

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

Part I: Measure Information

Bill Request #: 871

Bill #: House Bill 4 HCS
1

Document ID #: 4616

Bill Subject/Title: AN ACT relating to unemployment insurance.

Sponsor: Representative Russell Webber

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: All local government employers

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

This legislation, the Unemployment Insurance Sustainability Act of 2022, amends various sections of KRS Chapter 341, Unemployment Compensation. Some of the statutory changes; including indexing the maximum number of unemployment insurance benefit weeks to the state unemployment rate, increasing verifiable weekly work search activities from one to five for receiving benefits, and establishing work sharing programs, were the result of the 2021 Unemployment Insurance Reform Task Force meetings.

Section One adds definitions to KRS 341.005, including "approved job training or certification program", "enhanced federal benefits" and "state average unemployment rate". Approved job training or certification programs will comprise those approved by the secretary of the Education and Workforce Development Cabinet (now Education and Labor Cabinet) leading to short-term certificates or credentials as well as industry-recognized certificates, diplomas, or associate of applied science degrees in one of the state's five high-demand workforce sectors identified by the Kentucky Workforce Innovation Board and the

cabinet. They also will include those approved and determined by the cabinet secretary to improve an individual's employability in a high-wage, high-demand occupation.

Enhanced federal benefits will be state-administered benefits, temporarily or partially federally funded through voluntary agreements with the United States Department of Labor, supplementing or increasing weekly state benefit amounts. Enhanced federal benefits exclude KRS 341.350 to 341.415 regular benefits, KRS 341.700 to 341.740 extended benefits, and shared work benefits.

The state average unemployment rate will be the seasonally adjusted statewide unemployment rate during the six month period in which the claim is filed. Six month periods begin on January 1 and July 1. From January 1 through June 30, the state average unemployment rate shall be the prior calendar year's third quarter monthly average. From July 1 through December 31, the state average unemployment rate shall be the calendar year's first quarter monthly average. In calculating the averages, the cabinet shall utilize the most recent seasonally adjusted unemployment rate as determined by the United States Department of Labor, Bureau of Labor Statistics.

Section Two establishes criteria within KRS 341.100 for "suitable work". Suitable work is comprised of jobs offers to individuals who have received at least six weeks of unemployment. The positions have to have a salary of at least one hundred twenty percent of their weekly benefit amounts; be within thirty miles of their residence, or remote on a permanent basis; and be those that they are able and qualified to perform, regardless of whether or not he or she has related experience or training. The maximum weekly benefit amount is currently \$569 and one hundred twenty percent of that is \$682.80.

Sections Three and Four amend KRS 341.270 and KRS 341.272, respectively to reduce the minimum period of time for an employer to qualify for a lower contribution rate, initially set at two and seven-tenths percent (currently nine percent for construction employers, who under KRS 341.272(1) shall pay contributions equal to the maximum rate of contributions payable under the rate schedule in effect for any given calendar year as determined by KRS 341.270) from twelve (three years) to four (one year) consecutive quarters. Section Three also lowers the employer's reserve ratio computation period from twelve (three years) to four (one year) consecutive quarters to conform. These sections do not apply towards employers reimbursing the Kentucky Unemployment Insurance Fund in lieu of contributions.

A lower contribution rate is dependent upon the status of the employer's reserve account balance, which per KRS 341.270(5)(d) is the amount of employer contributions less unemployment benefits paid through June 30 immediately preceding the computation date. The reserve account balance generates the KRS 341.270(5)(c) employer's reserve ratio, currently the percentage of the reserve account balance to the taxable payrolls for the last three years ended as of June 30 immediately preceding the computation date as well as the schedule used under KRS 341.270.

Section Five amends KRS 341.350 to require that recipients engage in five verifiable work search activities, at least three of which shall consist of formally submitting an application for employment or interviewing for employment, per week during each week that he or she claims eligibility for benefits; set standards for work search activities; and exempt those certified as enrolled and making satisfactory progress in an approved job training or certification program.. The six eligible work search activities are formally submitting an application for employment, either in person or online; interviewing for employment virtually, in person, or online; job shadowing; attending a job fair or networking event hosted by state or local government or a business organization; participating in a job search skills workshop or seminar; and participating in official Kentucky Career Center or partner programs related to employment or the search for employment.

Further KRS 341.350 changes include directing the cabinet to conduct randomized weekly audits to determine compliance with work search activities, establishing annual work search activity cabinet reporting requirements to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment, and requiring the cabinet secretary to promulgate regulations and standards for verification of work search activities. The reports shall include percentage of audited claimants that failed to comply with the work search activity requirement outlined in Section Five; work search activities most commonly engaged in by audited claimants; recommendations to make the work search activity requirement more effective in assisting claimants in finding employment; number of claims audited each week and the total number of claims audited during the reporting period; percentage of total claims audited each week and percentage of total claims audited during the reporting period; and a summary of the methodology used to conduct randomized auditing.

Section Six modifies KRS 341.380 to change an individual's maximum annual benefits from the lesser of twenty-six times his or her weekly benefit rate or one-third of his or her base wages (as long as that amount is not less than fifteen times his or her benefit rate) to the lesser of the variable duration of unemployment insurance benefits in Section Seven times his or her weekly benefit rate or one-third of his or her base wages (as long as that amount is not less than twelve times his or her benefit rate).

Section Seven creates a new section of KRS Chapter 341 providing for the variable duration of unemployment insurance benefits based upon the state average unemployment rate at the time of each individual's application for benefits. The minimum benefit is twelve weeks for a four and one-half percent or less state average employment rate. The classification system, for regular benefits only, adds one additional week for each one-half percent above the four and one-half percent state average employment rate and reaches twenty-three weeks for a ten percent state average employment rate. Twenty four weeks of benefits is available for a greater than ten percent state average unemployment rate. Claimants may qualify for up to an additional five weeks if they are certified as enrolled and making satisfactory progress in an approved job training or certification program.

With General Assembly approval, the cabinet secretary may extend the maximum to twenty-six weeks if either authorized by the federal government with federal funding or

during an extended benefit period as defined by KRS 341.094. Triggers for extended benefit periods are an insured unemployment rate of least one hundred twenty percent of the average in the same thirteen week period of the preceding two calendar years that is at least five percent, for the most recent thirteen consecutive-week period. Under certain federal programs, triggers can also be an average seasonally adjusted unemployment rate of least one hundred ten percent of the average in the same three month period of either or both of the preceding two calendar years that is at least six and a half percent, for the last three consecutive months.

Claimants with verified return-to-work or recall-to-work prospects would receive up to sixteen weeks times his or her weekly benefit rate instead, if the state average unemployment rate is six and one-half percent or less. If the state average unemployment rate is over six and one-half percent, then the proposed classification system would apply to claimants with verified return-to-work or recall-to-work prospects.

Section Eight adds a new section of KRS Chapter 341 to permit an employer to notify the cabinet secretary when individuals either declined suitable work or has failed to attend a first interview for suitable work, specify the notice's content; state that the notice shall be considered when determining eligibility and may constitute grounds for ineligibility; and direct the cabinet to provide an online portal employer transmittal. Section Nine amends KRS 341.370 to add declining an interview from a prospective employer offering suitable work and not acting in good faith to secure suitable work as conditions under which a worker must be disqualified from receiving unemployment benefits. Section Ten creates a new section of KRS Chapter 341 to allow the General Assembly to end the state's participation in an enhanced federal benefit program, in a manner consistent with applicable federal laws, at any time during that program.

Sections Eleven modifies KRS 341.096 to add six terms for work sharing programs initiated and funded by employers, in which employees would still receive unemployment benefits to offset reduced hours of work. "Affected group" will be two or more employees designated by an employer to participate in a shared work plan; "approved plan" will be an employer's voluntary, written plan conforming to criteria in Section Twelve and approved by the cabinet secretary, under which the affected group members share the work remaining after their normal weekly hours are reduced; "normal weekly hours of work" will be the normal hours of work, not to exceed forty hours and exclusive of overtime, for full-time and permanent part-time employees in the affected group when their employer is operating on its normal, full-time basis; "shared work benefits" will be the unemployment compensation benefits payable to employees in an affected group under an approved plan as distinguished from unemployment benefits payable under other KRS Chapter 341 provisions; "shared work employer" will be an employer with a shared work plan in effect and include those succeeding or acquiring entities with a shared work plan as long as they adopt and ratify the previously approved plan; and "subgroup" will be a group of employees which constitutes at least ten percent of the employees in an affected group.

Section Eleven also clarifies that "fringe benefits" are advantages, in addition to the earned cash remuneration, incidental of employment including but not limited to health insurance,

retirement benefits, paid vacation and holidays, and sick leave. The section reorders some of its existing definitions; “additional benefits”, “extended benefits”, “regular benefits”, and “rate of insured unemployment”, and does not reorder “eligibility period” or “exhaustee”.

Sections Twelve through Eighteen create new sections of KRS Chapter 341 to set parameters for shared work programs. Section Twelve allows employers to submit a signed, written plan for a shared work program to the cabinet secretary for approval and directs the cabinet secretary to approve the plan if it meets particular criteria. The criteria includes application to and identification of the specified affected group; estimation of the number of layoffs that might occur without the shared work program; identification of affected group members by name, social security number, and any other information required by the cabinet secretary; reduction of affected group members’ normal weekly hours by at least ten percent but not more than forty percent; and continuation of fringe benefits as though work weeks had not been reduced, unless the employer reduces the level of benefits for employees outside the shared work group, at which point the employer then may reduce the level of benefits by a like amount for the shared work employees.

Further requirements include the plan certifying that aggregate work hour reductions are in lieu of all layoffs that would have affected at least ten percent of the employees in the affected group (the equivalent of one subgroup) or groups under the plan, resulting in an equivalent reduction in work hours. The workforce in the affected group must not have been reduced by temporary layoffs of more than ten percent of the workers during the last four months. The plan must apply to at least ten percent of the employees in the affected group (the equivalent of one subgroup) and provide equal treatment to employees within each subgroup as well as, if under one plan, all employees of the group.

The plan shall contain a certification by the employer that he or she made the proposed plan available for inspection to each employee in the affected group and include either a description of how the plan was made available or an explanation as to why advance notice of the plan was not feasible. Also, the plan needs to include a certified statement by the employer that the terms and implementation of the shared work plan are consistent with any obligations the employer has under applicable state and federal law. Employees joining affected groups after shared work plan approval are automatically covered under the approved plan, effective the week that the cabinet secretary receives written notice from the shared work employer that the employee has joined. The plan shall serve neither as a subsidy to seasonal employers during the off season nor as a subsidy to employers who traditionally use part-time employees.

Furthermore, Section Twelve stipulates that the employer agree to furnish reports, if requested by the cabinet secretary, relating to proper conduct of the plan (compliance and execution). The employer must agree to provide the secretary, or his or her authorized representatives, all records necessary to evaluate the plan for approval and to evaluate application of the plan after approval. The section instructs the cabinet secretary to create an application through which employers shall submit shared work plans for approval.

Section Thirteen requires the cabinet secretary to either approve or reject a plan in writing within thirty days of receipt and clarify that the secretary may approve only one plan per employer per year. The reason for the rejection of any plan shall be final and non-appealable, but an employer whose plan was rejected shall be allowed to submit another plan for approval not earlier than fifteen days from the date of the last rejection.

Section Fourteen states that the plan shall either take effect on the date of cabinet secretary approval or on a date specified within the plan if that date occurs after cabinet secretary approval. Each plan shall either expire at the end of twelve full calendar months after its effective date or, if revoked by the secretary, shall terminate on the date specified in the secretary's written order of revocation. A shared work employer may terminate an approved plan by providing the secretary and each employee in every affected group covered by the plan with a written notice. Such notice shall contain a message indicating that the plan is being terminated; identify the termination date; and be delivered to the cabinet secretary and each employee in each affected group covered by the plan no less than thirty days prior to the termination date.

Section Fifteen says that for purposes of the section, "good cause" includes but is not limited to failure to comply with the assurances given in the plan; unreasonable revision of productivity standards for the affected group; conduct or occurrences tending to defeat the intent and effective operation of the plan; and violation of any criteria on which approval of the plan was based. The cabinet secretary may revoke approval of a plan for good cause and by issuing a written revocation order specifying the revocation's effective date and the reasons for the revocation. The cabinet secretary may issue a revocation at any time upon his or her own motion or on motion of any of the affected group's employees. The cabinet secretary shall review the operation of each approved employer plan at least once during the twelve month period that the plan is in effect to ensure its compliance with the requirements of Sections Twelve to Eighteen of this Act. Revocation of a plan for good cause by the secretary shall preclude approval of any subsequent plan submitted by the revoked plan employer during the twelve month period beginning on the date of the revocation order.

Section Sixteen stipulates that an individual is eligible to receive shared work unemployment compensation benefits with respect to any week only if the cabinet secretary finds that the individual is employed as a member of an affected group under an approved plan approved by the cabinet secretary before the week and in effect for the week; the individual is able to work and is available for the normal work week with the shared work employer; and the individual's normal weekly hours of work are reduced by at least ten percent but not more than forty percent, with a corresponding reduction in wages. A worker shall not be denied shared work benefits if he or she is otherwise eligible for these benefits for any week by reason of the application of any provision of this chapter relating to availability for work, active search for work or participation in work search activities, or refusal to apply for or accept work from other than the worker's shared work employer. A worker shall not be denied shared work benefits if he or she is otherwise eligible for these benefits for any week because he or she is participating in training sponsored by, or at the direction of, the shared work employer. Notwithstanding any other provision in this

chapter, a worker shall be deemed unemployed in any week for which compensation is payable to him or her, as an employee in an affected group, for less than his or her normal weekly hours of work in accordance with an approved plan in effect for the week.

Section Seventeen explains that the shared work weekly benefit amount shall be the KRS 341.380 regular weekly unemployment compensation amount multiplied by the reduction percentage, ten percent minimum, in the individual's usual weekly work hours; an individual may be eligible for shared work benefits or regular benefits, except that no individual shall be eligible for regular benefits, shared work benefits, or a combination of the two in any benefit year that exceeds the KRS 341.380 maximum regular benefit amount; an individual shall not be paid shared work benefits for more than twenty-six weeks, whether or not consecutive, in any benefit year under a shared work plan; the shared work benefits paid to an individual shall be deducted from the KRS 341.380 maximum benefit amount established for his or her benefit year; and the cabinet secretary shall promulgate rules and procedures for the filing of shared work benefits claims.

Section Eighteen clarifies that an individual receiving all of the combined regular and shared work benefits available in a benefit year shall be considered an exhaustee for purposes of KRS 341.700 to 341.740 extended benefits and, if otherwise eligible under those provisions, eligible to receive extended benefits.

Sections Nineteen and Twenty amend KRS 341.530 and KRS 341.080 respectively to conform with this legislation. Section Nineteen clarifies that the shared work benefits paid to an eligible worker shall be charged against either the reserve account for each employer making contributions to the Kentucky Unemployment Insurance Fund or the reimbursing employer account for each employer making payment in lieu of contributions. Section Twenty excludes weeks in which workers receive shared work benefits from the “week of unemployment” definition.

Section Twenty-one amends KRS 341.127 to add annual reporting requirements. The cabinet shall report to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment, providing analysis of the impact of the shared work benefits on the unemployment trust fund and unemployment insurance taxes paid by employers, from December 1, 2022 through December 1, 2025. Section Twenty-two modifies KRS 341.710 to state that any reports required by Sections Five and Twenty-one of this Act may be combined by the cabinet and submitted as one to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment. Section Twenty-three amends KRS 371.710 to conform with this legislation. The changes are technical in nature.

Section Twenty-four clarifies that the provisions of this Act shall not be construed to limit access for eligible claimants to Disaster Unemployment Assistance benefits authorized under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, sec. 410, Pub. L. No. 100-707, 42 U.S.C. sec. 5177, or any amendments thereto, and regulated under 20 C.F.R. pt. 625.

Section Twenty-five declares the provisions of this Act severable. It states that if any provision of this Act or the application thereof to any person or circumstance is held invalid, unconstitutional, or in violation of any federal law; then, the invalid provision shall be null and void and its invalidity shall not affect other provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section Twenty-six permits the Act to be cited as the Unemployment Insurance Sustainability Act of 2022.

The Kentucky Association of Counties has 477 members in its Unemployment Compensation Self-Insurance Fund and the Kentucky League of Cities has 303 members, 156 cities and 147 other city-related entities, in its Unemployment Compensation Trust. These two programs, as do localities that self-insure independently such as Louisville Metro, reimburse the state for unemployment benefits in lieu of contributions to the Kentucky Unemployment Insurance Fund. KACo and KLC participating localities, referred to in KACo's and KLC's program financials as in a "pool of self-insured Participants" pay premiums to the Self-Insurance Fund or Trust based upon actuarially determined rates. Unemployment benefits paid by the commonwealth are then charged to the participating locality's account. The lowering of the benefit periods detailed in Sections Six and Seven may result in actuaries reducing the required amount that KACo and KLC participants, as well as other self-insurance pool participants and localities self-insuring independently, maintain in their unemployment insurance accounts. Therefore, KLC estimates that cities meeting or exceeding the revised lower actuarial requirements could either receive a dividend from the Trust or retain the fund balance and pay no additional contributions until the Trust drops below the actuarial amount. This would be dependent upon factors including the locality's account funding status, number of claims, and costs associated with those claims.

Newly established localities, if any, contributing to the Kentucky Unemployment Insurance Fund through paying the state unemployment tax may see savings under Sections Three and Four which reduce the minimum period of time for an employer to qualify for a lower contribution rate from three years to one year. For any localities contributing to the UI fund through payment of the employment tax, the lowering of the benefit periods in Sections Six and Seven could increase the employer's reserve account balance and affect the UI fund balance, which would impact the KRS 341.270 schedule used.

The shared work program is voluntary, with the shared work benefits charged against either the employer's reserve account (for UI tax) or the reimbursing employer account for each employer making payment in lieu of contributions per Section Nineteen; therefore, no fiscal impact is anticipated to municipalities.

Kentucky municipalities tend to reduce staff through attrition (retirements, voluntary resignation, etc.) rather than through layoffs. KLC had 107 claims in 2019; 133 in 2020; and 109 in 2021.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Changes from HCS from Bill as Introduced

There are no changes to the municipalities' fiscal impact with the House Committee Substitute. It amended Section Five to change the reporting requirements for receipt by the Governor and the Interim Joint Committee on Economic Development and Workforce Investment rather than the General Assembly; removed reference to the most recent employer with respect to claimants with verified definite return-to-work or recall-to-work prospects in Section Seven; removed reference to the Kentucky Career Center in favor of original statutory reference to employment office or cabinet secretary in Section Nine with respect to declining interviews; created a new section of KRS Chapter 341 to allow the cabinet to combine any reports required by KRS 341.127 and KRS 341.350 and submit them as one to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment; and added a new section of noncodified language to provide that the provisions of this Act shall not be construed to limit access for eligible claimants to Disaster Unemployment Assistance benefits authorized under the Stafford Act.

Data Source(s): LRC Staff, Kentucky League of Cities, Kentucky Career Center Weekly Unemployment Insurance Benefits Calculator; KACo Unemployment Compensation Self-Insurance Fund and Kentucky League of Cities Unemployment Compensation Reimbursement Trust audited financial statements

Preparer: Katherine L. Halloran **Reviewer:** CHM **Date:** 2/23/22