclusion, the new STC provisions under the Act have both grown and strengthened the program by increasing the number of states operating STC programs by offering financial incentives; expanding and clarifying the definition of STC; supporting state trust funds

(particularly during a recessionary period) by providing Federal reimbursement of STC benefits to states; and, providing STC grants to states to improve program administration and promote and expand outreach to employers. Employers and employees have benefited from the program and jobs have been saved. DOL is fully committed to continuing promotion of state adoption of the STC program as well as providing ongoing support to the states that are operating STC programs.

Section I: Introduction to Short-Time Compensation (STC)

Short-Time Compensation (STC), also known as work sharing or the shared-work program, is a program administered by state unemployment insurance (UI) agencies that offers employers an opportunity to avert layoffs within an affected unit that is experiencing a reduction in available work. Employers can avoid a layoff of one or more members of the affected unit through a reduction in hours for the affected unit, and affected employees will receive a partial STC benefit commensurate with the percentage of reduction from their usual hours of work. STC plans generally last from for 26-52 weeks, depending on the duration of time established under state law.

STC is a program that is beneficial to both employers and employees. STC allows employers to retain a skilled work force within the affected unit or units through a partial reduction of employees' hours of work rather than laying-off some employees within the unit. STC preserves employees' jobs during times of lowered economic activity and cushions the negative impact of the reduced business activity within the unit by permitting employees to collect an STC payment to replace a portion of their lost wages.

Participation in an STC plan allows the employer to retain its trained workers until demand for its products and services resumes, at which point employers have the opportunity to restore hours. Through the duration of the plan, the participating employer can maintain productivity and quality levels because it has the same experienced employees doing the same work. A participating STC employer avoids the costs of having to hire and train new workers when normal business activity levels resume. Also, by participating in an approved STC plan, an employer communicates to its employees (and the local community) that it values the well-being of its workers. In addition, the STC program helps employers keep businesses viable, provides important assistance to workers and their families, and benefits local economies.

STC benefits workers in the affected unit or units by averting the loss of employment during declining business activity. Workers receive an STC payment to cushion the impact of the reduction in the usual hours of work while maintaining health and retirement benefits under the same terms and conditions as though the employee's workweek were not reduced during the duration of the STC plan. Individuals may be able to participate in training to enhance their work skills as part of the STC plan. By participating in the STC program, employees stay connected to their job, continue to apply their skills, and avoid the need to look for alternative employment. Retaining employment and income can be particularly important for a family, especially if other family members lose their jobs or face reduced work hours. Once the economic conditions for the employer improve, the employees can then resume their regular hours of work.

1.1 How STC Works

STC refers to a benefit payment made to individuals who are working reduced hours under an STC plan, and the payment is different from regular UI in both the amount payable and the conditions of entitlement. Although the U.S. Department of Labor (DOL) actively encourages states to enact legislation to implement an STC program, state participation is voluntary. States that choose to administer an STC program must amend their state UI law to provide for the payment of STC from state UI trust funds consistent with the definition of an STC program

provided in Federal UI law, as set out in the Middle Class tax Relief and Job Creation Act of 2012. ETA reviews these state STC laws to ensure the laws conform to federal law.

State UI agencies are responsible for administering the STC program. Employers interested in participating in the program must file an application with the state UI agency for approval of their STC plan. The state UI agency reviews the application to determine eligibility of the employer and the employees to be covered as provided in the state STC law. The duration of the STC plan varies by state as provided in state law, but generally states may approve an STC plan that lasts from 26-52 weeks. State STC laws permit modification of STC plans if business conditions improve or deteriorate. States vary in the degree of flexibility provided to employers regarding modifications to employee participation and changes in the plan from week to week.

For employees in an approved STC plan, the STC weekly benefit amount is determined as the product of the regular weekly UI amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work. This STC weekly benefit amount is payable for each week that the claimant is otherwise eligible, regardless of the individual's earnings and the deductible income provisions under state UI law.

For employees to be covered by an STC plan and to receive benefits, they must meet state UI eligibility requirements. Each individual included in the STC plan must be monetarily eligible for benefits and not subject to any disqualification. However, the eligibility requirements relating to the claimant being available for work; actively seeking work; and the partial benefit provisions do not apply. Although excused from the availability for work requirement, each member included in the STC plan must be available for their usual hours of work with the STC employer.

Claims for STC may, in general, follow the procedures for regular UI. Either the employer or the affected unit employees or both, depending on the state, will be involved in the process of submitting initial claims and weekly or bi-weekly claims for STC directly to the UI agency. Receipt of STC reduces the maximum benefit amount available under the regular UI program (i.e., if the individual was fully laid-off after participation in STC, the amount of STC received would be subtracted from the UI maximum benefit amount).

Box 1.1: Example of How STC Works

- Employer X has 300 employees, with 100 employees in each of three work units (units A, B, and C) who each work 40 hours per week.
- The demand for work in Unit A drops due to loss of two major contracts. Employer X needs to reduce work hours by 20 percent to meet current product demand.
- Employer X can either assign 20 employees to full layoff, or use the STC program and reduce hours for all 100 employees in Unit A by 20 percent (reduce weekly hours from 40 to 32). Employer X applies for a 26-week STC plan.

- Under an approved STC plan, employees will receive STC payments equal to 20 percent of the amount they would have received from the UI program had they become fully unemployed.
- If all Unit A employees earned \$40 per hour, the regular weekly earnings for 40 hours would be \$1,600. Under the STC plan, Unit A employees work 32 hours and earn \$1,280 from their employer, or \$320 less than their regular pay.
- STC employees in Unit A would also receive 20 percent of their full UI weekly benefit because their hours were reduced 20 percent.
- For example, if an individual's full UI weekly benefit amount would be \$360, then the individual would be eligible to receive 20 percent of \$360 or \$72 per week as STC payments.
- If the employee's hours are reduced as expected during the 26-week plan, the employee would receive weekly wages of \$1,280 plus weekly STC amounts of \$72 for a total of \$1,352 per week.

1.2 History of the STC Program

California was the first state in the United States to enact STC legislation in 1978. Arizona and Oregon followed in 1982 with their own individual legislation. DOL began studying STC in the late 1970s, and monitored the progress of the first STC states. Initially, states were authorized to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF), pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) added statutory authority for states to fund STC from the UTF and established certain requirements related to the definition of an STC program.

1.3 The Middle Class Tax Relief and Job Creation Act of 2012

After the onset of the most recent recession, legislation was enacted to promote additional use of the STC program by the states. Congress passed and President Obama signed into law on February 22, 2012 the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) (the Act). Subtitle D of the Act, also known as the Layoff Prevention Act of 2012, specified the requirements of the STC program. The Act also provided resources to support states in implementing, improving, and promoting their STC programs.

STC Redefined: Section 2161 of the Act revised the definition of STC for the first time in nearly 20 years. The revised definition contained new provisions and modified or expanded provisions in the prior law. Section III of this report contains a detailed explanation of the new STC definition.

STC Reimbursements to States: In addition to making changes to the definition of STC, Section 2162 of the Act provided Federal reimbursement for 100 percent³ of certain STC benefit costs for up to three years to states operating a conforming STC program. If a state had an existing STC law at the time of enactment of the Act that did not conform to the new definition of STC, this section of the Act provided a transition period for up to two years and six months for the state to enact conforming legislation. During the transition period, the state was eligible to receive Federal reimbursement of STC benefit costs provided the state signed an agreement with DOL to receive such reimbursement and to properly report such expenditures of STC. A total of twenty-two states received STC benefit costs reimbursements (see Figure 4.1).

Optional Temporary Federal STC Program: For a state that did not have a law providing for an STC program, Section 2163 of the Act established an optional temporary Federal STC program to allow states to try out the STC program and pay STC based on a signed agreement between the state and DOL similar to the way a temporary federally funded extension program (such as the Emergency Unemployment Compensation program enacted in 2008) is paid. The optional program provided that all administrative costs and one-half of the STC benefit costs of these newly established programs would be federally reimbursed. In these states, STC participating employers would pay for the other half of STC costs. States could participate in the temporary Federal STC program for no more than two years. No state chose to participate in this optional program.

STC Grants to States: Under Section 2164 of the Act, Congress provided up to \$100 million⁴ for grants to STC states that enacted conforming STC legislation for implementation or improved administration of an STC program and for promotion of the program and enrollment of employers in a conforming STC program. The amount of each state's share of the grant money was based on its proportionate share of Federal Unemployment Tax Act (FUTA) taxable wages for Calendar Year 2009 multiplied by the \$100,000,000 authorized by the Act.

DOL Assistance & Guidance to States: Section 2165 of the Act required DOL to consult with STC stakeholders to develop model STC legislative language to ensure conformity with the new program definition. Additionally, DOL was required to develop and issue revised programmatic guidance and reporting requirements to assist states in developing and enacting STC programs.

STC Report: Section 2166 required the Secretary of Labor to submit a report on the implementation of the changes to STC as a result of the Act no later than four years after enactment (February 22, 2016). This report is provided in response to this requirement.

³ The STC Reimbursement was subject to sequestration. Sequestration reduced reimbursement to 94.9 percent in Fiscal Year (FY) 2013, to 92.8 percent in FY2014, and to 92.7 percent in FY2015.

⁴ The Act authorized the Secretary to use 0.25 percent of that amount in support of STC activities. Therefore, the total amount available in grant funds was \$99,750,000.

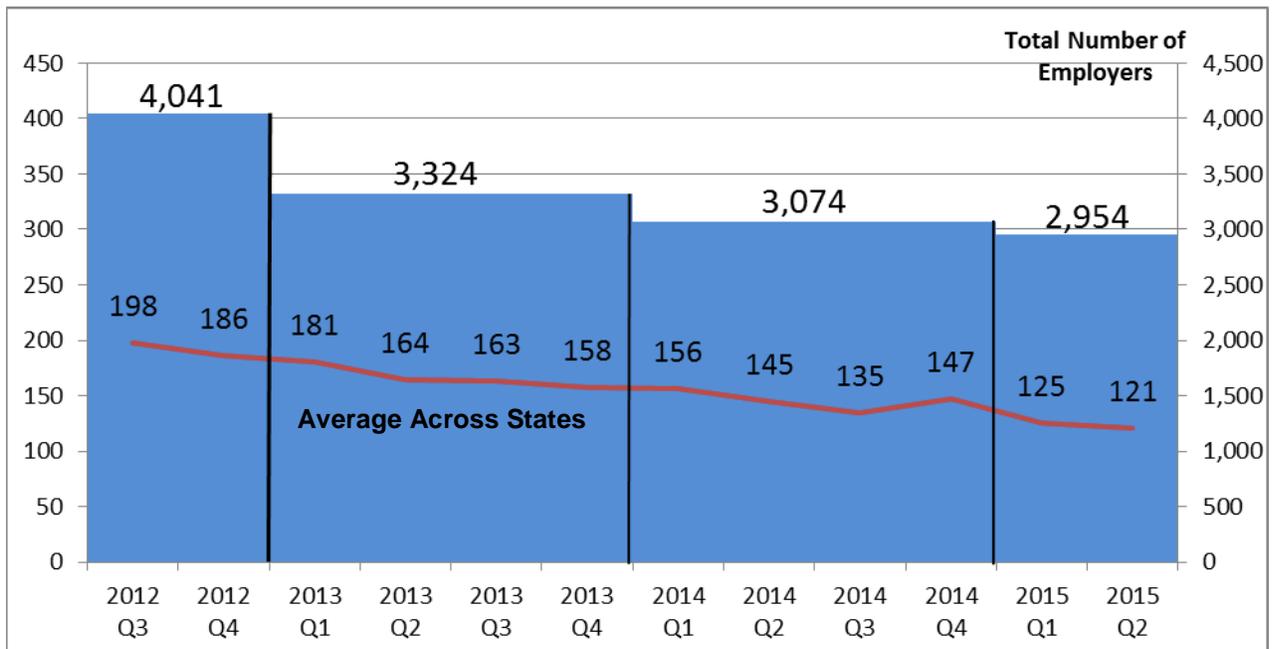
Section II: Use of STC in the United States

The discussion below presents information and data obtained from the Westat report.⁵

2.1 Number of Participating Employers

The collection of data on the number of employers participating in the STC program was mandated by the Act. As a result, monthly reporting of the count of participating employers to DOL only began in July 2012. Figure 2.1 provides the total and average number of employers participating across the U.S. The total number of employers, which is the average of the monthly numbers for a given year, varies considerably among states. The average number of participating employers per state, also shown in Figure 2.2, indicates that a few states have a large number of participating employers, while most states have relatively small numbers of participating employers. In 2014, Arizona and Washington had, on average, more than 900 employers participating in STC, and California and Missouri had, on average, about 300 and 400 employers, respectively. Figure 2.1 also shows a downward trend in the number of participating employers, consistent with an improving economy during the reported time period.

Figure 2.1 Total and average number of employers across states participating in STC, for July 2012 through June 2015



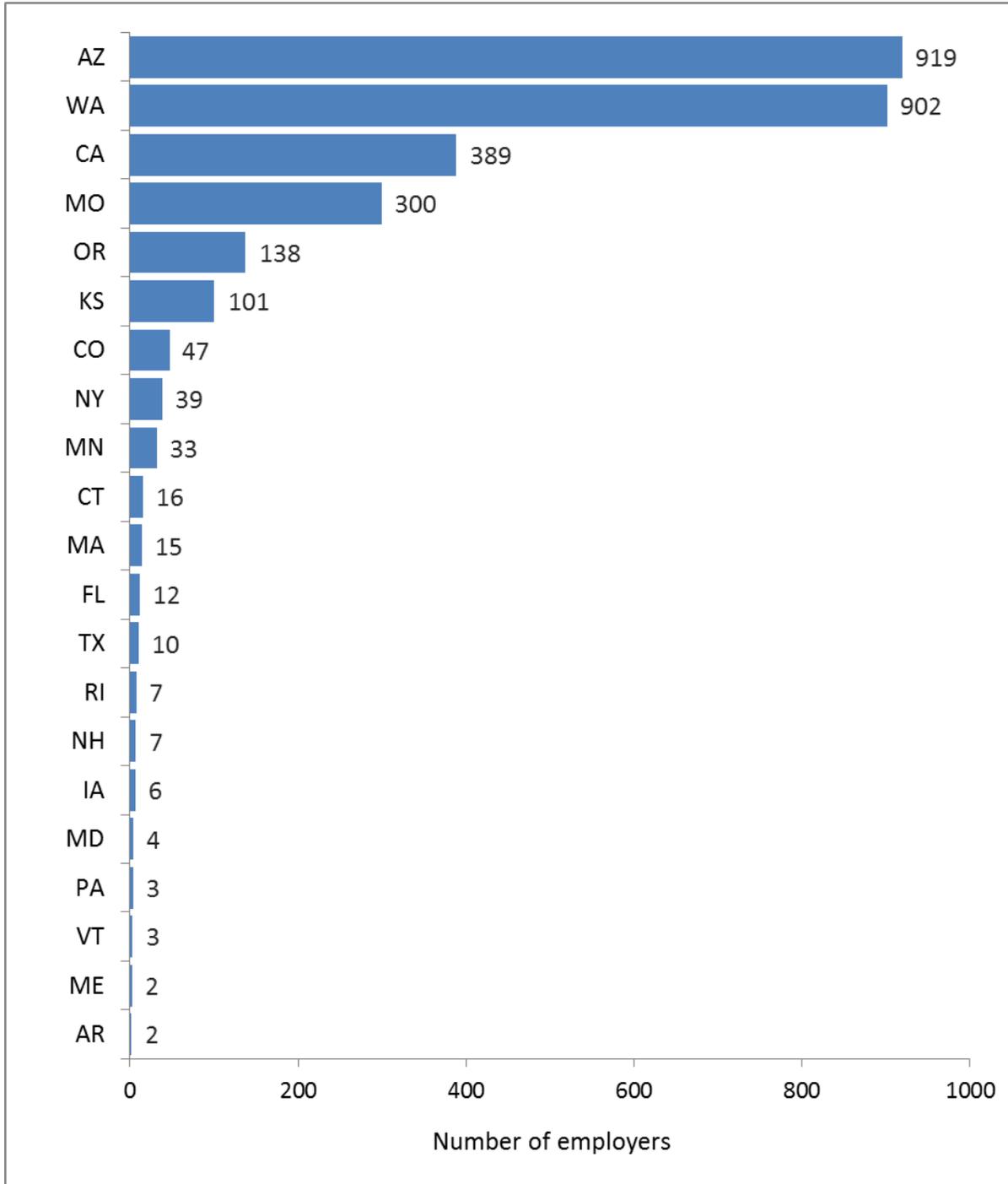
■ Yearly totals represent the total number of employers in all states averaged over the 12 months of the calendar year.

— The average across states is the total employers each quarter divided by the number of states.

Source: U.S. Department of Labor 5159 monthly STC claims report.

⁵ The report is unpublished (Westat, Short-Time Compensation After Enactment of The Middle Class Tax Relief and Job Creation Act of 2012. Authors Frank Bennici and Stephen A. Wandner).

Figure 2.2 Average numbers of employers participating in STC in 2014, by state



Source: U.S. Department of Labor ETA 5159 monthly STC claims report. 21 states had active STC programs in 2014 and reported the number of participating employers.

2.2 Number of Participating Employees

The size of the STC program has traditionally been measured by the number of employee participants. These numbers have been collected monthly for over three decades. Since 1995, there have been four years in which more than 100,000 employees received STC first payments. “First payments” represent the number of employees who filed an STC claim and received their first STC payment. The greatest number of STC participants was 288,618 in 2009 during the height of the last recession. When compared to the number of regular UI first payments, the number of STC first payments is a relatively small percentage, but increases during peak periods of economic recession (rising to 3.0 percent in 2008 and 6.4 percent in 2009). See Figure 2.3.

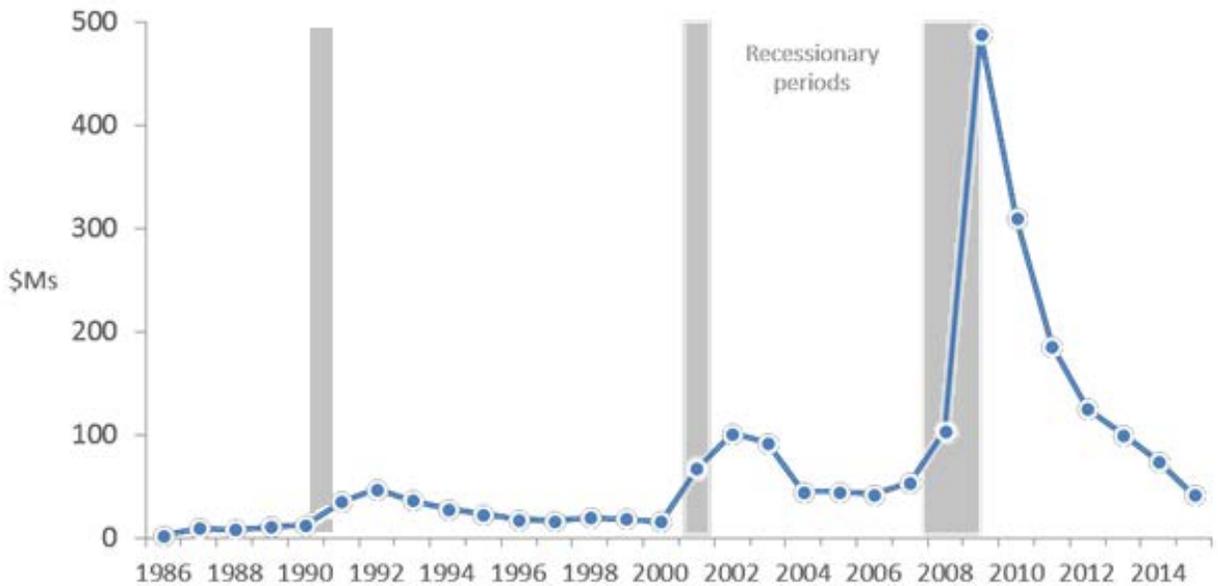
Figure 2.3 STC first payments and UI first payments and STC first payments as a percentage of UI first payments, by year

Year	Number of STC first payments	Number of regular UI first payments	STC first payments as a percentage of UI first payments
1995	45,942	2,847,890	1.6
1996	41,549	2,710,832	1.5
1997	32,498	2,694,307	1.2
1998	47,728	2,698,085	1.8
1999	36,666	2,549,669	1.4
2000	32,916	2,560,028	1.3
2001	111,202	3,071,153	3.6
2002	93,795	3,232,841	2.9
2003	83,783	3,296,383	2.5
2004	42,209	3,114,893	1.4
2005	40,238	2,967,107	1.4
2006	39,854	2,814,781	1.4
2007	48,924	3,018,237	1.6
2008	96,388	3,174,867	3.0
2009	288,618	4,476,889	6.4
2010	147,591	3,801,557	3.9
2011	106,544	3,620,627	2.9
2012	89,099	3,735,770	2.4
2013	73,969	3,616,374	2.0
2014	53,565	3,205,620	1.7

Source: U.S. Department of Labor ETA 5159 monthly STC claims report.

Figure 2.4 provides the trend in the annual amount of STC paid, reflecting the peak use in 2009 and showing much higher usage during the Great Recession than 2001-2003 (which was a prior recessionary period).

Figure 2.4 Annual amount of STC compensation benefits paid, 1986 - 2015



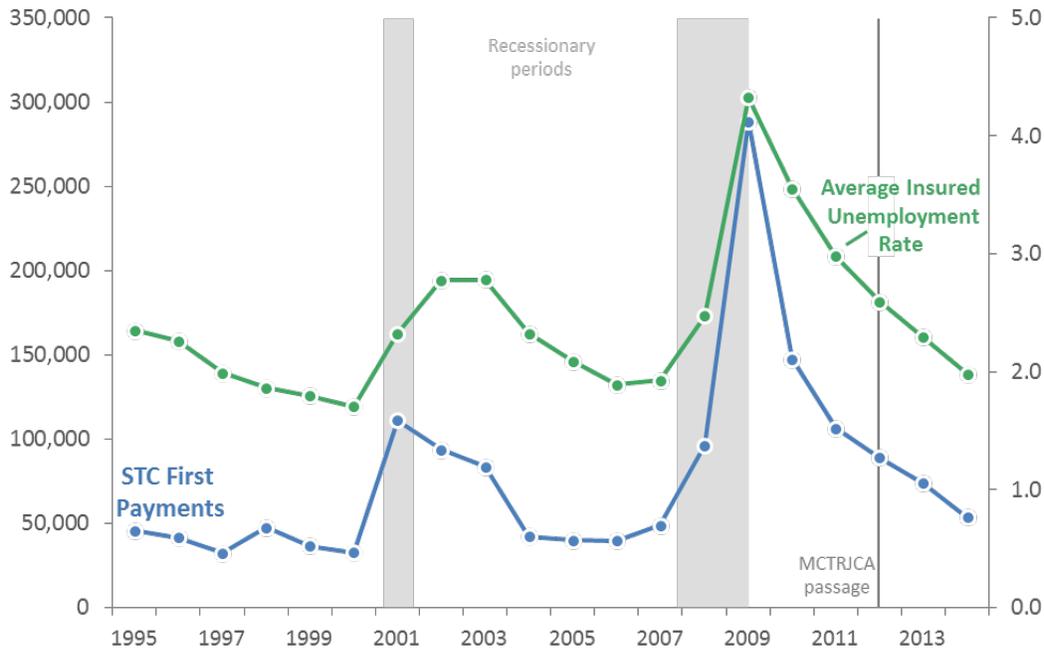
Source: U.S. Department of Labor ETA 5159 monthly STC claims report. The 2015 data are limited to January through August 2015.

2.3 Variation with the Business Cycle

The STC program is highly cyclical in nature, even more so than the regular UI program as employers tend to have less need for the program when the economy is strong. The cyclical nature of the STC program is illustrated in Figure 2.5, a graph of STC first payments as compared to the insured unemployment rate (IUR). The IUR and STC first payments follow a similar trajectory. As the IUR rises, so too does participation in STC. This figure also reveals how much greater the effect of the 2007-2009 recession was on STC participation than the 2001 recession. Program use increased sharply at the outset of the Great Recession. It declined just as sharply after 2009.

Although STC is predominantly used during economic downturns, there are employers that use STC when there is a decline in their business, for reasons such as a reduction in demand for their goods and services.

Figure 2.5 STC first payments and average national rate of insured unemployment, 1995 – 2014



Source: U.S. Department of Labor ETA 5159 monthly STC claims report and Federal Reserve Economic Data, <https://research.stlouisfed.org/fred2/series/IURNSA#>, with bands to show the beginning and ending of recessionary periods.

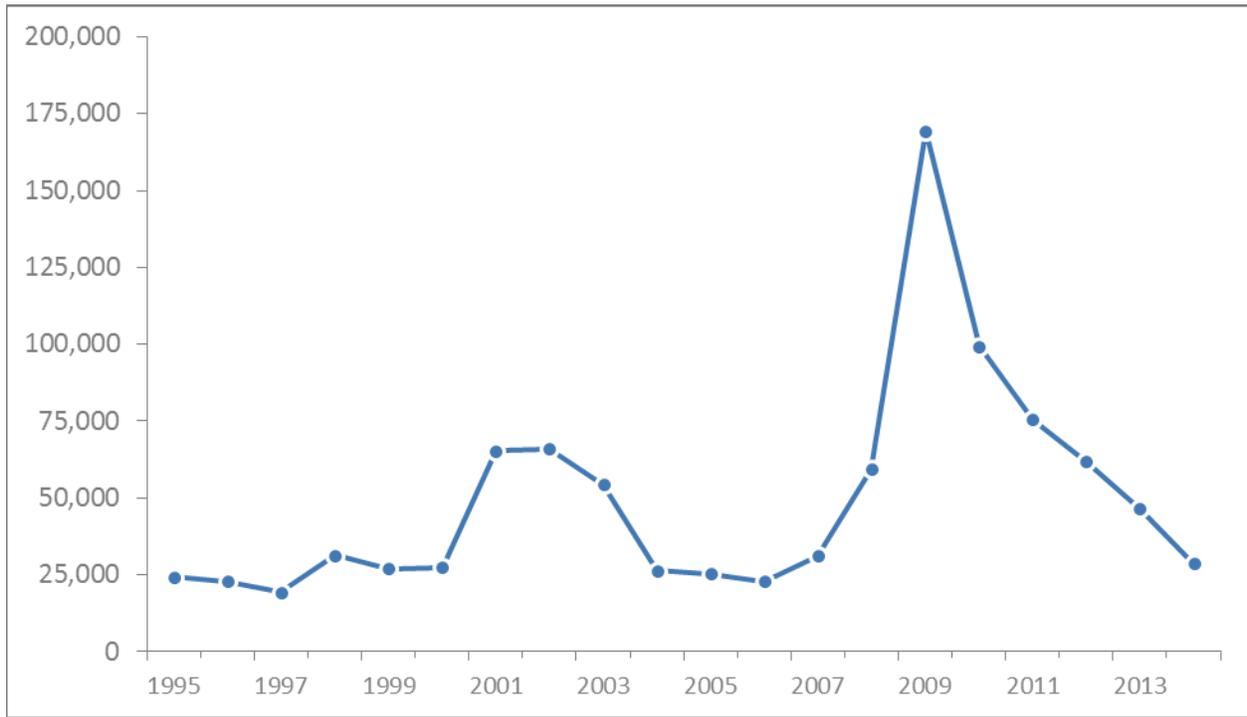
2.4 Number of Estimated Averted Layoffs

The purpose of the STC program is to avert layoffs. States have enacted their STC programs in the hope that participation in the program will avert layoffs in the short run and preserve jobs. One way to estimate the number of layoffs averted is to convert the number of STC initial claims to full-time equivalents of a regular UI layoff, based on the percentage of hours reduced by an employer for its employees covered under an STC plan. For example, a 20 percent reduction in hours under STC for 100 workers could be considered the equivalent to 20 employee layoffs being averted. Federal reporting requires states to estimate the number of layoffs averted using this computation. Figure 2.6 charts the estimates of the number of layoffs averted nationally, by year, for the period 1995-2014. The graph shows a dramatic increase in the number of estimated layoffs averted between 2007 and 2009, and a total estimate of approximately 570,000 jobs having been saved through the STC program since the beginning of the last recession (2008-2015).

It is possible for layoffs to occur after the period of STC use because of the long term impact of the economic recession on the employer’s business, especially for longer recessions. The 2015 Employer Survey Study asked STC employers if they eventually laid-off STC employees because of a continued lack of work (considering only the most recent usage during the study period of 2008-2013). The percentage of employers that said they eventually used layoffs ranged between 16 and 21 percent across the four states that participated in the employer survey conducted by IMPAQ International (the survey did not ask for the number of employees laid

off). For two states that came out of the recession faster, the layoffs occurred mainly in 2009 and 2010. These results suggest that the use of STC prevented a significant portion of these employees from being laid off during the recession and those employees were then available to resume full-time employment afterwards.

Figure 2.6 Estimate of the number of layoffs averted through the use of STC, based on STC initial claims converted to full-time equivalents, by year



Source: Westat report authors' calculation using U.S. Department of Labor ETA 5159 monthly claims report.

Section III: State Enactment of STC Provisions of the Act

3.1 The Statutory Definition of STC

Since the inception of the STC program, states were authorized to implement temporary STC programs using funds from their accounts in the Unemployment Trust Fund (UTF) in the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The Unemployment Compensation Amendments of 1992 (Pub. L. 102-318) added statutory authority for states to fund STC from the UTF and established certain requirements in its definition of an STC program.

Prior to enactment of the Act, twenty-one state UI laws contained a provision authorizing the payment of STC benefits.⁶ The Act amended the Federal Unemployment Tax Act (FUTA) by providing a new definition of an STC program in new subsection (v) of Section 3306, FUTA, which became effective on the date of enactment, February 22, 2012. States are not required to carry out an STC program; however, states may only operate an STC program if the State law conforms to this definition. Seven states enacted new STC programs after enactment of the Act (Illinois, Michigan, Nebraska, New Jersey, Ohio, Virginia and Wisconsin).

Section 401 of the Unemployment Compensation Amendments of 1992 included the definition of a short-time compensation program as follows:

(d) DEFINITIONS.--For purposes of this section--

(1) SHORT-TIME COMPENSATION PROGRAM.--The term "short-time compensation program" means a program under which--

(A) individuals whose workweeks have been reduced by at least 10 percent are eligible for unemployment compensation;

(B) the amount of unemployment compensation payable to any such individual is a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

(C) eligible employees are not required to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but are required to be available for their normal workweek;

(D) eligible employees may participate in an employer-sponsored training program to enhance job skills if such program has been approved by the State agency; and

⁶ US Department of Labor, Employment and Training Administration – Office of Unemployment Insurance, *Comparison of State Unemployment Insurance Laws of 2011*, p 4-11.

(E) there is a reduction in the number of hours worked by employees in lieu of imposing temporary layoffs.

(2) STATE.--The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.⁷

In the Act, this definition was modified and expanded. The Act added a new section 3306(v) to the Federal Unemployment Tax Act (FUTA). Section 3306(v) consists of paragraphs (1) through (10). Paragraphs (1) through (9) contain the specific definition of a short-time compensation program and state STC law must conform to this amended definition. A comparison of this definition to the previous definition is provided.

a. *“(1) the participation of an employer is voluntary;”*

This is the same as prior law. Employer participation has always been voluntary in STC programs.

b. *“(2) an employer reduces the number of hours worked by employees in lieu of layoffs;”*

This is a modification from the prior definition. Previously, the STC definition required a reduction in hours worked by employees in lieu of temporary layoffs. The removal of the word temporary may enable a state UI agency to approve more applications by employers to participate in an STC program since the employer is no longer required to reasonably expect that the layoff be temporary. The use of the word “layoffs” means that the employing unit affected must consist of at least two workers.

“(3) such employees whose workweeks 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), are not disqualified from unemployment compensation;”

This is a modification from prior law. Consistent with prior law, employees participating in STC must not be disqualified from UI on account of their STC participation. However, prior law required a reduction in the workweek of at least 10 percent. No maximum percentage was provided under the prior law. Federal law now establishes both a minimum (10 percent) and maximum (60 percent) percentage by which individuals’ workweeks may be reduced. The states may determine the range as long as it falls within those parameters.

“(4) the amount of unemployment compensation payable to any such employee is a pro rata portion of the unemployment compensation which would otherwise be payable to the employee if such employee were unemployed;”

⁷ Unemployment Compensation Program Letter (UIPL) No. 45-92.

This is the same as prior law. STC weekly benefit amounts have always been defined as a proportion of the UI weekly benefit amount payable for a week of total unemployment equivalent to the proportion of the workweek that had been reduced. Thus, individuals must be monetarily eligible for UI and have remaining entitlement to UI in order to receive an STC weekly benefit amount.

e. *“(5) such employees meet the availability for work and work search test requirements while collecting short-time compensation benefits, by being available for their workweek as required by the State agency;”*

This is the same as prior law.

f. *“(6) eligible employees may participate, as appropriate, in training (including 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 agency;”*

This is an expansion of the requirement in prior law because it permits the state UI agency to approve STC plans providing for both employer-sponsored training and Workforce Investment Act (WIA)⁸ training to improve job skills. Previously, only employer-sponsored training could be included in an STC plan. The addition of WIA training should provide more training opportunities to STC participants. As under previous law, any training must be approved by the state agency.

g. *“(7) the State agency shall require employers to certify that if the employer provides health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j)) or contributions under a defined contribution plan (as defined in section 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-time 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-time compensation program;”*

This is a new requirement, although many states already have STC laws that contain similar provisions. The employer may not reduce the health or specified retirement benefits to individuals participating in the STC program. However, this prohibition on reductions does not apply if a reduction (described in more detail below) in such health and specified retirement benefits also apply to employees not participating in STC.

Health Benefits. As part of any application to participate in an STC program, an employer that provides health benefits to an employee who has a reduced workweek under the employer’s STC plan must certify that such benefits will

⁸ The Workforce Innovation and Opportunity Act (WIOA) took effect on July 1, 2015, replacing WIA.

continue to be provided to the employee under the same terms and conditions as though the employee's workweek were not reduced.

For purposes of this certification, employees participating in the employer's STC plan must be allowed to maintain coverage under the same terms and conditions as employees not participating in the STC plan. If coverage under the group health plan requires employee contributions, employees who participate in the STC plan may still be required to make such contributions in order to maintain their coverage. Notwithstanding the above, a change in health benefits applicable to employees who are not participating in the STC plan may also apply to employees who participate in the STC plan.

Retirement Plans. As part of any application to participate in an STC program, an employer that maintains a retirement plan (either a defined benefit plan or a defined contribution plan) for an employee who has a reduced workweek under the employer's proposed plan must certify that benefits (in the case of a defined benefit plan) and contributions (in the case of a defined contribution plan) will continue to be provided to the employee under the same terms and conditions as though the employee's workweek were not reduced.

For purposes of this certification, employees participating in the employer's STC plan must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the STC plan. The hours that were reduced under the STC plan must be credited for purposes of participation, vesting, and accrual of benefits as though the workweek had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation. Notwithstanding the above, a reduction in benefits under a defined benefit plan or a reduction in contributions under a defined contribution plan, applicable to employees who are not participating in the STC program may also apply to employees who participate in the employer's STC plan.

h. "(8) the State agency shall 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 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 short-time compensation and such other information as the Secretary of Labor determines is appropriate;"

This is a new requirement, although state laws generally require employers to submit an application to participate in the STC program. However the requirement that the state law specify that any STC application will require the employer to specify how the plan meets the new requirements of Section 3306(v), FUTA, is generally new for states. Of particular note, the plan will have to

specify how workers will be notified of the STC plan in advance, if feasible, and provide an estimate of the number of workers who would be laid off if the employer does not participate in STC. If advance notice is not feasible, the Department requires that the application explain why it is not feasible. If the affected unit is covered by a collective bargaining agreement, it will be sufficient to provide an explanation in the application of how notification to the bargaining agent will be provided.

i. *“(9) the terms of the employer’s written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws;...”*

This is a new requirement. Now, state STC law must require the employer to attest, as part of its STC application, that participation in the STC program is consistent with the employer’s obligations under state and federal law.

j. *“(10) upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”*

This is a new provision intended to give states the flexibility to include, upon state request and approval by the Secretary, additional STC requirements. Many state STC laws already contained additional requirements for employer or employee participation in the STC program.

DOL issued additional guidance explaining the process by which states could request that the Secretary approve any additional provisions other than those specifically included in Section 3306(v), FUTA⁹ (see Appendix A for a listing of Approved Optional Provisions for States STC Laws).

In recognition that states would need to amend their laws to conform to this new definition, the Act provided a transition period for states with existing STC laws to conform to the new requirement. If any state that had not been administering an STC program on February 22, 2012, enacted a law providing for an STC program after that date, the enactment must conform to this new definition.

Transition Period for State STC Laws to Conform to New Definition. While the new definition of STC in Section 3306(v), FUTA, became effective on February 22, 2012, Section 2161(a)(3) provides for a transition period for states administering STC programs on that date. The term “administering” means the state’s STC law is in effect, and the state agency responsible for administering the STC program has established operating guidelines and has informed employers and workers about the STC program, regardless of whether any STC payments have been made. We advised states that if a state’s law cannot be administered consistent with this

⁹ Section 4 of UIPL No. 22-12, Section 6 of UIPL 22-12, Change 1, including Section K of the Commentary Section to Attachment 1 Draft Language and Commentary to Implement a Short-Time Compensation Program, UIPL 22-12, Change 2.

new definition, the state may continue to administer its current STC law until the earlier of the effective date of state law changes conforming to this new STC definition or the “date that is 2 years and 6 months after the date of the enactment of this Act,” August 22, 2014. Thus, if any state that had not been administering an STC program on February 22, 2012 enacted a law providing for an STC program after that date, the enactment must conform to the definition in Section 3306(v), FUTA. In addition, a state administering a non-conforming STC program on February 22, 2012, was required to amend its law to conform to Section 3306(v), FUTA, effective no later than August 22, 2014, in order to continue operating its STC program after that date.¹⁰

3.2 Departmental Guidance and Assistance to States Regarding the New Definition of STC

The Act required DOL to develop model language to assist states in enacting or amending their law to conform to the new definition and to consult with state workforce agencies and other stakeholders to obtain input prior to developing model legislation.

A notice of listening sessions on implementation of unemployment insurance provisions of the Act was published at 77 Federal Register 16074 (March 19, 2012), and two listening sessions were held on March 16, 2012 and March 20, 2012. During these sessions, many states with existing STC laws expressed concern about the need to amend their law to conform to the new definition of STC in the Act.

During the listening sessions, some stakeholders expressed the opinion that the model language should be limited to that which is necessary to conform to the new definition and that no other requirements should be included in the model legislation. Some states have STC laws that have been in place since the 1980s, and expressed an interest in keeping the model language as consistent with the model language in UIPL No. 39-83 as the new definition of Section 3306(v), FUTA, would allow. Some states inquired about the approval process provided in Section 3306(v)(10), FUTA, if their current law contained additional provisions beyond the minimum conformity requirements.¹¹

After these listening sessions, DOL reviewed existing state laws for conformity with the new definition of STC in the Act and offered informal technical assistance pending issuance of the model legislation. DOL identified many additional provisions in state laws that were not inconsistent with the definition of an STC program in Section 3306(v)(1) through (9), FUTA, but might require the state to request approval as appropriate for an STC program under Section 3306(v)(10), FUTA. On December 21, 2012, DOL issued UIPL No. 22-12, Change 1 including an attachment entitled “Draft Language and Commentary to Implement a Short-Time Compensation Program.” This guidance also included a description of the process a state would utilize to request the Secretary of Labor to approve additional provisions it considers appropriate for an STC program.

¹⁰ Section 5 of UIPL No. 22-12.

¹¹ Section 4 of UIPL No. 22-12, Change 1.

On December 28, 2012, the Administrator for the Office of Unemployment Insurance (OUI) sent a letter to each state workforce agency administrator with an existing STC law informing the state that legislative changes were necessary to conform to the new definition of STC and explained that DOL would provide technical assistance to each state upon request. Additionally, this letter reminded states of the availability of the Federal reimbursement of STC benefit costs and that states could apply for STC grants as soon as their laws were in conformity with the new federal definition of STC.

On January 24, 2013, DOL hosted a webinar for state workforce agencies and stakeholders to discuss the implementation of recent changes to the federal STC law, including the model legislation and new conformity requirements. Thereafter, DOL provided individual technical assistance to states upon request or when any state STC legislation was introduced.

On July 31, 2013, the OUI Administrator sent a letter to states with existing STC programs requesting the states to submit a copy of all statutes, regulations, policies and forms pertaining to the STC program to assist DOL in an analysis of whether those states were in conformity or substantial compliance with the Act.

In November 2013, Secretary of Labor Thomas E. Perez sent letters to Governors of states with existing STC programs encouraging them to enact conforming legislation and to take advantage of the Federal financial incentives authorized by the Act. In November 2013, DOL followed up with phone calls to UI directors in states that had existing STC programs and those that had not yet established STC programs to encourage states to adopt such programs.

DOL developed an STC website, which provides states with many resources and tools to create and operate an STC program (website link: <http://stc.workforce3one.org/>). A Training and Employment Notice No. 10-13 (issued November 14, 2013), press release, and blog posting was released announcing the STC website.

DOL followed up the website launch with two webinars for state UI agency staff and other STC stakeholders (including Governors, legislators, business leaders, unions, etc.). On November 20, 2013, DOL hosted state administrators and workforce partners in a webinar on “Short-Time Compensation (STC) Program Website Launch and Demonstration” to remind states of the available incentives for state implementation and/or expansion of STC programs that would soon no longer be available and to provide an overview of the newly developed STC website designed to be a resource for states.

On December 6, 2013, DOL hosted state administrators and workforce partners in a second webinar on “Short-Time Compensation (STC) Program: Legislation, Website Tools, and Q&A with State Panel” covered the incentives currently being offered by the Federal government for states to operate an STC program. This webinar also outlined the benefits of the program and provided participants with information needed for their legislation to meet the new federal definition of STC. The webinar featured a panel of state STC experts who discussed their experience with the STC program, including challenges and successful practices related to passage of the required legislation; implementation of the program; the benefits of the program; and the positive outcomes experienced by businesses that participate in the STC program.

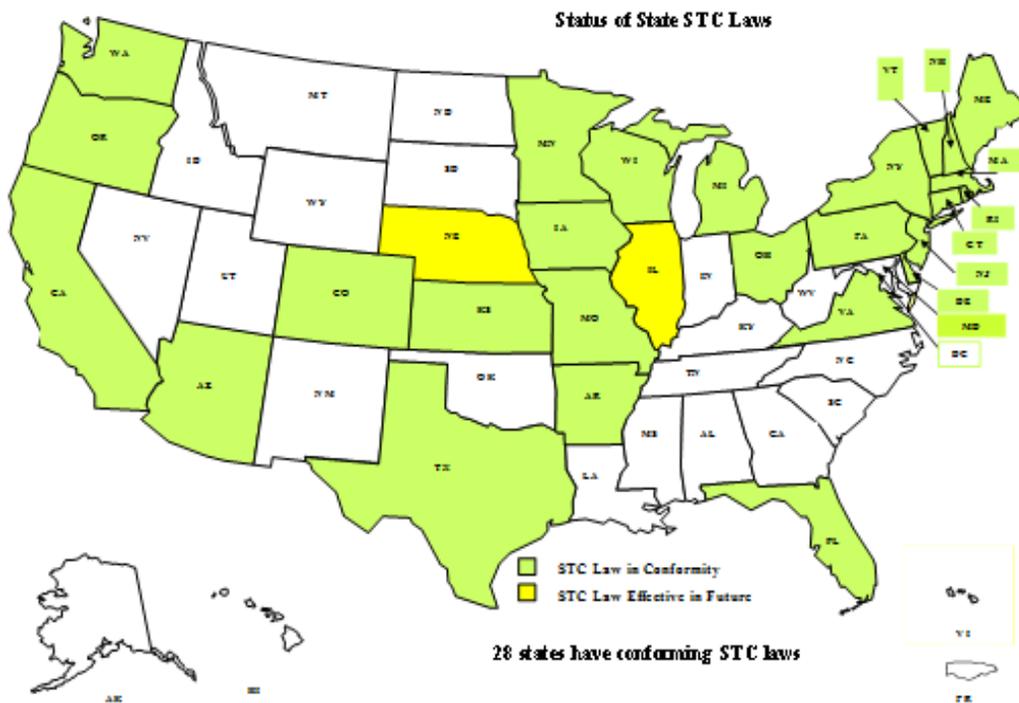
OUI regularly communicated with its six ETA regional offices to encourage states to sign the reimbursement agreement, to apply for the STC grant(s), and to inform states that staff members were available to provide technical assistance during the legislative process and assistance regarding implementation/operation of STC programs.

On February 7, 2014, DOL completed its review of the additional provisions in state STC laws, regulations and policies. Several additional provisions were determined to be appropriate for a STC program. These additional provisions are included in Appendix A of this Report.

3.3 State Laws That Conform to the New Definition of STC

Currently, twenty-eight states have amended their STC laws, or enacted new STC provisions in their state UI laws, to conform to the new definition of STC in the Act (see Figure 3.1 below and Appendix B).

Figure 3.1: States with Active STC Programs, February 2016



3.4 State Perspective on Enacting Conforming Legislation

In 2015, nine states that made STC legislative conformity changes were interviewed to determine the modifications made to conform with the Act and questioned about whether they encountered significant challenges (Connecticut, Florida, Michigan, Ohio, Oregon, Rhode Island, Texas, Virginia, and Washington). All representatives contacted reported that there were no significant difficulties in achieving conformity.¹²

¹² DOL contracted with Westat to conduct interviews with state workforce agency officials involved in the legislative process. The report is unpublished (*Short-Time Compensation after Enactment of the Middle Class Tax Relief and Job Creation Act of 2012*).

Section IV: STC Program Implementation

The discussion below presents information and data obtained from the Westat report.¹³

4.1 States That Received STC Grants

The Act provided funding for grants to states for STC program promotion and enrollment of employers, and for implementation or improved administration. One-third of the funds were available for implementation and/or improved administration grants and two-thirds of the funds could be used for promotion and enrollment grants. Only states that had conforming STC laws could be approved for grants, and the state STC program could not be subject to discontinuation. As a result, states with existing STC programs were unable to take advantage of the grants until their legislatures acted, which for some states was close to the time the grant availability expired.

The Act provided the following criteria for use of the STC grants:

- The creation or support of rapid response teams to advise employers about alternatives to layoffs;
- The provision of education or assistance to employers to enable them to assess the feasibility of participating in STC programs; and/or
- The development or enhancement of systems to automate—
 - (A) The submission and approval of employer STC plans; and
 - (B) The filing and approval of new and ongoing STC claims.

When developing STC grant applications, DOL strongly encouraged state UI agencies to partner with other workforce partners, such as Rapid Response teams, to reinforce the shared goal of layoff aversion and to leverage resources.

Seventeen STC states received grants totaling \$50.5 million (see Figure 4.1). Currently, however, sixteen (16) states are in receipt of grant funds, totaling \$46.1 million, as funds were recouped from one state because the state could not meet the grant requirement.¹⁴

Five states applied for the grants and received funding in 2014 (Michigan, Ohio, Oregon, Texas¹⁵ and Washington). The remaining twelve states received grants in January 2015 (Arkansas, California, Connecticut, Illinois, Iowa, Massachusetts, Missouri, New Hampshire,

¹³ The report is unpublished (Westat, Short-Time Compensation After Enactment of The Middle Class Tax Relief and Job Creation Act of 2012).

¹⁴ Illinois applied for and received an STC grant. After receiving its grant in January 2015, Illinois determined that it could not implement its STC program by the end of 2015. Since the Act required that all state STC laws had to be effective within 12 months of certification of grant eligibility, Illinois could not retain the grant.

¹⁵ Texas submitted its improved administration grant in 2014 and its promotion/enrollment grant in January 2015.

New York, Pennsylvania, Rhode Island, and Wisconsin). All states, except for Arkansas and New Hampshire applied for and received both grant types. Arkansas and New Hampshire applied only for administration improvement grants.

4.1.1 Implementation or Improved Administration Grants

States that received the implementation/improved administration grant are using the grant funds to automate their systems or for other program improvement activities. The Westat report indicated that when STC grant funds were used for automation, some states also supplemented their grant funds with other automation grant funds available and/or built on an existing UI information technology modernization project. Other states used the grant funds for various types of process improvements. Below are other examples of how grant funds were used:

- Improving the STC application process and other downstream program operations;
- Hiring and training STC program staff;
- Developing and posting program STC information on the state website;
- Developing an STC web-portal; and
- Improving existing STC program forms (e.g. employer applications, claim forms, letters, etc.) and developing electronic forms.

4.1.2 Program Promotion and Employer Enrollment Grants

States that received the STC grant for promotion and enrollment activities are utilizing the funds to:

- Develop or enhance a state website devoted to the STC program;
- Mail informational materials to employers;
- Initiate or expand presentations to employers or employer groups;
- Email informational materials to employers;
- Implement outreach efforts to legislators, other stakeholders (such as Chamber of Commerce and employer associations) about the STC program;
- Work with Rapid Response team and other workforce partners in the state to promote the program;
- Broadcast public service announcements on radio or TV;
- Promote their STC programs on the radio, TV, or internet;
- Conduct webinars for employers on the STC program;
- Promote STC program on billboards;
- Design or update promotional material, such as brochures, postcards, handouts, and videos (including employer testimonial videos);
- Launch an email campaign to employers across the state;
- Hire and train staff engaged in promotion and enrollment activities; and
- Develop a technology/data warehouse to identify potential employers that may benefit from the STC program.

4.2 States That Received STC Reimbursements

Twenty-two STC states received reimbursements under the Act, totaling \$266.7 million between 2012 and 2015 (see Figure 4.1). The District of Columbia, Florida, Illinois, Nebraska, New Jersey, Virginia, and Wisconsin did not receive reimbursements. None of these states, except Florida, had STC activity during the time that reimbursement was available. Federal reimbursement for STC benefits ended in August 2015. Florida did not request reimbursement of STC benefit costs.

States that received the Federal reimbursement had the option of relieving an employer of charges (or not requiring reimbursement of the STC benefits from a reimbursable employer) for the STC benefits that were federally reimbursed. The Westat report suggested this option could be viewed as an incentive to new employers to try the STC program if needed. The Act provided for 100 percent reimbursements of STC benefits paid. However, the reimbursement became subject to reductions as a result of Federal sequestration provisions. The reimbursement was reduced to 94.9 percent in FY 2013, to 92.8 percent in FY 2014, and to 92.7 percent in FY 2015.

Figure 4.1 Amount of the STC grants and of Federal reimbursement received by states with STC programs

State	STC Grant (\$) (17 States)	Reimbursement (\$) (22 States)
Arizona		1,982,906
Arkansas	84,011	615,404
California	11,564,436	144,657,830
Colorado		617,000
Connecticut	1,260,659	14,524,798
District of Columbia		
Florida		
Illinois ¹⁶	4,307,659	
Iowa	1,047,671	1,422,433
Kansas		3,158,151
Maine		117,000
Maryland		902,656
Massachusetts	1,608,256	4,118,345
Michigan	2,840,535	4,513
Minnesota		4,061,031
Missouri	1,204,684	14,499,412
Nebraska		
New Hampshire	150,490	353,137
New Jersey		
New York	6,078,428	27,086,740
Ohio	3,714,908	142,000
Oregon	1,189,280	4,580,382
Pennsylvania	3,895,384	383,000
Rhode Island	328,092	7,446,551
Texas	8,273,025	13,895,807

¹⁶ The grant funds for Illinois were recouped by DOL because the state could not meet the grant requirement of operating the STC program within 12 months of receiving grant funds.

Figure 4.1 (Cont'd) Amount of the STC grants and of federal reimbursement received by states with STC programs

State	STC Grant (\$) (17 States)	Reimbursement (\$) (22 States)
Vermont		577,798
Virginia		
Washington	2,136,749	21,553,120
Wisconsin	777,396	
TOTAL	46,154,004	266,700,014

Source: U.S. Department of Labor, Office of Unemployment Insurance

4.3 Implementation or Administrative Challenges

At the 2015 STC Summit, several issues were discussed that can be viewed as challenges to states in the administration of their programs. These challenges include the lack of automation, the lack of resources to support outreach and promotion, the need for process improvements, the inability to scale up to be prepared for the next recession, the ability to achieve and expand program name recognition, and uncertainty about how much flexibility to provide employers in STC plans. These challenges are discussed in more detail below.

4.3.1 Antiquated IT Systems that Cannot Support Automation of the STC Program

Among the most significant challenges states faced with regard to the implementation and administration of STC are inadequate computer systems and lack of program automation. Most states do not have highly automated STC systems, and some states do not currently have UI computer systems that would support STC implementation.¹⁷ Without automation, the tasks of receiving and reviewing employer applications and claim filings are highly labor intensive. In some states, the weekly STC claims filings, for example, require STC staff to review long lists of participating employees that may vary each week, as well as vary by the percentage of hourly workweek reductions. In contrast, states with automated STC operations are able to verify and process claims more quickly.

4.3.2 Inability to Scale up the Program

A common issue raised by many states is the importance of being ready for the next recession. Some states have only one or a very small number of staff working on STC and several states said that they would have a difficult time scaling up to meet program demands because of the lack of automation and their current reliance on a manual paper system. Some, but not all, states were able to use their STC grant funds to help with automation and/or process improvements. Other states did not request grant funds. For example, Virginia could not apply for the STC grants because the program was set to end in 2016. By the time the sunset provision was eliminated in 2015, the deadline to apply for grant funds had passed. State attendees of the 2015

¹⁷ Because STC represents a small portion of state UI benefit payments, most states cannot afford to reprogram their systems to accommodate STC eligibility provisions that are different than those for regular UI payments.

STC Summit indicated that it would be helpful to states if additional grant funds were made available so states could modernize their STC systems.

4.3.3 Need for Process Improvement

Several states noted that their STC operational processes could be improved to make them more efficient and reduce errors, particularly states that are operating manual paper systems and relying on regular postal service mail and fax machines. In Washington and Oregon, the agencies were using a process improvement approach that relied on a collaborative team effort to improve performance by systematically assessing and removing wasteful activities and operating as a lean enterprise.

Using its STC administration grant, Washington has adopted “lean” management tools and processes designed to improve workflow and identify improvement opportunities. So far, Washington has updated its paper forms to web-based fillable forms and is in the process of developing a database to log and track employer STC plans. Washington plans to integrate the database into a new UI/STC benefits system in late 2016.

In Oregon, the STC program improvement grant was used to fund a full-time project manager, secure vendor support, update STC forms, and develop program rules. Through the process improvement approach, seven improvement solutions were identified: develop written policies; standardize procedures to remove ad hoc decision making; moving the program to the special programs unit; reducing paperwork by using a shared network and creating electronic files; establishing objective standards; improving STC tools; and reducing incomplete, illegible forms (that introduce errors) by using fillable forms containing required fields.

4.3.4 The STC Program Name is Not Well Known

Relatively few employers are aware of the existence of STC, which is a relatively small program. One issue that arises with STC promotion is that the name of STC varies from state to state, with some states using “Short-Time Compensation” and others using variations of “Shared Work” or “Work Share.” The latter two names are sometimes confused with a separate program called “job sharing” in which employees share one job permanently.

Use of different names across states may lead to confusion for employers in a regional market that involves more than one state. An illustration of the problem of multiple state names for STC is the situation in the District of Columbia metropolitan region. Virginia, the District of Columbia, and Maryland all use different names – “Shared Work” is used in the District of Columbia, “Work Share” is used in Maryland, and “Short-Time Compensation” is used in Virginia. Use of one name for the program may facilitate improved program awareness.

4.3.5 Flexibility Provided to Meet Employers’ Changing Needs

State agencies vary in the level of flexibility they provide to employers in developing their STC plans and in the week-to-week administration of the program. Employers seek as much flexibility as possible to allow them to meet their business needs. Business conditions can change during the use of the plan that requires further reduction in hours or for adding or removing employees from the list of STC claimants.

The dilemma for states is determining how much flexibility to provide, considering the level of staff available to administer the STC program, the level of program automation, and the ability to continue such flexibility if the program is scaled up in a recession. States try to provide as much flexibility as possible while still maintaining the integrity of the program. Thus, the state agency also has to consider its ability to sufficiently audit the STC employer plans.

Section V: Employer Knowledge/Interest in the STC Program

DOL funded a survey of employers in four states with active STC programs from 2008 to 2013. The survey was conducted by IMPAQ International (the IMPAQ study). Almost all respondents were familiar with the term “unemployment benefits” and understood the meaning of the term.¹⁸ However, STC has never been required in all states and there was less familiarity with the term “short-time compensation” among employers. After states were given permanent authority to operate STC programs in 1992, some states use the term “short-time compensation” while other states preferred a different name for the STC program. Some states label their STC program “work sharing” or “shared work.” As a result, it is more likely that employers in a state will recognize the STC program under the label given to the program by their state legislation rather than the term “short-time compensation.”

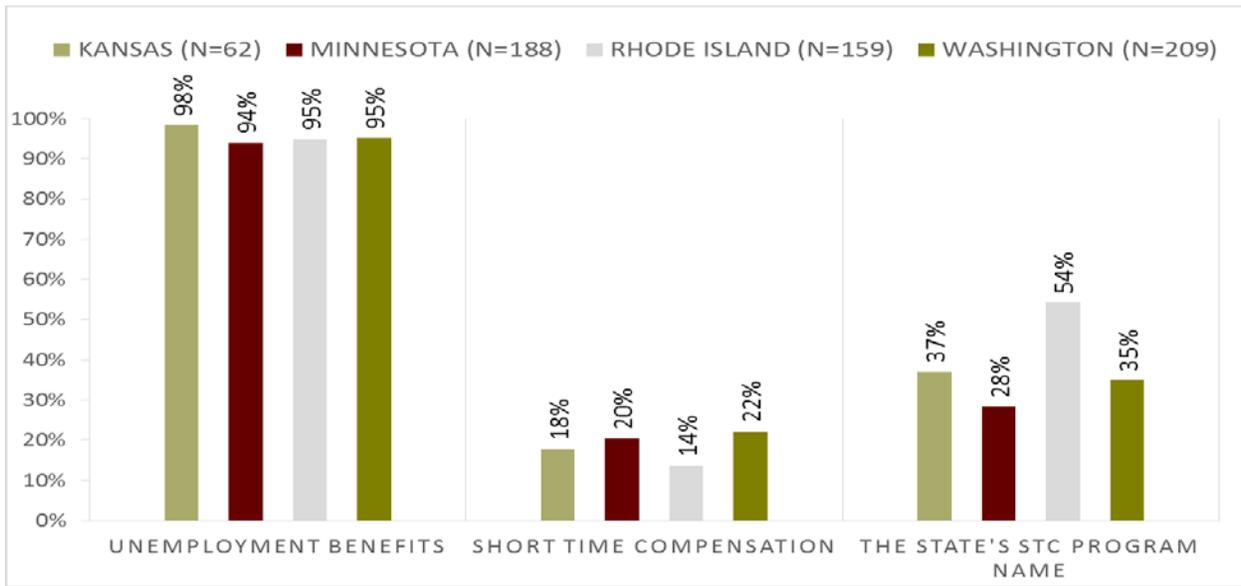
Among non-STC employers, awareness of STC was much lower than for the regular state UI program (Figure 5.1). When the IMPAQ study asked respondents if they recognized the STC program under the state’s name for the program (for example, “Work Share”), awareness was higher. Across states, less than a quarter of non-STC employers had heard the term “Short-Time Compensation.” Yet, when respondents were asked if they heard of STC under the label used for the STC program in the state UC law, the awareness of each state’s program name was much higher. More than half of Rhode Island’s non-STC employers were aware of the state’s program name, followed by Kansas (37 percent) and Washington (35 percent).

Figure 5.2 shows the awareness level among STC employers. STC employers had very high awareness of the term “unemployment insurance” but low awareness of the term “Short-Time Compensation.” Again, the STC employers almost universally recognized the name of their state’s STC program, and their awareness was not surprisingly much higher than that of non-STC employers. As discussed in sections 4.3.4 and 6.2.2 of this report, use of different names may lead to challenges in communications with and among employers and makes it more difficult to promote the STC program.

After conducting the four-state survey, DOL determined that conducting a survey in all states would not be cost effective and would not have added significant value to our reporting on employers’ interest in the program.

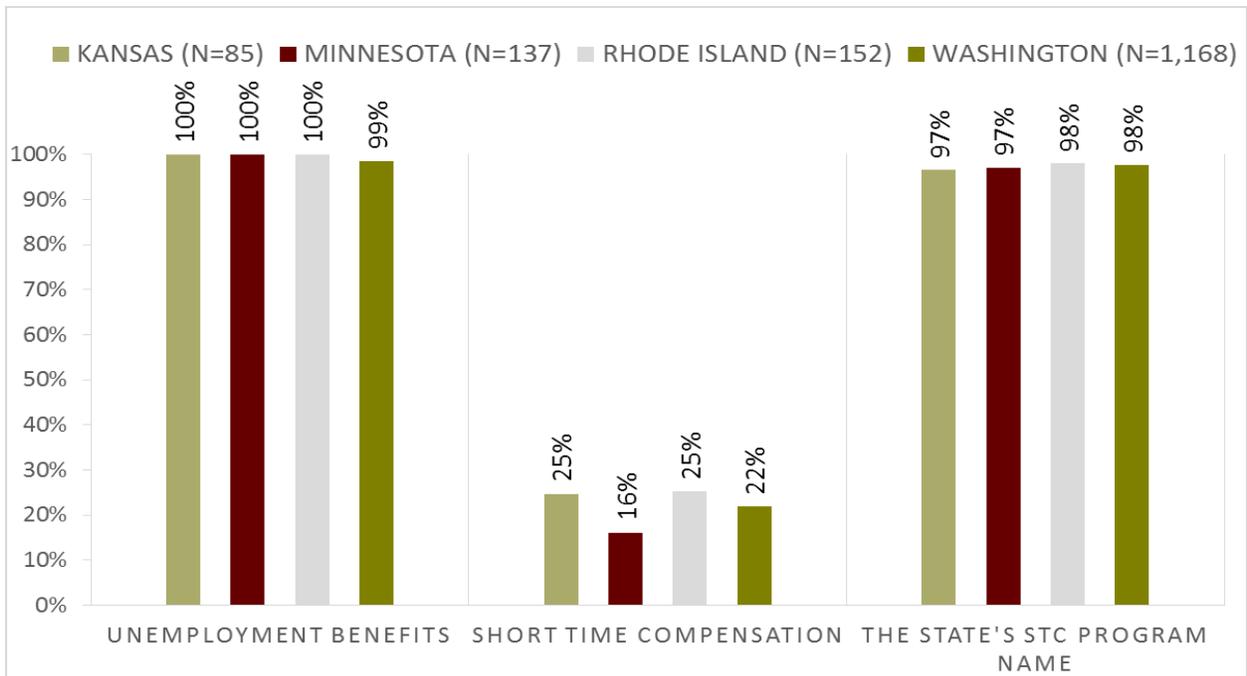
¹⁸ This report is unpublished (IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”).

Figure 5.1 Awareness of the STC program among non-STC employer respondents



Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.

Figure 5.2 Awareness of the STC program among STC employer respondents



Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.

5.1 How Employers Heard About the STC Program

The IMPAQ survey results show that employers who have participated in the STC program obtained awareness of the program from several sources including outreach efforts by state or local government officials; hearing about it from other employers; and, in rarer instances, from employees.

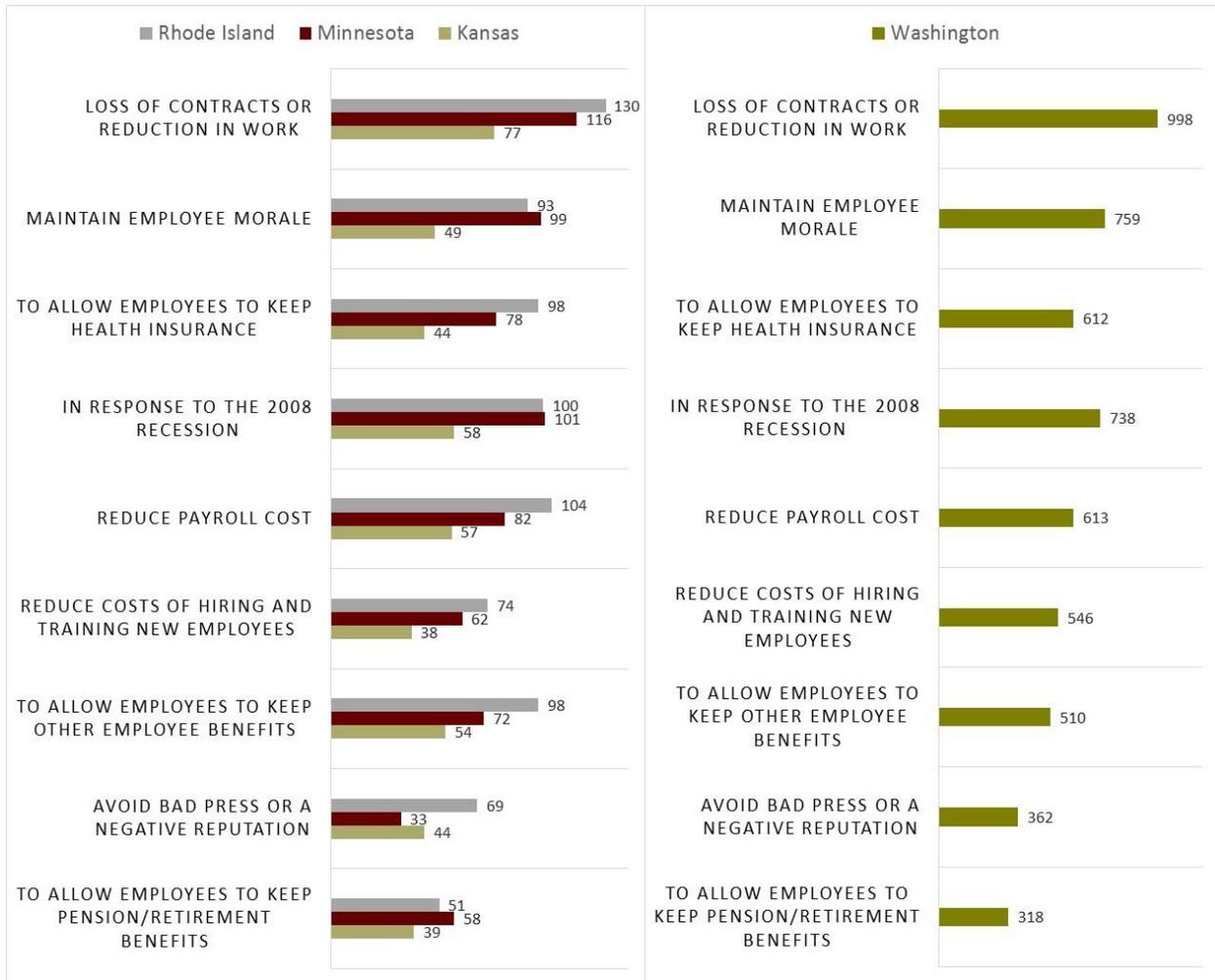
For employers that were surveyed but had not participated in the state STC program, awareness either came from state and local outreach efforts or from discussions with other employers. State outreach efforts were a critical factor in awareness of the program for these employers. States that conducted extensive outreach programs were more likely to increase knowledge of the program than other states without such outreach efforts.

5.2 Distribution of Information about STC and Motivations for Applying

Employers interested in participating in the state STC program typically sought information from the state agency about the STC program before submitting a plan application. The IMPAQ study found that almost all employers were very pleased with the adequacy of information they received from state agencies about the STC program. The survey results revealed that all employers who responded to the survey were satisfied with the information provided by the state STC agency.

Employers are most likely to inquire about STC when faced with a decline in business. In the IMPAQ study, as demonstrated in Figure 5.3, across all four study states, the main reason cited by employers for inquiring and submitting an application for STC was economic hardship caused by the loss of contracts or reduction in work. Other reasons that employers reported they inquired about STC included that the program would help maintain employee morale rather than laying off employees, that the STC program would enable employees to maintain health benefits, and that the STC program would reduce the cost of hiring and training new employees when business improved.

Figure 5.3 Reasons for STC employer respondents applying for STC, by state



Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.¹⁹

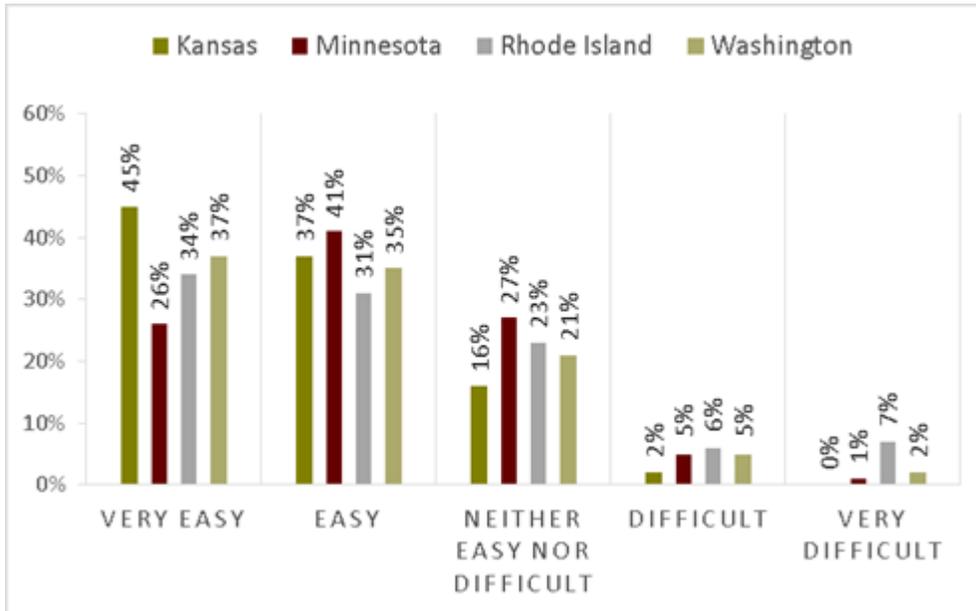
5.3 Ease of Application

The administrative processes for submitting an STC plan application varies from state to state. Some states have employed a manual process for submitting plan applications but most states are moving toward some automation of the application process. Employers who have participated in approved STC plans reported that the application process is not difficult. In the IMPAQ study, as shown in Figure 5.4, most STC employers reported satisfaction with the application process. Employers in Kansas were most satisfied with the application process; 82 percent rated the process as “very easy” or “easy.” Washington and Rhode Island employers also showed high ratings with 72 percent and 65 percent respectively rating the application process as “very easy” or “easy.” In Minnesota, 68 percent rated it “easy” or “neither easy nor difficult”, but only 26

¹⁹ The study obtained a higher number of responses from Washington and therefore these are reported in a separate column to not distort the results across the study states.

percent rating it “very easy.” One employer in Kansas said, “The people in the office were excellent to work with when I had questions.” One Minnesota employer noted, “They were very helpful with questions, and they responded very quickly via email or phone [when] needed.”

Figure 5.4 STC Employer ratings of the application process

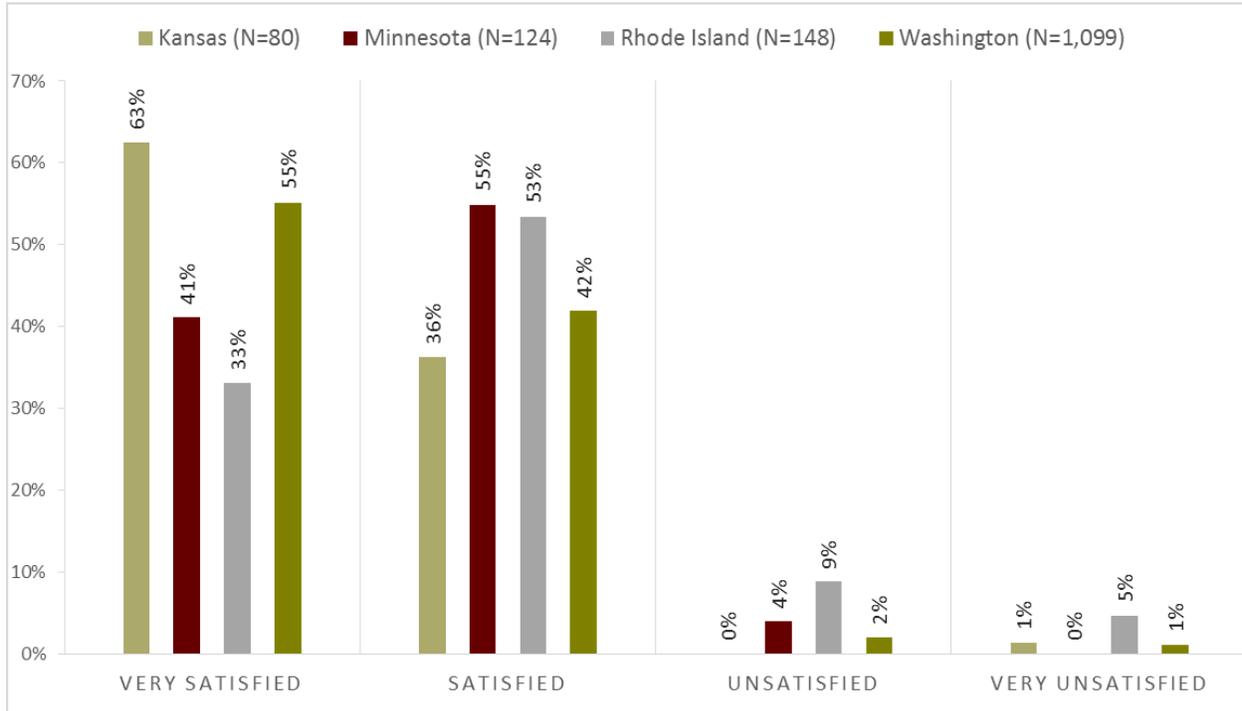


Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.

5.4 Employer Satisfaction of Communication with State Workforce Agencies

Communication between STC employers and state workforce agencies is important to successful STC programs. State workforce agencies need to clearly and effectively communicate with STC employers about the application process and requirements for participation after approval of the STC plan. The IMPAQ study reported that the overwhelming majority of STC employers were satisfied with the communication they had with state officials about the program (Figure 5.5). In the survey states, almost all employers reported they were either “satisfied” or “very satisfied” with the communication received from state officials (Kansas employers reported that 99 percent of employers were either “satisfied” or “very satisfied”; Minnesota employers reported 96 percent were either “satisfied” or “very satisfied; Rhode Island employers reported 86 percent were either “satisfied” or “very satisfied; and Washington employers reported 97 percent were either “satisfied” or “very satisfied).

Figure 5.5 STC employers’ satisfaction with communication received from state officials



Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.

5.5 Likelihood of STC and Non-STC Employers to Participate in STC in the Future

STC is a successful layoff aversion strategy during severe economic downturns as reflected by the estimated layoffs averted (described in section 2.4), the number of employers participating in STC during the recent recession, and that once employers participate in the program it is more likely that they will repeat participation in the future when similar economic conditions confront them. The IMPAQ study asked both employers who have previously participated in the state STC program and employers who had never participated whether they will apply to participate in the future. As demonstrated in Figure 5.6, more than 84 percent of STC employers across all four states responded that they were either “very likely” or “somewhat likely” to participate in STC in the future. The level of interest of employers who had not previously participated in STC to apply for an STC plan in the future varied but there was definite interest in doing so from survey respondents. In Kansas 41 percent of non-STC employers reported that they were either “very likely” or “somewhat likely” to apply for approval of an STC plan in the future; in Minnesota 38 percent of non-STC employers reported that they were either “very likely” or “somewhat likely” to apply for approval of an STC plan in the future; in Rhode Island 53 percent of non-STC employers reported that they were either “very likely” or “somewhat likely” to apply for approval of an STC plan in the future; and, in Washington 48 percent of non-STC employers reported that they were either “very likely” or “somewhat likely” to apply for approval of an STC plan in the future.

Figure 5.6 Likelihood of STC and non-STC employers to participate in STC in the future

	Kansas		Minnesota		Rhode Island		Washington	
	Non-STC	STC	Non-STC	STC	Non-STC	STC	Non-STC	STC
Very likely	7%	62%	5%	46%	9%	64%	13%	73%
Somewhat likely	34%	24%	33%	38%	44%	24%	35%	20%
Somewhat unlikely	27%	5%	23%	10%	17%	8%	19%	4%
Very unlikely	32%	9%	38%	5%	31%	4%	33%	3%
Number of respondents	59	82	186	125	59	148	208	1,093

Source: IMPAQ International, “Employer Views about the Short-Time Compensation Program: A Survey and Analysis in Four States”.

5.6 Employer Feedback Interviews

The interviews conducted by Westat with nine STC employers from three states (Connecticut, Michigan, and Texas) provide some insights as to the reasons the employers participate in the program.²⁰ Westat reported the following information in its study.

- A common theme among the employers was to help their employees remain employed, receive some earnings and maintain their health and retirement benefits.
- Employers would be able to keep valued employees and maintain employee morale.
- One employer interviewed indicated that the STC program helped it retain its very small workforce during a slow business period.
- Another employer said that STC was a perfect fit because the employer needed to reduce employee hours by eight hours a week but the employees would not be eligible for regular UI benefits.
- With STC, the impact on employees of reduced hours would not be as severe because of the receipt of STC. In addition, the employer would not lose employees to other firms.
- Interviews conducted with employers in Iowa and Oregon indicated that STC usage was beneficial to business survivability and effectiveness. STC helped employers make it through hard economic times and retain skilled and valued employees so that the employers were ready when demand improved. In addition, employers said they were motivated by human concerns to keep employees on the job and avoid falling into a deep financial hole.

²⁰ The Westat study involved focused interviews with state workforce agencies and employers. The report is unpublished (Westat, Short-Time Compensation After Enactment of The Middle Class Tax Relief and Job Creation Act of 2012).

Section VI: STC Best Practices

The following information is based on material gathered from interviews conducted by Westat with state UI agencies and from discussions at the 2015 STC Summit about what works well in the administration, promotion and use of STC programs.²¹ The STC “best practices” are various practices that have been identified as contributing to the success of STC programs in a number of states. We divide these practices into those improving program administration and use, improving program promotion, and best practices reported by employers.

6.1 Administration and Use of STC

6.1.1 Centralize Administration to Support Efficiency and Scalability

Even though STC is a UI program, it operates differently than regular UI in two significant ways. First, STC is more work intensive than regular UI administration and requires more involvement from both employers and state agency staff per STC participant served. Employers are directly responsible for developing their STC employer plan. Employers must decide whether to use STC, file an application, determine the percentage reduction in work hours, and identify employees to include in the affected STC work unit. In addition, the employers must communicate with their employees about the STC program. To administer the STC program efficiently, states have generally centralized the location of STC operations at the state UI office, allowing for a small number of staff to administer the program and leveraging the experience and expertise of other program experts (including experts on taxes and benefits).

Second, use of the STC program can be highly cyclical, even more so than the regular UI program. For example, while Washington’s UI first payments doubled between 2006 and 2009, its STC first payments increased 19 times during the same period. Because the workflow is highly cyclical, with the greatest amount of activity occurring in times of economic recession, states have looked for new and effective ways to administer STC. For example, Oregon has found that by moving STC from a small unit with a small number of staff to a larger UI special programs unit that oversees other UI programs, the agency can cross-train staff so that the program is operated more efficiently and is better able to deal with the ebb and flow of the STC program over the business cycle.

6.1.2 Adopt Scalable Operational Procedures

In interviews that Westat conducted with states and in presentations at the 2015 STC Summit, STC states said that a major lesson learned during the Great Recession was that they have to be able to effectively and quickly scale up the STC program when the number of STC applications and the number of STC claims increase dramatically. During the Great Recession, agencies saw the wait time for STC plan approval increase significantly, sometimes undermining the appeal of the STC program to meet employer needs.

The STC program requires more administrative effort than the regular UI program because it involves job attached workers and is an employer-driven program. The agency staff reviews all of the elements of the application and checks the eligibility of the employer and the employees

²¹ The report is unpublished (Westat, Short-Time Compensation After Enactment of The Middle Class Tax Relief and Job Creation Act of 2012).

listed as those in the affected work unit. It is common for the state agency staff to correspond with an employer by email and telephone a few times during the application process, and again when the initial claims are filed to work through technical issues and to properly oversee the program.

At the 2015 STC Summit, a presenter from Washington State gave an illustration of the magnitude of the change in the average number of days to approve or deny an STC plan in the state between January 2009 and January 2011 and the number of plans approved. The average number of days increased in February 2009 to 49 days from 35 days in the prior month, and was followed by a large increase in the number of approved plans in March 2009 (641 plans in March compared to 141 in February).

When STC applications dramatically increase, states are challenged to have a sufficient number of staff members trained and ready when needed to scale up. This can be accomplished through cross-training of staff that can be brought in when needed. In addition, a number of states indicated that having policies and procedures in place facilitated scaling up operations when needed. For example, at the 2015 STC Summit, an Oregon presenter described having had a single staff member responsible for STC using 100 percent paper and a completely manual process. That approach was not scalable, and there was no reliable way to capture and report data. Oregon moved the STC program to its special programs unit, standardized procedures to remove ad hoc decisions, developed written policies and procedures, and reduced paperwork by creating electronic files (among other process improvement activities). Within the Oregon special programs unit, five staff members have been trained for the STC program. The result is a potential fivefold increase in staffing available during the next recession.

6.1.3 Use a Balance of Process Improvement and Automation of Application and Claims Processes

States vary considerably with respect to their capacity to use automation for the STC application and claims processes. In some states, both processes are paper dependent. In others, there is partial automation, and in still others, there is full automation as a result of building on an existing or recently updated UI operating systems. Several states are using their STC implementation and improved administration grants to automate their systems. Michigan and Ohio, two new states, were able to build automated systems for the STC program as part of recent upgrades to their state UI benefit payment systems.

Ohio's system provides for real-time employer and employee self-services through a web portal. Through the portal an employer can submit an STC plan application and upload the STC participant list. The Ohio system automatically associates employee benefit claims with the STC plan, calculates the benefit amount and makes the disbursement of the properly prorated amount. Employees go online to attest to the hours reported by the employer. The automated forms are designed to reduce errors through the use of check boxes, drop-down boxes, and autofill from the system records.

In Michigan, STC legislation was enacted in 2012 and their STC grants were approved in May 2013. The STC implementation and improved administration grant was used to automate STC. Under the Michigan STC system employers can manage their plans, including posting employee

hours. Employees also can go online to certify their hours worked. The new system generates reports for the state agency to help manage and audit the program.

In 2013, Florida implemented an automated system for STC, replacing the paper system they used previously. Employers may report weekly hours online. Employees may use it as well to indicate concurrence with the number of hours worked. Employees file their own continuing claims each week. The system performs cross-matches to confirm all information provided is consistent with the STC plan and data on file. Because there is a learning curve for employers and employees who use the new system, the state agency provides training, with a literature tutorial and step-by-step discussion by telephone.

For states without fully automated systems, changes have been made through other process improvements, such as the use of fillable forms or a database to track employer STC plans. In addition, a number of states have recognized the importance of having direct and secure communications with employers about the STC program. Some have established a direct telephone line that will go to staff knowledgeable about the STC program who can answer questions about the program and about an application or a claim. Michigan recently instituted a dedicated support telephone line with five trained individuals to address any issue or question concerning STC. Some states also have established a dedicated secure email address to correspond with employers.

At the 2015 STC Summit, many states agreed that the best way to operate the STC system is by using a combination of a highly automated system and program streamlining that makes the program as effective and efficient as possible. Some states, however, do not have the resources to automate their STC systems, and they work hard to compensate for a more manual system with program streamlining efforts. Other states with almost entirely manual systems plan to automate their STC programs when they further automate their UI benefit payment systems in the future.

6.1.4 Increase Flexibility in STC Administration

Participating STC employers tend to have week-to-week changes in their need for the STC program, and need an STC plan that is flexible in meeting their needs. Some employees in an STC unit are brought back to full-time work while others remain on STC. The weekly reduction in hours might need to be raised or lowered depending on changing demand for the firm's goods and services. Flexibility allows employers to vary the number and mix of employees using STC each week. Providing such flexibility to employers, however, often results in additional administrative burden to the states.

6.1.5 Use a Dedicated STC Web Page and Promotional Materials with User-friendly Content

States with active programs generally make STC information available to employers and the general public through the state agency's website. Most of the states have a dedicated STC web page. Use of a dedicated STC web page can enhance the promotion and administration of the program. Some of the promotional aspects include posting fact sheets, brochures, employer testimonials, videos and pre-recorded webinars. For administration, the web page can be used to provide educational information to the employer, such as how to complete an application and

how to communicate about the program to employees. It also can be used to provide the necessary forms and a portal for submission of forms. States can also use the website to share best practices for employers based on recommendations from those employers that have used the STC program.

When Washington received its grant in early 2014, it began revising its website. A professional video using clear, simple language was developed through a vendor to explain STC to employers that visit the state STC website. In addition, the content and presentation of the website was revised, making it easy for employers to understand and to use. The website explains what the STC program can do for employers and how they can apply.

Connecticut developed a professional logo and slogan for its STC program and uses them in its promotional materials and on the website. At the 2015 STC Summit, many state attendees responded positively to the Connecticut presentation and materials. Connecticut found that using these new materials along with aggressive outreach efforts increased the number of STC applications despite an improving economy.

Virginia is a new STC state that did not receive an STC grant. It has limited resources for promotion and implementation. Currently, it uses its web page to provide information about the STC legislation and the STC program, posts answers to frequently asked questions on its website, and also has a detailed video on the STC program. The STC application also is available on its web page.

6.1.6 Provide Clear Communications

Communicating to employers through promotional and educational materials is important to make employers aware of the program. The STC information needs to be clear, easy to understand, informative, and accessible. A dedicated STC web page should be comprehensive. The web page may provide examples of how STC works and explain the potential impact of its use on employers' UI tax rates.

Once employers use the STC program, there should be clear communications from the state STC staff with the employer to address week-to-week issues, as well as to keep the employer informed of the timeline for its STC plan to ensure that the renewal process is understood and that the plan does not expire without the employer knowing in advance about the expiration date. Providing information early and explaining the process will make it easier for employers to use STC when it is needed.

6.2 Promotion

6.2.1 Leverage State Agency Resources

States are leveraging other existing state agency resources to promote STC. Some state agencies are looking beyond the UI office to other workforce offices and agencies that directly engage employers as they conduct their work activities, such as the Rapid Response team which is responsible for working with employers to help them avoid layoffs or the business service representatives responsible for helping employers with job placements. These various points of employer engagement are opportunities to share a brochure or fact sheet or discuss the STC program. States also have looked to special projects as opportunities to interact with employers

and promote STC. For example, Rhode Island has promoted STC during visits to employers for the Step-Up Program (Subsidized Training and Employment Program) that encourages employers to hire veterans.

Massachusetts coordinated promotional activities among several state entities (Economic Development, Workforce Development, One-Stop Centers, and Education). The state observed that many employers did not know about programs available in the state, and at times a number of different state programs would contact employers regarding the workforce programs, leading to employer confusion and frustration. Under the title of “Biz Works,” Massachusetts developed a comprehensive guide about the programs and cross-trained about 250 staff members on the various programs. As STC is one of the programs involved, the state STC program is now more visible through the guide (available online), and the trained staff members can promote the program when they interact with employers.

6.2.2 Effectively Brand the STC Program

Washington and Connecticut have developed state STC branding that helps to inform employers about the program. Washington has been particularly effective at raising STC awareness among both small and large firms and across several industries, and in having employers establish STC plans. As a result, there is a much wider variation in the size and industry of employers that use the Washington STC program. As previously mentioned, Connecticut developed a logo and slogan and is branding all STC promotional materials. It has used these materials to educate employers throughout the state about the STC brand and the STC program.

One problem that arises because each state has its own name for STC is that the names can be different for contiguous states that share a metropolitan area. The result is that it can be challenging for employers to communicate about STC across state lines, and it is difficult to promote the STC program when employers know the STC program only by its own state name. The concern can be addressed by developing a single national brand or a regional brand which would make it much easier to promote the STC program. Such an approach would need to be considered in consultation with states, particularly those that have their own brands established.

6.2.3 Use Experienced Marketing Personnel

Several states used their STC grant funds to improve the professionalism of their STC promotion, either by in-house state agency communication staff or by hiring staff dedicated to the STC program. A number of STC states have found that employer participation increased significantly after implementing an effective promotional campaign. For example, in Missouri one internal staff member conducts a full-time promotional effort throughout the state. In Washington, with use of the STC promotion grant, an outside individual with a strong marketing background was temporarily hired to direct the outreach to employers. At the 2015 STC Summit, Washington presenters described how this temporary hire provided fresh ideas on how to reach out to and communicate with employers. This outreach included emails, newsletters, production of a video, speaking engagements, radio and TV spots, and presentations at trade shows. This presenter indicated that they compiled lists of all the chambers of commerce in the states, as well as the top 25 employer associations and public access channels. Personal emails were sent to each chamber of commerce and resulted in the publication of newsletter articles and

social media articles and numerous presentations. Emails were sent to all public access channels in the state and about one-third agreed to run the video.

6.2.4 Customize and Personalize Outreach and Promotion

State presenters at the 2015 STC Summit indicated that, while it is important to promote STC through indirect methods such as advertising and use of websites, it also is important to work directly with individual employers. Direct methods might include visits to individual employers' places of business as well as presentations to employer associations.

Some state agencies are pro-active in seeking out employers who may find the program to be useful to them and their employees. They conduct research about employers in the state that are likely to benefit from STC programs by using economic analyses and labor market information, examining industries or geographic areas that are heavy users of STC, or employers that have considerable experience with temporary layoffs.

6.3 Best Practices Recommended by Employers

Interviews conducted by Westat with nine employers from three states (Connecticut, Michigan, and Texas) produced information on the following suggested practices for employers with an STC plan. These were offered by the employers based on their own STC experiences:

- Before submitting an STC application, contact the state UI agency to determine the parameters for setting up and operating an STC program so that there is no confusion or misunderstanding.
- Learn as much as you can and teach your employees about the STC program. It is important for both parties to know how the program works.
- Tell your STC employees what the STC work schedule will be (which days/hours will be worked) to ensure business operations are sufficiently staffed.
- Be certain that the weekly certification form is completed and sent in on time, and ask the state agency to confirm receipt. If confirmation is not received, contact the agency again.
- Generate a system to accurately report the work hours of STC employees and be sure to put reporting on a calendar. Designate an individual to be a back-up available for the person responsible for reporting.

Two employers made presentations at the 2015 STC Summit and provided important insights about how employers can make effective use of STC. A Rhode Island employer indicated that the key to its success in implementing STC twenty years ago was working with its union representatives and convincing them to try the program and suggested that her company would not be viable now without the option of using the STC program. Since then, this employer has used the program multiple times to avoid layoffs, a result that has been appreciated by its workers. Working closely with her employees and explaining the program and the needs of the company to be effective and efficient in its operations, this employer has found that her employees are highly productive during their shortened workweek, making use of STC cost effective. Another key company practice has been varying the extent of the hour reductions by STC unit within the firm, depending on the company's production needs. This employer considers STC to be critical to the small community in which the company is the largest employer.

An Oregon defense contractor has used STC when there have been delays in the award of Federal contracts. Using STC has allowed this employer to avoid layoffs since it first used the program in 2013. STC is cost effective for this employer because it employs highly skilled workers who take a year and a half to train. This employer reports that no employees object to the program and no one has left the company due to STC use. The company also has taken into consideration the effect layoffs would have on the small community in which it operates.

Section VII: Charting a Path Forward

As reflected in this report, the STC program is an important layoff aversion strategy for states, employers, and workers, particularly during downturns in the economy and/or an individual employer's business activity. STC is a win-win program for employers and workers and it saves jobs.

The STC provisions in the Act strengthened the program by:

- Increasing the number of states operating STC programs by offering financial incentives;
- Expanding and clarifying the definition of STC, which has been adopted by all states with an STC program;
- Supporting state trust funds during a recessionary period by providing Federal reimbursement of STC benefits to states; and,
- Improving program administration and outreach to employers and expanding the use of the program by providing grants to STC states for promotion and enrollment of employers and for program implementation and administration.

DOL is eager to continue its work to further promote state adoption of STC programs and strengthen the STC programs through ongoing technical assistance and enabling of state peer-to-peer sharing of best practices. DOL is also committed to working collaboratively with states to improve employer knowledge and take-up of the STC program.

Appendix A: Approved Optional Provisions for States' STC Laws

In reviewing existing state laws, DOL determined that several state STC laws contained common additional provisions that were not inconsistent with Section 3306(v)(1) through (9), FUTA, and were potentially approvable under the flexibility offered under Section 3306(v)(10), FUTA. In UIPL 22-12, DOL approved the following additional provisions as appropriate for a state STC law at the option of the state²².

Section 3306(v)(10), FUTA, provides that “upon request by the State and approval by the Secretary of Labor, only such other provisions are included in the State law that are determined to be appropriate for purposes of a short-time compensation program.”

This is a new provision intended to give states the flexibility to include, upon state request and approval by the Secretary, additional STC requirements if the Secretary determines they are appropriate for an STC program. Many state STC laws currently contain additional requirements for employer or employee participation in the STC program. Some of these provisions were part of the model legislation previously issued²³ by the Secretary of Labor. Others were added to state STC laws after the guidance providing the previous model language expired.

Many of these provisions are common in state STC laws and are not inconsistent with the specific requirements of an STC program under Section 3306(v)(1) through (9), FUTA. Accordingly, the following optional provisions are pre-approved under Section 3306(v)(10), FUTA. States are not required to keep or include these provisions in their state STC laws as a conformity requirement. However, if a state law currently contains these provisions, or a state adds them in a new enactment, they will present no conformity issue.

DOL did not provide model legislative language for optional provisions. However, below are generic examples of state laws containing these provisions. Additionally, a state wishing to add these provisions could request individual technical assistance from DOL or consult with other states that have such provisions in their STC laws before adding them to their new state STC law.

1. A requirement that, if the affected unit is covered by a collective bargaining agreement, the bargaining representative must agree to the plan.

An affected unit may include employees covered by a collective

²² See UIPL 22-12, Change 1, Section K of the Commentary Section to Attachment 1 “Draft Language and Commentary to Implement a Short-Time Compensation Program.

²³ Model legislation was previously issued as Attachment 1 to UIPL 39-83. This program letter had an expiration date of September 30, 1985. After the new definition of a STC program in the Unemployment Compensation Amendments of 1992, it became obsolete.

bargaining agreement, or more than one collective bargaining agreement. Depending on the variety of skills of the workers in an affected bargaining unit, there may be more than one individual craft union agreement or single industrial union type of agreement. A state STC law may require agreement by the collective bargaining representative(s) involved to ensure that both labor and management are satisfied with the plan and to minimize possible problems in connection with implementation of the plan.

Example of a state law containing this provision, as well as the mandatory notice provision:

A. - The employer certifies that it has obtained the approval of any applicable collective bargaining unit representative and has notified all affected employees who are not in a collective bargaining unit of the proposed short-time compensation plan.

2. A requirement that the employer provide assurances to the Director that it will not hire new employees in the affected unit during the term of the plan.

Since an STC plan involves the reduction in hours of members in the affected unit in lieu of layoffs, it is appropriate for an employer to restore the hours of members of the affected unit to the levels that existed before the beginning of the plan before hiring new personnel in the affected unit when business activity increases for that employer.

Example of a state law containing this provision:

A. - The employer certifies that it will not hire additional part-time or full-time employees for the affected work force while the program is in operation.

B. - The employer provides assurances that it will not hire new employees in, or transfer employees to, the affected unit during the effective period of the short-time compensation plan.

3. Limitations on tenure of workers in affected unit in an STC plan.

As specified in the model language, a state may require that an affected unit contain a reasonable minimum number of employees (but not fewer than 2). These limitations on the size of an affected unit are intended to reduce problems of administering numerous plans, each for relatively few workers. Any size limitation should take into consideration the benefits of layoff aversion and must not be so large as to limit effective participation in STC programs by a state's employers or to exclude all but the largest

employers in a state.

Additionally, some state STC laws contain a limitation that workers in the affected unit must be regularly employed by the employer and require that each worker in the affected unit previously have worked some specified number of hours or weeks for the employer. This limitation is appropriate because an STC plan is not intended to address seasonal variations in economic activities which are an inherent part of the industry or occupation. Therefore, a state may exclude from participation in an STC plan workers who are seasonal, temporary or intermittent employees.

4. A limitation that the STC plan is being implemented to avoid the layoffs of a certain minimum percentage of workers in the affected unit.

Since STC plans are implemented in lieu of layoffs, it is appropriate for a state to require the employer to specify that implementation of the plan will avert the layoffs of a minimum percentage of members of the affected unit. Requiring the employer to demonstrate that the plan will avert the layoff of a certain minimum percentage of workers in the affected unit allows the state to make a proper evaluation of the effectiveness of the plan as a true layoff aversion strategy.

Examples of state STC laws containing this provision:

A. - The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours. The plan applies to at least 10 percent of the employees in the affected unit.

B. - The employer's certification that the implementation of a short-time compensation plan is in lieu of layoffs that would affect at least 15 percent of the employees in the affected unit and would result in an equivalent reduction in work hours.

5. A prohibition against STC plan participation by employers who are delinquent in the payment of contributions, penalties or interest.

It is appropriate for a state to limit participation in the STC program to only those employers who are meeting their obligations under State law, and who are not delinquent in the payment of taxes, penalties, or interest to ensure that there is not a negative impact on the state's account in the unemployment trust fund so the Director can properly administer the UC program in the state.

Example of a state STC law containing this provision:

A. - A short-time compensation plan will only be approved for an employer that meets all of the following requirements:

B. - The employer has filed all quarterly reports and other reports required under this act and has paid all obligation assessments, contributions, reimbursements in lieu of contributions, interest, and penalties due through the date of the employer's application.²⁴

Additional Provisions DOL Determined to be Acceptable for STC Programs

A. Provisions that exclude certain employers from participation in an STC program.

1. Exclude employers with negative unemployment experience from participating in STC.
2. Exclude maximum-rated employers from participating in STC.
3. Exclude employers that are subject to a “new employer” tax rate from participating in STC.

States may prohibit employers with negative unemployment experience; employers who are assigned the maximum tax rate (5.4 percent or greater); or employers who are assigned a fixed “new employer rate” from participation in the STC program. These are all provisions that prevent STC participation by employers who may have a financial incentive to participate for some reason other than avoiding a layoff. Because STC would have little or no effect on the future tax rates of negative or maximum-rated employers, these provisions avoid transferring the costs of STC to other employers in the state. Additionally, because new employer rates are not affected by benefit charges until the employers have a specified level of experience, these STC costs are effectively passed on to other employers during the period that the “new employer rate” is in effect.

B. Assess a surcharge on certain employers who participate in STC.

States may assess certain employers (e.g., employers with negative unemployment experience, maximum-rated employers, or new employers) a surcharge to allow them to participate in STC. This is appropriate because it enables more employers to participate in STC; addresses concerns about solvency; addresses concerns about employers not being effectively charged for

²⁴ Section K of Attachment “Draft Language and Commentary to Implement a Short-Time Compensation Program.” to Unemployment Insurance Program Letter 22-12, Change 1.

STC benefit payments; and ensures STC is truly being used to avoid layoffs. In order to avoid a conformity issue with the experience rating requirements of FUTA, states must continue to charge STC payments to employers who are assessed this surcharge consistent with how STC payments are charged to other employers under state law.

This is an alternative to the exclusions from STC participation described above in paragraph A for addressing these concerns. DOL previously encouraged this option in guidance issued in 1983 when the STC program was first authorized. (UIPL No. 39-83, Attachment 1. NOTE: This UIPL is no longer active and has been superseded by subsequent guidance.)

C. Limit the amount of time workers in an affected unit may be subject to an STC plan.

States may require an employer to specify the period when the STC plan will be in effect and limit the approval to a specified number of months in a specified time frame for the same work unit. This is appropriate in order to ensure that employers who experience regular cyclical downturns do not incorporate the STC program into their business models, or use STC to avoid the consequences of restructuring the operations of their company to address new, permanent economic realities.

D. Limit STC participation if an employer recently reduced its workforce by a specific percentage within a specific time period specified in state law.

States may exclude from STC participation employers who recently reduced the workforce in the affected group by imposing layoffs. A state providing for this exclusion must specify in its state law the minimum amount (in percentage) of recent workforce reduction and how recently in time the reduction must have occurred to trigger the STC participation prohibition. While this provision is aimed at encouraging employers to try STC in their initial round of layoffs, it could have the effect of excluding employers who otherwise may be good candidates for STC simply because they have recently had to lay off a certain portion of their staff.

E. Require employers to specify whether the STC plan is a transition to permanent layoffs.

States may require that an employer provide information about whether the STC plan is intended to be a transition to permanent layoffs. As long as this requirement is for informational purposes only, it is appropriate in order to plan a response to potential eventual layoffs or to provide additional services to claimants. However, states may not exclude employers from STC participation based on their response. Section 3306(v), FUTA, no longer limits STC plans to

averting temporary layoffs. Thus, states may require such information as part of the application, but may not base approval of the plan on the information received.

F. Prohibit employees receiving supplemental unemployment benefits from being included in an STC plan.

States may prohibit employees receiving supplemental unemployment benefits (SUB) from being included in an STC plan. SUB are paid from a tax-exempt plan or trust funded by an employer, the employee, or a union to provide a benefit to supplement state UC and are designed to help maintain a recipient's pre-separation standard of living. Excluding these workers from receiving STC is appropriate because individuals receiving SUB already are receiving income support very similar to STC, so that STC would arguably be duplicative and would not serve the same purpose as it would absent these workers receiving SUB. Indeed, providing STC to these individuals might result in their receiving a higher weekly income than they did before the reduction in their work week. However, an employer with employees receiving SUB may not be wholly excluded from STC participation if it has employees not receiving SUB who the employer wishes to include in an STC plan.

G. Relieve employers of charges for STC paid to individuals who are participating in training with the approval of the state agency.

States may relieve employers from charges in the state experience rating system for weeks of STC paid to individuals participating in training, as provided in section 3306(v)(6), FUTA. Most states relieve an employer of charges if UC claimants participate in approved training. This is appropriate because it gives employers an incentive to provide training to upgrade the skills of its employees, which may avoid future layoffs.²⁵

²⁵ Section 4 of Unemployment Insurance Program Letter 22-12, Change 2.

Appendix B: State Laws that Conform to the New Definition of STC

Currently, twenty eight states have amended their STC laws, or enacted a new STC provision in their state UI law, to conform to the new definition of short-time compensation in the Act.

States with Active STC Programs, February 2016²⁶

TABLE SHOWING STATES WITH STC PROGRAMS				
State	Period of Approved Plan	Required Reduction of Work	Maximum Number of Weeks Payable	Continuation of Benefits Required
AZ	1 year	At least 10% but not more than 40%	26 weeks (limitation does not apply if state IUR consisting of the week and the preceding 12 weeks is $\geq 4\%$)	X
AR	12 months or date in plan, whichever is earlier	Not less than 10%, but not more than 40%	25 weeks	X
CA ¹	6 months	At least 10%	No limit on weeks, but total paid cannot exceed 26 x WBA ²⁷	X
CO	12 months or less	At least 10% but not more than 40%	18 weeks	X
CT	26 weeks (with 26-week extension possible)	Not less than 10%, but not more than 60%	26 weeks	X
DC	12 months	At least 20%, but not more than 40%	50 weeks (with 2-week extension possible)	X ²
FL	12 months	Not less than 10%, but not more than 40%	26 weeks	X
IA	52 weeks	Not less than 20%, but not more than 50%	26 weeks	X
IL ²	12 months	Not less than 20%, but not more than 60%	52 weeks	X
KS	12 months	Not less than 20%, but not more than 40%	26 weeks	X
ME	12 months	Not less than 10%, but not more than 50%	52 weeks	X
MD	6 months	At least 20%, not to exceed to 50%	26 weeks	X
MA	52 weeks	Not less than 10%, but not more than 60%	52 weeks	X
MI	52 weeks	Not less than 15% and no more than 45%	No limit on weeks, but total paid cannot exceed 20 x WBA	X
MN	At least 60 days, but not more than 1 year	At least 20%, but not more than 50%	52 weeks	X
MO	12 months	Not less than 20%, but not more than 40%	52 weeks	X

²⁶ US Department of Labor, Employment and Training Administration – Office of Unemployment Insurance, *Comparison of State Unemployment Insurance Laws of 2015*, Table 3-6. There have been no new enactments of STC laws since the date of this publication.

²⁷ WBA is the UI weekly benefit amount.

TABLE SHOWING STATES WITH STC PROGRAMS				
State	Period of Approved Plan	Required Reduction of Work	Maximum Number of Weeks Payable	Continuation of Benefits Required
NE ³	12 Months	Not less than 10%, but not more than 60%	52 weeks	X
NH	26 weeks	Not less than 10%, but not more than 50%	26 weeks	X
NJ	12 months	Not less than 10%	26 weeks	X
NY		Not less than 20%, but not more than 60%	26 weeks	X
OH	52 weeks	Not less than 10%, but not more than 50%	26 weeks	X
OR	Not more than 1 year	At least 20%, but not more than 40%	52 weeks	X
PA ⁴	52 weeks	Not less than 20%, but not more than 40%	52 weeks	X
RI	12 months	Not less than 10%, but not more than 50%	52 weeks	X
TX	12 months	At least 10%, but not more than 40%	26 weeks	X
VT	6 months or date in plan, whichever is earlier	Not less than 20%, but not more than 50%	26 weeks	X
VA	6 months or date in plan, whichever is earlier	Not less than 10%, but not more than 60%	26 weeks	X
WA	12 months or date in plan, whichever is earlier	Not less than 10%, but not more than 50%	No limit on weeks, but total paid cannot exceed maximum entitlement	X
WI	6 months in any 5-year period within the same work unit	Not less than 10%, but not more than 50%	No limit on weeks, but total paid cannot exceed maximum entitlement	X
¹ STC benefits shall not be payable on any type of extended claim ² Not operational as of January 1, 2015 ³ STC program becomes operative October 1, 2016 ⁴ Program expires 5 years from effective date of February 16, 2016				

Although the District of Columbia is listed on this table, it never operated the STC program despite having legislative authority to do so and has been informed that it may not do so until it brings its law into conformity with the new definition of a short-time compensation program in the Act. Nebraska STC law is effective July 1, 2016. Illinois will operate its STC program once regulations are adopted and computer programming is completed.