Memorandum

To: Larry Beltramo, President NECA
David Long, NECA CEO

From: Jef Fagan, NECA General Counsel JEF

Date: April 22, 2020

Re: Short-Time Compensation, unemployment insurance and the CARES Act

You have asked for some guidance on the intersection of the CARES Act and the concept of short-time compensation as that relates to unemployment insurance, particularly in light of the availability of an extra $600 per week in federal money. This memorandum provides summary guidance.

Short-Time Compensation

Short-Time Compensation (STC), also known as work sharing or shared-work program, is an alternative to layoffs for employers experiencing a reduction in available work. STC preserves employees' jobs and employers' trained workforces during times of lowered economic activity. STC allows employers to reduce hours of work for employees rather than laying-off some employees while others continue to work full time. Those employees experiencing a reduction in hours are allowed to collect a percentage of their unemployment compensation (UC) benefits to replace a portion of their lost wages. STC cushions the adverse effect of the reduction in business activity on workers by averting layoffs and ensures that these workers will be available to resume prior employment levels when business demand increases.

In order to connect a STC with state unemployment insurance during the periods of temporary layoff, a STC program must be established in the state at issue. Currently, 27 states have STC programs established in law that meet the new federal definition with 26 having operational programs (Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin).

I will note that the use of a short-time compensation program is a mandatory subject of bargaining and may not be unilaterally implemented absent specific CBA language authorizing some short-term layoffs or furloughs in some set order. In fact, many of the state laws establishing an STC require an assertion upon plan submission that the employee representative agrees with the plan submitted to the state. For example, one state law provides in this regard: *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.*

In order for an employee to receive unemployment benefits under the STC program, employers must have an approved STC plan in place with the appropriate state workforce agency. The STC application process is initiated by employer(s) and not employee(s). Therefore, in order for employees with reduced hours to potentially be eligible for STC, the employer must submit an application to the appropriate state agency, and the state must approve the employer's application/plan. In order to qualify for STC, employees must first be determined to be eligible for UC. While receiving UC benefits under a STC plan, employees are not required to meet availability or work search requirements, but they are required to be available for their normal workweek. Also, employees who are eligible to participate in an employer's STC plan may be required to serve a mandatory "waiting week," which is a non-paid week (required by most states).

The amount of UC paid to individuals filing for STC is a pro-rated portion of the UC payment they would have received if they were totally unemployed. For example, an employee normally works a 40-hour work week. The employee's work week is reduced by eight hours or 20 percent. If the employee had been laid off and totally unemployed and determined eligible for UC, the individual would have received a weekly benefit amount of $270.00. The employer submits a STC plan, and the plan is approved. Under the STC plan, the employee would receive $54.00 of benefits (or 20 percent of $270) in addition to the 32 hours of wages earned from the employer.

The CARES Act and Enhanced Unemployment Programs

The CARES Act temporarily enhances and expands UC benefits through three key programs. To participate in the programs, each state must enter into an agreement with the federal government. The basics of each program are as follows:

1. **Pandemic Unemployment Compensation (PUC)** (Section 2104 of the CARES Act)

   - *Who is Eligible*: Individuals who, as determined by the applicable state unemployment agency, meet that state's criteria to receive UC benefits.
   - *Benefit Provided*: The law provides an increase of a flat payment of $600 per week to the amount regularly available for unemployment under state law.
   - *Additional Criteria that Must be Met to Receive PUC*: None
   - *Time Period for Increased Compensation*: This increase applies to weeks of unemployment beginning after the state agrees to participate in the program through July 31, 2020.

2. **Pandemic Unemployment Assistance (PUA)** (Section 2102 of the CARES Act)

   - *Who is Eligible*: Individuals who are not usually eligible for unemployment benefits, including those who are furloughed or out of work as a direct result of COVID-19, self-employed and independent contractors, and those who have exhausted existing state and federal unemployment benefit provisions.

  - *Important Note: Individuals who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria described below to receive assistance under the new law) are expressly excluded from coverage.*

- *Benefit Provided*: The PUA will equal the minimum weekly benefit amount described in the Stafford Act Disaster Unemployment Assistance (DUA) program, which is the model for the PUA program (CFR 625.6 of Title 20), ***plus*** the $600 per week federally funded supplement (similar to that provided to UC recipients under the PUC).

- *Additional Criteria that must be Met to Receive the PUA*: Applicants for PUA must provide self-certification that they are (1) partially or fully unemployed or (2) unable and unavailable to work because of one of the following circumstances:

  - the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
  - a member of the individual's household has been diagnosed with COVID–19;
  - the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID–19;
  - a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;
  - the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;
  - the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;
  - the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;
  - the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19; or
  - the individual's place of employment is closed as a direct result of the COVID–19 public health emergency.

- *Time Period for Expanded Compensation*: January 27, 2020 through December 31, 2020.

3. **Pandemic Emergency Unemployment Compensation (PEUC) (Section 2107 of the CARES Act)**

   - *Who is Eligible*: UC recipients who exhaust all of their regular state UC benefits, which range from as few as 12 weeks to a maximum of 26 weeks depending on the state
   - *Benefit Provided*: Additional 13 weeks of state UC benefits
   - *Additional Criteria that Must be Met to Receive PEUC*: Individuals must have exhausted their regular state UC benefits and be actively engaged in searching for work
   - *Time Period for Extended Benefits*: The benefits extension is available through December 31, 2020, unless otherwise extended.

<u>The CARES Act and STC</u>

The CARES Act provides funding to support STC programs, where employers reduce employee hours instead of laying them off, and the employees with reduced hours receive a pro-rated unemployment benefit. This provision does not provide new or additional benefits; rather, it provides federal funding for these programs through December 31, 2020. For states with existing short-time compensation programs, the federal government will fully fund the state's program. For states that implement such a program after the passage of the CARES Act, the federal government will fund the program at a rate of 50%, making the state responsible for paying one-half of the short-time compensation to the individual employee.

In summary, payment of the $600 federally funded supplement is entirely dependent on whether, under state law, the individual is awarded unemployment benefits. In other words, the individual's award of UC benefits under state law is the event that triggers the payment of the $600 federal supplement. Thus, whether and to what extent an employee can receive unemployment benefits, including partial unemployment benefits based on, for example, reduced hours, will be determined by existing state law governing the requirements to qualify for unemployment benefits. Many states are modifying existing unemployment laws and regulations to expressly allow partial unemployment benefits where an employee's hours are reduced due to COVID-19 related reasons. In the event that an individual is not entitled to unemployment benefits under state law, the individual may be eligible for assistance under the PUA program.

<u>Bottom Line</u>

In order to utilize an STC program to maximum advantage, a contractor must:

- Be in a state that has an STC program
- Have a company STC program that has been bargained with the local union or have an allowance for a STC program in the local collective bargaining agreement
- Submit an application to the state for approval of that program
- Administer the program effectively to maximize the use and retention of the workforce and the proper receipt by the employee of the CARES Act expanded benefits

Please let me know if I can be of further assistance on this matter.