# NASWA SURVEY OF STATE UI DIRECTORS ON THE SHORT-TIME COMPENSATION PROGRAM

By Frank Bennici

## BACKGROUND

In 2012, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012 (MCTRJCA, or the Act) and it was signed by the President. The Act redefined the Short-Time Compensation (STC) program (also known as Work Share or Shared Work) using a ten-point definition. All states with an existing STC program were required to enact conforming legislation. The Act provided STC states with the opportunity to receive (1) temporary federal reimbursement for STC benefits paid and (2) grant funds for implementation or improved administration and for promotion and employer registration. In 2011, 22 states had active STC programs, and by the end of 2014, there were 28 states.

Middle Class Tax Relief and Job Creation Act of 2012

- Redefined the Short-Time Compensation program
- Required STC states to enact conforming STC legislation
- Provided temporary federal reimbursement to states of STC benefits paid
- Provided federal grant funds for promotion and for program improvement and administration

In October 2015, the National Association of State Workforce Agencies (NASWA) conducted a web-based survey designed to obtain information on how state agencies responded to the MCTRJCA. Survey respondents were the state directors of state Unemployment Insurance (UI) agencies. Two surveys were administered: one for states with an enacted STC program and a second, shorter survey for states without an STC program. The survey of STC states focused on how states responded to the MCTRJCA, including receipt and use of the temporary federal reimbursement and of the grant funds. The survey of non-STC states asked whether the state agency considered enacting the STC program and, if so, what prevented them from establishing an STC program and what changes could make the STC more attractive in their state. Among the 28 states with federally-approved STC programs, 26 responded, but only 25 provided completed surveys. Thirteen non-STC states responded to the second survey.

This report presents the findings from both surveys and findings are reported separately for each survey.

## SURVEY OF STATES WITH ENACTED STC PROGRAMS

### Enactment of Legislation to Confirm to the MCTRJCA

Of the 25 STC state respondents, 23 reported having made changes to their STC legislation to conform to the MCTRJCA (Question 2). Two states reported no changes because they first enacted STC legislation after the MCTRJCA. The states were asked about the nature of the changes that needed to be made to conform to the MCTRJCA (Question 3). Table 1 indicates the nature of the changes made to state legislation and the number of states making those changes. The majority of states indicated that changes made included requiring employer applications to specify the number of layoffs averted because of the STC plan and to specify how affected employees will be notified about changes in hours. These changes align with the revised definition of STC provided in the MCTRJCA.

**Table 1. Changes to State STC legislation due to MCTRJCA**

| Changes to State STC legislation due to MCTRJCA | Number of states |
|---|---|
| Employer application should specify the number of layoffs averted by the implementation of an STC plan | 14 |
| Employer application should specify how affected employees will be notified in advance about the reduction in hours | 12 |
| Maintain full health and pension benefits for employees who have them | 10 |
| Charge STC benefits to employers in the same way as regular UI benefits | 9 |
| Revise employer/employee eligibility criteria | 8 |
| Change the allowable percentage reduction in hours | 4 |

Only four of the 23 states that made changes to their STC laws encountered significant challenges with enacting the new STC provisions prior to the August 2014 deadline (Question 4). When asked for details on the challenges, one state cited “insufficient time and a part-time legislature” and another state sited “opposition from others” (not specifying other than to say not employer organizations or organized labor). Two states identified “other” challenges (Question 5):

- The state was not informed by DOL of needed conformity changes until after the state legislature had adjourned for the year. The legislature was not scheduled to reconvene until after the deadline for making statutory changes.
- It was a slow process because all law changes must be approved by the state agency's advisory board.

States were asked what actions were taken as part of the state's implementation activities after passage of the MCTRJCA (Question 6). Twenty-four states provided responses. Most states indicated that the actions taken included revising the STC application, revising the state STC website/webpage, and adding new federal reporting items (Table 2). So, the Act had an immediate effect on the STC program operations as states made changes to comply with the new definition.

**Table 2. Implementation activities subsequent to the passage of MCTRJCA**

| Implementation activities subsequent to the passage of MCTRJCA | Number of states |
|---|---|
| Revising the STC application | 21 |
| Revising the state STC website or webpage | 19 |
| Adding new federal reporting items | 13 |
| Informing employers of changes in state procedures and requirements | 11 |
| Informing employers of the need to meet new federal requirements, including maintain health and retirement benefits | 10 |

**Temporary Reimbursement of STC Benefits Paid**

DOL offered states with an approved STC program temporary reimbursement of the STC benefits paid for a period of up to 156 weeks (i.e., three years), ending in August 2015. States could elect to keep the reimbursement funds after depositing them into their state UI Trust Fund account or they could credit the funds to employers that were using STC during the period of reimbursement by not charging those employers for STC benefit payments.

Temporary Federal Reimbursement of STC Benefits Paid

- 21 STC states received reimbursement between 2012 and 2015
- 8 of those states relieved employers of STC charges during the reimbursement period

Of the 25 STC states surveyed, 21 indicated that their state received the temporary federal reimbursement (Question 7). Eight of the 21 states reported having used the money to temporarily relieve employers of STC charges for which the state was being reimbursed; six states relieved employers of charges during the whole period of reimbursement; while the other two states relieved employers only part of the reimbursement period (Question 9). Temporary reimbursement of states for STC charges was a smart policy decision in the last recession and can be a wise choice for future recessions as long as the federal government is able to provide reimbursement and in a timely manner.

States were also asked to report the start and end dates for the period of their federal reimbursement (Question 8). Nineteen states provided their start and end dates. There was substantial variation across states as to when their reimbursement period began, with some states starting as early as February 2012 and others much later because their programs did not pay STC benefits in the earlier years of the three-year reimbursement period. The reimbursement periods reported varied from a low of 44 days to a high of 1,401 days (306 days more than the limit), with a median (and mode) of 1,075 days. Five states reported a period of reimbursement longer than the 156 weeks limit. (Two of the five states exceeded the limit by 8 and 10 days, but the other states exceed the limit by 165 days and 306 days—2 states—likely due to confusion as to the start and end date because reimbursement in some states was retroactive to February 2012. DOL limited the reimbursement period to no more than 156 weeks.)

**Federal Grants for Promotion**

The MCTRJCA provided grants funding from DOL to STC states for promotion of STC to employers. The STC states had to sign an agreement with DOL to receive the funding. The survey asked states if they received the federal promotion grant, how they promoted STC prior to receipt of the promotion grant, and how they intend to use the grant funds to promote their STC program. States that did not receive the grant were asked how they currently promote STC.

Thirteen of the 25 responding STC states reported having received the federal promotion grant (Question 10). When asked about which implementation activities were used, most stated indicated that a website was developed that was

Federal STC Grants

- 13 STC states received promotional grants
- The most common planned activities include presentations to employers, STC-specific web sites, and informational mailings and emails

devoted to the STC program and presentations were made to employers and employer groups (Table 3).

**Table 3. Promotional activities prior to the passage of MCTRJCA**

| State promotional activities prior to federal promotion grant receipt | Number of states |
|---|---|
| Website devoted to the STC program | 10 |
| Presentations to employers or employer groups | 7 |
| Outreach to legislators, other stakeholders | 5 |
| Informational mailings to employers | 2 |
| Informational emails to employers | 2 |
| Webinars on the STC program for employers | 1 |
| Advertising on the radio | 1 |
| Advertising on TV | 1 |
| Public service announcement on radio or TV | 1 |
| Advertising on billboards | 0 |
| Other | 3 |

"Other" promotional activities prior to the federal grant included:

- Promotion by the agency's Rapid Response team (1 states)
- The UI website, not a dedicated STC site, along with an employer brochure, UI newsletter to employers, and verbal marketing by employment service offices (1 state)
- Media outreach to employers in specific regions of the state between 2008 and 2010.

The planned use of the promotional grants by the 13 recipient states is to expand their promotional activities. Table 4 presents those planned activities (Question 12). It is evident that the funding is driving their promotional activities. The number of states doing each activity is greater than prior to the grant. All states plan presentations to employers and employer groups, and nearly all (12 of 13 states) plan informational mailings and emails and a website devoted to the STC program.

**Table 4. Planned promotion activities among states receiving federal STC promotion grants**

| Planned promotion activities among states | Number of states |
|---|---|
| Presentations to employers or employer groups | 13 |
| Website devoted to the STC program | 12 |
| Informational mailings to employers | 12 |
| Informational emails to employers | 12 |
| Outreach to legislators, other stakeholders | 10 |
| Advertising on the radio | 6 |
| Webinars on the STC program for employers | 5 |
| Public service announcement on radio or TV | 5 |
| Advertising on TV | 4 |
| Other paid advertising | 4 |
| Advertising on billboards | 2 |
| Other | 6 |

STC states that received the promotional grants were asked to report the start and end dates for implementing their efforts to promote STC to employers (Question 13). Thirteen states responded with periods between 299 days (about 9-10 months) and 990 days (about 20 months), or a median of 690 days, for implementation.

The 12 STC states that did not receive the federal promotion grant reported fewer promotional activities than the states that received promotional grants (compare Table 5 to Table 3). Promotional activities implemented by states that did not receive the promotional grants included making presentations to employers/employer groups and creating a website dedicated to the STC program (Table 5) (Question 14).

**Table 5. State promotional activities among states without federal promotion grant**

| State promotional activities among states without federal promotion grant | Number of states |
|---|---|
| Presentations to employers or employer groups | 7 |
| Website devoted to the STC program | 5 |
| Outreach to legislators, other stakeholders | 4 |
| Informational mailings to employers | 3 |
| Informational emails to employers | 1 |
| Webinars on the STC program for employers | 0 |
| Advertising on billboards | 0 |
| Advertising on the radio | 0 |
| Advertising on TV | 0 |
| Other paid advertising | 0 |
| Public service announcement on radio or TV | 0 |
| None of the above, program is not promoted | 1 |
| Other | 8 |

"Other" promotional activities reported included:

- STC information is provided through the agency's employer outreach unit in an employer packet (2 states)
- STC information is available on the UI website and STC is always mentioned in UI presentations to employer groups (3 states)
- Downloadable fact sheets about STC are available on web page for layoff alternatives and transition services (1 state)
- Press releases (1 state)
- Contact information for a dedicated STC coordinator is on the state's STC webpage (includes a dedicated email address) (1 state)

**Federal Grants for Program Improvement and Administration**

The MCTRJCA provided funding for grants from DOL to STC states for program improvement and administration. The STC states had to sign an agreement with DOL to receive the funding. The survey asked states if they received the grant and how they intend to use the grant funds.

Fifteen of the 25 responding STC states reported that they received the federal grant for program improvement and administration (Question 19). Table 6 presents the responses from these states about their plans for using the grant funds (Question 20):

**Table 6. STC states' plan for use of program improvement and administration grant funds**

| **STC states' plan for use of program improvement and administration grant funds** | **Number of states** |
|---|---|
| Train additional staff about the STC program | 8 |
| Automate the STC claims process | 8 |
| Develop an online system for employers to apply for the program | 7 |
| Other | 8 |

Federal STC Grants

- 15 STC states received grants for program improvement and administration
- The most common planned activities include training additional staff about STC, automating the STC claims process, and developing an online system for employers to apply for the STC program

"Other" activities planned included:

- Hire a vendor to lead state agency staff in business process assessment to streamline overall functions and achieve administrative efficiencies. Also, hire an IT vendor to enhance the current continued claims system
- Modify the existing mainframe programs to comply with law and procedural changes
- UI system enhancements for modification and improvement; develop training materials for STC staff, Rapid Response staff, and audit staff
- Make improvements to existing online system for employer and staff use and for updating reporting capabilities
- Non-IT-dependent process improvements and engaging in rulemaking with significant stakeholder outreach and input
- Enhance the customer service experience, especially regarding responsiveness and convenience, through (1) a new initial claim online application; (2) online plan application enhancements; (3) benefit certification enhancements; (4) improvements to employer communications; and (5) new webpage content with an emphasis of educating employers on rules and guidelines

Automated Systems to Support STC Administration

- Only 7 STC states have an online system for employer applications
- Only 6 STC states have an online system for employers to submit initial claims on behalf of employees
- 8 states have an online system for employers to submit continuing claims for STC employees

States that received the implementation grants were asked to report the time period over which they will implement the improvements in the operation of their STC programs (Question 21). Seven of the 15 respondent states provided the start and end dates. The periods varied from 30 days to 690 days (with a median of 390 days), reflecting the differences in the types of activities planned and/or underway, and the differences in the timing of their implementation, with some states using the funds into 2018.

**Use of Automated Systems**

The survey asked questions designed to garner information on the level of automation the states have with regard to the STC plan. State agencies were asked whether employers in their state can submit an application online to establish an STC plan and whether they have an online system for employers to submit initial claims or continued claims on behalf of employees participating in an STC plan.

Seven of the 25 STC state respondents said they had an online system available for employers to submit an application to establish an STC plan (Question 15). The other 18 respondents said that they do not have online capabilities for the employers. In addition, six of the 25 STC state respondents reported having an on-line system available for employers to submit <u>initial claims</u> on behalf of employees (Question 16). The other 19 states do not. Eight respondents indicated having an online system available for employers to submit <u>continuing claims</u> for employees participating in STC (Question 17). The other 17 states said that they do not have such a system. These results demonstrate that administration of STC programs in most STC states can be cumbersome for employers.

**Challenges in Administering STC Programs**

States were asked whether they had encountered significant problems in administering the state STC program (Question 18). Fifteen of the 25 state STC respondents reported that they had no significant problems. Conversely, 13 states said they have encountered significant problems, with eight citing a lack of an automated STC claims process and six states citing insufficient number of staff knowledgeable about the STC program (Table 7). Three states reported employer concerns about the application process or operation of the STC plan. One state reported employee concerns about the operation of the STC program and their STC benefits.

**Table 7. Issue of concern to states in administering their STC programs**

| Issue of concern to states in administering their STC programs | Number of states |
|---|---|
| Lack of automated STC claims process | 8 |
| Concern by employers about application process or operation of STC plan | 3 |
| Concern by employees about the operation of the STC program and their STC benefits | 1 |
| Insufficient state staff who are knowledgeable about the STC program | 6 |
| No significant problems in administering the STC program | 15 |
| Other | 8 |

"Other" issues cited included the following:

- Some employers no longer qualify for STC due to the requirement to maintain employee health and retirement benefits (1 state)
- The manual systems in use are costly and will be problematic when employer participation increases (3 states)
- Employers see STC as too restrictive because it does not allow layoffs during the STC plan or fully employing STC employees for some weeks of the plan (1 state)
- Federal grant funds are not sufficient for implementation of a high-tech approach to STC 1 state)
- The state agency has not fully employed its marketing strategy (1 state)

## SURVEY OF STATES WITHOUT AN ENACTED STC PROGRAM

The short survey to state UI agencies without an enacted STC program asked if the states considered enacting an STC program, and, if so, what had prevented them from establishing one. These states were also asked what changes in the federal legislation would make STC more attractive in their state. Of the 13 non-STC states that responded, five considered enacting an STC program (Question 2). Among these, four states provided responses as to what prevented them from enacting STC (Question 3) (Table 8).

**Table 8. What prevented non-STC states from enacting STC legislation**

| What prevented non-STC states from enacting STC legislation | Number of states |
|---|---|
| STC was not a legislative priority | 1 |
| Concerns about conforming to federal requirements | 1 |
| Opposition from employer groups | 1 |
| Other opposition | 2 |
| Insufficient time to pass new legislation and implement the program in order to qualify for federal grants | 1 |
| Operating a state STC program was viewed as too costly | 1 |
| Other | 4 |

"Other" factors that prevented enacting STC legislation included:

- The state had a backlog of UI claims and did not have sufficient IT staff to tackle STC.
- The structure of the state's UI tax charging system results in the full tax being charged to an employer once a claimant collects the first dollar of benefits, so there would be no savings to the employer.
- The mainframe system is antiquated and not flexible to automate STC. So STC would be a manual process that might apply to only a handful of employers. Most employers are accustomed to the partial unemployment process (supported with an online account). STC is not critical to implement because it has similar intent and benefits as STC.
- STC is currently under consideration for possible 2016 legislation.
- Lack of interest and expressed support from the employer community.

The non-STC states were also asked what changes in the federal STC legislation would make STC more attractive in their state (Question 4). As shown in Table 9, no states cited the options listed in the survey:

**Table 9. What changes in the federal STC legislation would make STC more attractive**

| **What changes in the federal STC legislation would make STC more attractive** | **Number of states** |
|---|---|
| Financial assistance to administer the program, including funds to implement automated system to handle STC claims filing and benefits payments | 0 |
| Simplified administrative process for applications and claims filing | 0 |
| Reduce or simplify reporting requirements | 0 |
| Permanent federal reimbursement of STC benefits | 0 |

However, two non-STC states added the following:

- Less administrative burden to operate the program
- Strict uniformity among states so that STC programs can be easily designed and implemented in all states without exceptions. Provide federal funding as an incentive to implement STC and find a way to include or combine with the partial unemployment process.

## CONCLUSION

The results of the survey suggest that the MCTRJCA had its intended effect on STC states to enact conforming legislation and implementing necessary changes in the operation of the state programs to comply. There were no significant enactment issues because most of the changes required were minor. Although the survey of non-STC states indicated that only five of the 13 responding states actually considered enacting STC legislation, there were six states that enacted new STC legislation after 2011. DOL may want to consider doing more to promote STC now to get more states to enact legislation and be prepared by the time of the next economic recession.

The Act provided STC states with temporary federal reimbursement of STC benefit charges for up to three years and 21 of the responding STC states received reimbursement, with some relieving employers of the charges during the reimbursement period. However, the timing of the federal reimbursement, starting in 2012, was late in coming relative to the timing of the Great Recession. The reimbursement might have had a greater impact for states and employers if it had been available during the recession (i.e., 2009-2010). In the future, and potential federal reimbursement of STC benefit charges should be offered as close as possible to the start of the recession.

Thirteen of the responding STC states received a grant for promotion of STC. As a result, more states will implement more promotional activities within their states to increase employer participation. These activities are planned to occur over the next three years. Fifteen of the responding STC states received operational improvement or administration grants from DOL. These grants are greatly needed because most states report a need to modernize their STC programs. Although the funds received may not fully support automation of applications and claims, the grant recipients have carefully planned how best to use the funds to supplement other agency resources and to improvement STC processes. Other states could learn from these states through communities of practice such as the recent 2015 STC Summit sponsored by DOL, and borrow or adapt their ideas, methods or products.

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