



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

# **2012 Sunset Review: Colorado Work Share Program**

October 15, 2012





## Executive Director's Office

Barbara J. Kelley  
Executive Director

John W. Hickenlooper  
Governor

October 15, 2012

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Work Share Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2013 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the program provided under Part 2 of Article 75 of Title 8, C.R.S. The report also discusses the effectiveness of the Department of Labor and Employment and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley  
Executive Director





John W. Hickenlooper.  
Governor

Barbara J. Kelley  
Executive Director

## **2012 Sunset Review: Colorado Work Share Program**

### **Summary**

#### ***What Is the Colorado Work Share Program?***

The Colorado Work Share Program (Program) offers employers an alternative to employee layoffs, allowing them to reduce the work hours of a group of employees instead. Employees then share the remaining work and collect prorated unemployment benefits to offset the reduction in income.

#### ***How Is It Administered?***

The Division of Unemployment Insurance within the Department of Labor and Employment (Division) administers the Program, which must comply with certain federal guidelines. In order to qualify for participation in the Program, employers must submit to the Division a written work share plan that adheres to specific statutory criteria. Once the Division has approved the work share plan, the employer may implement it. To receive unemployment benefits under the Program, employees must have had their hours reduced by between 10 and 40 percent, and meet other statutory requirements.

#### ***Who Participates in the Work Share Program?***

Since the Program was created in 2010, the Division has approved a total of 27 employer-submitted work share plans. In September 2012, there were nine employers actively implementing a work share plan.

#### ***What Does It Cost?***

Federal funds covered the implementation costs and the duties associated with the Program were absorbed by existing Division staff.

## Key Recommendations

### **Continue the Program indefinitely.**

Participating in the Program cannot save every business or prevent every layoff. However, it provides a valuable alternative for employers weathering difficult economic times. Under the Program, employees may avoid the dramatic reduction in income and loss of benefits that come with layoffs and employers may retain a skilled workforce during a temporary downturn in business. Therefore, the Program serves to protect the public welfare and should be continued. In order to qualify for the federal grants that will be available under the federal Layoff Prevention Act of 2012 (Act), the Program may not be subject to discontinuation, i.e., scheduled to sunset. For this reason, the General Assembly should continue the Program indefinitely.

### **Revise the Colorado Work Share statute to bring it into compliance with federal law.**

The Act made numerous changes to the federal criteria for work share programs. Consequently, Colorado must make numerous statutory changes to come into compliance with federal law. These changes are necessary in order to assure Colorado can continue to pay prorated unemployment compensation benefits to employees whose hours have been reduced.

### **Increase the cap on the number of weeks employees may be paid benefits under the Program to 26 weeks.**

Section 8-75-203(3)(e), Colorado Revised Statutes, prohibits the Division Director from approving a work share plan unless the employer agrees that no participating employee will receive more than 18 weeks of prorated benefits. However, under the Act, Colorado will likely qualify for 100 percent reimbursement of unemployment compensation benefits paid out under the Program, and federal reimbursement is capped at 26 weeks per individual. Extending the 18-week limit to 26 weeks would benefit employees whose hours have been cut by allowing them to supplement their income for a longer period and would benefit employers by giving them a longer timeframe in which they could avoid layoffs, incur lower payroll costs, and make organizational changes to increase their businesses' viability.

## Major Contacts Made During This Review

Colorado Department of Labor and Employment  
Colorado AFL-CIO  
Mountain States Employers Council  
Employers who have participated in the Program

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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## Background

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### Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.askdora.colorado.gov](http://www.askdora.colorado.gov).

The functions of the Division of Unemployment Insurance (Division) within the Department of Labor and Employment (DOLE) as enumerated in Part 2 of Article 75 of Title 8, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Colorado Work Share Program (Program) by the Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed Program should be continued for the protection of the public and to evaluate the performance of the Division. During this review, DOLE must demonstrate that the Program serves to protect the public health, safety or welfare, and that the Program is the least restrictive form of government intervention consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, DORA staff interviewed DOLE staff, reviewed records, interviewed current and past participants in the Program, reviewed federal and Colorado statutes and DOLE rules, and reviewed the laws of other states.

## **Profile of the Program**

As used in this report, a work share program is one that allows employees whose work hours have been reduced to collect prorated unemployment benefits. Federal law calls such programs short-term compensation (STC) programs. Throughout this report, the term "work share program" is intended to be synonymous with "STC program."

A work share program serves as a stopgap measure to help employers avoid layoffs during a temporary downturn in business by reducing employees' hours. For example, an employer faced with having to lay off 20 percent of its workforce could instead enroll in a work share program and reduce the hours of some or all employees by 20 percent. Then, to partially offset their loss of income, employees could collect prorated unemployment compensation benefits.

There are numerous advantages to work share programs. They spare employees the hardship of layoffs and allow them to maintain their skills, stay engaged with the labor force, and, if applicable, keep their benefits.

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Such programs also mitigate the reduction in the employees' income. Usually, unemployment benefits equal roughly half of an employee's pay. If a person making \$500 per week were laid off, he or she would receive \$250 per week in unemployment benefits. However, if this person's employer reduced his or her hours by 20 percent via a work share program, the employee would receive a total of \$450 per week: \$400 from the employer and \$50 in unemployment benefits.

Work share programs allow employers to retain a trained, skilled workforce and assure that when business increases, employers can be immediately responsive by restoring employees' hours to meet the increased demand.

Work share programs also have some disadvantages. For employees, filing for partial unemployment benefits might reduce the benefits they would receive if they were laid off at a later date. The compensation an employee receives under a work share plan is deducted from the total benefit amount of an unemployment claim. This means that if an employee is ultimately laid off, he or she might exhaust the balance of the claim more rapidly. For employers, participating in a work share program might increase their unemployment taxes, although such increase would be less than if they laid off employees. Also, federal law now requires employers who provide employee benefits such as health insurance, retirement benefits, or paid holidays, to continue to do so throughout the duration of the work share plan. This can pose a significant cost to the employer, particularly during lean economic times.

Although the federal government does not require states to create work share programs, it does require new and existing programs to conform to certain criteria.

Twenty-three states and the District of Columbia allow work share programs. Although the specific requirements of the programs vary from state to state, most programs require employers to submit a written plan to the state workforce agency demonstrating the number of employees whose hours will be reduced, and by what percentage. Once the plan is approved, employers proceed with the reduction in hours and employees file for partial unemployment benefits.

Plans are valid for a finite period, i.e., one year, and the benefits to be paid under the plans are capped. Most states allow benefits to be paid for no more than 26 weeks per year (which is the cap for a standard unemployment insurance claim) while Colorado allows no more than 18 weeks. The weeks do not have to be consecutive.

When the term of the agreement expires, the employer may either restore the employees' hours or proceed with layoffs or permanent reductions in hours.

Work share programs are not widely used in the United States although a recent AARP policy brief found that participation in work share programs in 11 states increased dramatically in 2009.<sup>2</sup>

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<sup>2</sup> Sara E. Rix, "Saving Jobs Through Work Sharing," *Insight on the Issues* 45, AARP Public Policy Institute (September 2010), p. 6.



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## Legal Framework

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### ***History of Regulation***

The General Assembly created the Colorado Work Share Program (Program) in 2010 when it passed Senate Bill 10-28. The Program offers employers an alternative to employee layoffs, allowing them to reduce the hours of a group of employees instead. Employees then share the remaining work and collect prorated unemployment benefits to offset the reduction in income.

The bill directed the Director of the Department of Labor and Employment's Division of Employment and Training (Director and Division, now called the Division of Unemployment Insurance, respectively) to establish the Program. The bill established eligibility criteria for participating employers and specified the information that must be included in the work share plan submitted to the Division.

### ***Federal Law***

The Federal Unemployment Tax Act (FUTA) establishes the criteria work share programs must meet in order for the state to pay benefits out of its unemployment insurance trust fund.<sup>3</sup> FUTA defines such a program as one in which:

- Employer participation is voluntary;
- The employer reduces employees' work hours by at least 10 percent but not more than 60 percent in lieu of layoffs;
- Employees whose hours have been so reduced are not disqualified from unemployment compensation;
- The amount of unemployment compensation payable to such employees is a prorated portion of that which would otherwise be payable to the employees if they were unemployed;
- 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;
- Eligible employees may participate, as appropriate, in training to enhance job skills if such program has been approved by the state;
- The state requires employers that provide health or retirement benefits under a defined benefit plan or contributions under a defined contribution plan to continue to provide such benefits to employees under the same terms and conditions as before the reduction in hours;
- The state requires an employer to submit a written plan describing how the work share plan will be implemented, and an estimate of the number of layoffs that would have occurred had the employer not enrolled in a work share program; and

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<sup>3</sup> 26 U.S.C. §3306(v).

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- The terms of the employer’s written plan and implementation are consistent with employer obligations under applicable federal and state laws.

It is important to note that the U.S. Congress implemented these criteria in February 2012 when it passed House Resolution 3630, which included the Layoff Prevention Act of 2012 (Act). Consequently, although the Program complied with the criteria that were in place when the General Assembly created the Program in 2010, it does not currently meet all of the requirements under the new definition. The Act specified a transition period to allow states with existing work shares programs to come into compliance with the new definition. Existing programs must be in compliance by either the effective date the state passes conforming legislation or by August 22, 2014 (two years and six months after the effective date of the Act), whichever is earlier.<sup>4</sup>

The revised Act also contains a temporary provision authorizing the federal government to reimburse states for 100 percent of the amount of unemployment benefits paid to individuals under a work share program meeting the criteria above. States may be reimbursed for up to 26 weeks of unemployment benefits paid to each individual employee participating in a work share program.<sup>5</sup> The reimbursement provision is in effect for weeks of unemployment ending on or before August 22, 2015 (three years and six months after the effective date of the Act).<sup>6</sup>

States may not be reimbursed for payments made to individuals who work for a work share participating employer on a seasonal, temporary, or intermittent basis.<sup>7</sup>

### **Colorado Law**

The laws creating the Program are located in Part 2 of Article 75 of Title 8, Colorado Revised Statutes.

To participate in the Program, employers must submit to the Director a written work share plan. Negative excess employers—meaning employers who have paid out more in unemployment benefits than they have paid in unemployment premiums—are ineligible for work share.<sup>8</sup> Seasonal employers are also ineligible if any portion of the work share period falls in the off-season.<sup>9</sup>

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<sup>4</sup> H.R.3630, Section 2161(a)(3).

<sup>5</sup> H.R.3630, Section 2162 (a)(3)(A).

<sup>6</sup> H.R.3630, Section 2162 (b)(1).

<sup>7</sup> H.R.3630, Section 2162(a)(3)(B).

<sup>8</sup> § 8-75-203(1)(b)(I), C.R.S.

<sup>9</sup> 7 CCR 1101-2, 18.1.2.

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To qualify for approval, a work share plan must:<sup>10</sup>

- Identify the specific unit that will be affected, meaning a specific plant, shift, department, or other definable work unit;<sup>11</sup>
- Apply to at least 10 percent of the employees in the unit;
- Reduce the normal work for the employees in the affected unit by at least 10 and not more than 40 percent;<sup>12</sup>
- Identify the employees in the affected unit by name and social security number; and
- Include a strategy that restores the total number of work hours to each participating employee to the amount of hours worked prior to participation in the Program.

Employers that provide benefits such as health insurance, retirement benefits, paid vacation and holidays, and similar employee benefits must agree that for the duration of their participation in the Program they will continue to provide such benefits. An employer that is subject to a collective bargaining agreement must obtain from the collective bargaining unit written agreement with the work share plan.<sup>13</sup>

All employers must certify that they will not employ additional employees in the affected unit while participating in the Program, agree that employees participating in the Program will receive no more than 18 weeks in benefits, and agree to submit reports to the Division upon the Director's request.<sup>14</sup>

The Director must approve or deny the submitted work share plan within 30 days of receiving it. If the Director denies a plan, he or she must provide employers the reason for such denial in writing.<sup>15</sup>

If the Director approves a work share plan, the employer may implement the plan and affected employees may begin collecting unemployment compensation benefits under the plan either the week immediately following the Director's approval or the first week specified by the employer, whichever is later.<sup>16</sup>

The work share plan expires 12 months after its effective date.<sup>17</sup>

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<sup>10</sup> § 8-75-203(2), C.R.S.

<sup>11</sup> § 8-75-202(1), C.R.S.

<sup>12</sup> Federal law permits states to determine the maximum percentage by which employees' hours are reduced, as long as such percentage does not exceed 60 percent (26 U.S.C. §3306(v)(3)).

<sup>13</sup> § 8-75-203(3), C.R.S.

<sup>14</sup> § 8-75-203(3)(d), (e), and (f), C.R.S.

<sup>15</sup> § 8-75-203(4), C.R.S.

<sup>16</sup> § 8-75-206(1), C.R.S.

<sup>17</sup> § 8-75-206(2), C.R.S.

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To be eligible to receive unemployment compensation benefits under the Program, employees must:<sup>18</sup>

- Be employed in a unit subject to an approved work share plan that is in effect for that week;
- Have had their hours reduced by at least 10 but no more than 40 percent and received a corresponding reduction in wages for that week;
- Be able and available to work additional or full-time hours for their employers.

Employees eligible for unemployment compensation benefits under a work share plan do not have to meet the general work-search requirements that other unemployment compensation beneficiaries must.<sup>19</sup>

To calculate the benefit, the Division multiplies an employee's regular weekly unemployment compensation benefit by the percentage of the reduction in the employee's work hours, rounded down to the next full dollar.<sup>20</sup>

Employers may modify their work share plans as long as the changes conform to the basic provisions of the plan as approved by the Director. Employers must submit the proposed changes in writing to the Division, and the Director approves or denies the modification using the same criteria as he or she did in approving the original plan. Employers subject to a collective bargaining agreement must obtain the approval of the collective bargaining unit before implementing any changes to the plan.

The Division cannot pay benefits to employees for weeks when they work and are compensated for hours exceeding the reduced hours established in the work share plan. If employers need to increase the number of hours employees work, they may submit a modified plan to the Division. Once the Director approves the plan, employees may work the additional hours and collect benefits under the modified plan.

The Director may terminate a work share plan for good cause if an employer violates the criteria upon which approval of the plan was based or engages in any other conduct that may compromise the purpose and effective operation of the Program.<sup>21</sup>

The unemployment benefits paid pursuant to a work share plan are charged to the employer in the same manner as regular unemployment benefits are charged.<sup>22</sup>

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<sup>18</sup> § 8-75-204(1), C.R.S.

<sup>19</sup> § 8-75-204(2), C.R.S.

<sup>20</sup> § 8-75-205(1), C.R.S.

<sup>21</sup> § 8-75-206(3), C.R.S.

<sup>22</sup> § 8-75-208, C.R.S.

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## Program Description and Administration

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The Director of the Division of Unemployment Insurance (Division) within the Department of Labor and Employment is authorized to create and oversee the Colorado Work Share Program (Program).

The General Assembly passed Senate Bill 10-28, which created the Program, in 2010. Federal funds covered the implementation costs, so there was no General Fund appropriation.

The Division does not have employees dedicated to this Program. Rather, the duties associated with the new Program were absorbed by existing staff:

- Two employees of the Business Services unit of the Division's Workforce Development section, who perform outreach and market the Program to employers facing layoffs;
- One employee in the Liability Unit of the Division's Employer Services section, who approves and monitors employers' work share plans; and
- Two employees of the Division's Claimant Services section, who monitor employees' benefit payments and address employer and claimant questions.

The duties associated with the Program take up a small percentage of these four employees' working hours.

To enroll in the Program, employers must submit their proposed work share plans to the Division by completing an application. The application specifically addresses all of the state and federal criteria work share plans must meet to qualify employers for participation in the Program.

The first work share plan was approved and implemented in August 2010.

Table 1 shows the statistics for the Program since it was created in 2010 through July 31, 2012.

**Table 1**  
**Statistics for the Colorado Work Share Program**  
**August 2010 through July 2012**

Employer applications received	39
Approved applications	27
Denied applications	10
Withdrawn applications	2
Employers whose approvals were revoked	7
Participating employees paid benefits under a work share plan	65
Total amount of benefits paid to employees	\$78,151

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All 10 denied applications were denied because those employers had a negative percent of excess, i.e., they had already paid out more in benefits than they had paid in unemployment insurance premiums, thus making them ineligible to participate.

Since work share plans may last no longer than 52 weeks, most of the 27 approved plans ran their course and expired between August 2010 and July 2012.

In August 2012, there were nine employers actively implementing work share plans.

According to the U.S. Small Business Administration, in 2006 (the most recent year for which data are available) there were nearly 130,000 employers in Colorado.<sup>23</sup> The nine employers enrolled in work share represent a tiny fraction of Colorado employers.

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<sup>23</sup> *Small Business Profile: Colorado*, SBA Office of Advocacy (October 2009), p.1.

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## **Analysis and Recommendations**

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### ***Recommendation 1 – Continue the Colorado Work Share Program indefinitely.***

Part 2 of Article 75 of Title 8, Colorado Revised Statutes (C.R.S.), compels the Director of the Division of Unemployment Insurance (Director and Division, respectively) within the Department of Labor and Employment (DOLE) to establish a voluntary work share program (Program). Under the Program, employers experiencing a decline in business are able to avoid layoffs by reducing employees' hours instead. Employees whose hours have been reduced may then collect prorated unemployment compensation benefits for the duration of the work share plan.

The first question of any sunset review is whether the regulation, in this case, the Program, exists to protect the public health, safety and welfare.

Work share programs benefit both employers and employees. Under the Program, employees may avoid the dramatic reduction in income and loss of benefits that come with layoffs, and employers may retain a skilled workforce during a temporary downturn in business.

Currently there are nine employers enrolled in the Program. Current and past participating employers work in a variety of industries, including landscaping, construction, sales, real estate appraisals, tax preparation and skilled manufacturing.

Employers interviewed for this report reported a high level of satisfaction with the Program. Specifically, they were grateful they were able to retain skilled workers and spare their employees the hardship of job loss.

Several businesses reported that they were able to restore employees' hours at the end of the work share plan. Others reported that they ultimately had to resort to layoffs. In the latter instances, however, some employers expressed appreciation that they were able to avoid layoffs for the duration of the work share plan, and use that time to do everything they could to improve their businesses' viability, even though the outcome was not ideal.

Participating in the Program cannot save every business or prevent every layoff. However, it provides a valuable alternative for employers weathering difficult economic times. Further, it mitigates the loss of income for employees whose hours have been reduced by allowing them to collect partial unemployment compensation benefits, and by allowing them to keep any applicable employee benefits during the term of the work share agreement. Employees may also use their time to seek other work, if needed.

In these respects, the Program serves to protect the public welfare and should therefore be continued.

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Participation in the Program has remained low since its creation. Although participation would likely increase if the Division devoted more resources to promoting it, there are two concerns about the possibility of increased enrollment in the Program.

First, there is concern that Colorado's unemployment trust fund might be depleted if the number of employers enrolled in the Program were to increase significantly. Second, increased Program participation might place increasing strain on the Division's limited resources. When Senate Bill 10-28 was passed, there were no employees allocated to the Division to manage or implement the Program. Although existing staff has managed the Program effectively thus far, it would likely become more difficult should participation increase.

The federal Layoff Prevention Act of 2012 (Act) contains two measures that would help address these two concerns. First, under the Act, the federal government will reimburse states for 100 percent of unemployment compensation benefits paid under a work share program that meets the new requirements. This would eliminate the concern that high participation in the Program would deplete Colorado's unemployment trust fund. Second, federal grants will be available under the Act for states to promote, increase enrollment in, and improve the administration of existing work share programs. If Colorado were able to secure such a grant, federal funds would allow the Division to promote the Program to employers and manage the increased workload associated with increased enrollment.

There is one caveat: in order to qualify for the federal grants, the work share program may not be subject to discontinuation, i.e., scheduled to sunset.

For this reason, the General Assembly should continue the Program indefinitely.

***Recommendation 2 – Revise the Colorado Work Share statute to bring it into compliance with federal law.***

Although federal law does not require states to create work share programs, the Federal Unemployment Tax Act (FUTA) establishes certain criteria such programs must meet in order for the state to pay benefits out of its unemployment insurance trust fund.<sup>24</sup> The Act made numerous changes to the FUTA criteria for work share programs. Consequently, Colorado must make numerous statutory changes to come into compliance with federal law.

Required changes include, but are not necessarily limited to:

- Striking the word “temporary” from section 8-75-203(3)(c), C.R.S.;
- Revising section 8-75-203(3)(c), C.R.S., to state that the reduction in hours must affect at least two employees in the affected unit (instead of 10 percent of employees);

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<sup>24</sup> 26 U.S.C. §3306(v).



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- Repealing section 8-75-203(2)(e), C.R.S., which requires the work share plan to include a strategy to restore the hours of each employee to the number of hours worked before participating in the Program;
  - Creating a new provision stating that eligible employees may participate, as appropriate, in training (included 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;
  - Adding language clarifying that employers must include in the written work share plan:
    - A description of how the plan complies with the FUTA provisions;
    - An explanation of how workers will be notified of the plan in advance, if feasible, and if it is not feasible, why not;
    - An estimate of the number of workers who would be laid off if the employer did not participate in the work share program; and
    - Certification that the terms of the written plan and implementation are consistent with employer obligations under applicable federal and state laws.

These changes are necessary in order to assure Colorado can continue to pay prorated unemployment compensation benefits to employees whose hours have been reduced under the Program and to assure Colorado qualifies for federal reimbursement under the Act. Therefore, the General Assembly should revise the statute to assure Colorado complies with the new FUTA criteria for work share programs.

***Recommendation 3 – Repeal section 8-75-209(2), C.R.S., to make Colorado eligible for federal grants.***

Under the Act, federal grants will be available for states to promote, increase enrollment in, and improve the administration of existing work share programs. In order to be eligible for such federal grants, a state’s work share program must not be subject to automatic discontinuation.<sup>25</sup>

Section 8-75-209(2), C.R.S., establishes a mechanism that triggers the repeal of the Program if the Program is accelerating the insolvency of the unemployment trust fund. This provision arguably makes the Program subject to automatic discontinuation.

Although it is possible that increased enrollment in the Program could over time deplete Colorado’s unemployment trust fund, the General Assembly would always have the option of seeking other funding sources or passing legislation to terminate the program. A statutory provision triggering repeal is not necessary.

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<sup>25</sup> H.R.3630, Section 2164(c)(4).

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The availability of federal grant money presents a unique opportunity for Colorado to increase enrollment in the Program and improve its administration. Section 8-75-209(2), C.R.S., arguably makes Colorado ineligible for such funding.

For this reason, the General Assembly should repeal section 8-75-209(2), C.R.S.

***Recommendation 4 – Amend section 8-75-208, C.R.S., to allow for federal reimbursement of benefits paid out under the Program.***

Section 8-75-208, C.R.S., requires DOLE to charge employers for benefits paid under work share in the same way that they charge for regular unemployment benefits.

However, under the Act, the federal government will reimburse states for 100 percent of unemployment compensation benefits paid under a work share program. Such federal reimbursement is intended as an incentive for employers to choose enrollment in work share over layoffs.

Therefore, the General Assembly should amend section 8-75-208, C.R.S., to state that as long as federal reimbursement is available, benefits paid as a result of work share plans will not be charged to the employer.

***Recommendation 5 – Increase the cap on the number of weeks employees may be paid benefits under the Program to 26 weeks.***

Section 8-75-203(3)(e), C.R.S., prohibits the Director from approving a work share plan unless the employer agrees that no participating employee shall receive more than 18 weeks of prorated benefits. In other words, the compensation to be provided to employees whose hours have been reduced under the Program is capped at 18 weeks (the weeks do not need to be consecutive).

This cap was likely put into place out of concern that participants in the Program would rapidly deplete the balance of Colorado's unemployment trust fund. This concern has not come to pass, largely due to low participation in the Program. However, even if participation were to dramatically rise over the coming years, Colorado will likely qualify for 100 percent reimbursement of unemployment compensation benefits paid out under the Program pursuant to the recent changes to the federal work share law. Under the Act, federal reimbursement is capped at 26 weeks per individual.

A survey of the 24 other jurisdictions that have work share programs (23 states and the District of Columbia) reveals that a total of 16 states cap benefits at 26 weeks,<sup>26</sup> while 4 states and the District of Columbia cap benefits at between 50 and 52 weeks. Only New York, with a 20-week cap, has a limit similar to Colorado's.

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<sup>26</sup> Although the laws in Washington and Pennsylvania do not specify the number of benefit weeks, they limit benefits to an employee's maximum entitlement under law, which is typically 26 weeks.

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Because of the federal reimbursement provisions in the Act, extending the 18-week limit to 26 weeks would not adversely affect Colorado's unemployment compensation trust fund. The extension would benefit employees whose hours have been cut by allowing them to supplement their income for a longer period. Finally, the extension would benefit employers by giving them a longer timeframe in which they could avoid layoffs, incur lower payroll costs, and make organizational changes to increase their businesses' viability.

For these reasons, the provision at section 8-75-203(3)(e), C.R.S., should be amended to increase the number of weeks that participating employees may claim unemployment compensation benefits to no more than 26 weeks of benefits.