

**THE TEXAS UNEMPLOYMENT INSURANCE SYSTEM:  
BARRIERS TO ACCESS FOR  
LOW-WAGE, PART-TIME & WOMEN WORKERS**

by

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## **Executive Summary**

The Texas unemployment insurance (UI) system is not working to meet its basic goal of providing a modest measure of income support to workers during times of unemployment. This is due in significant part to the UI system's failure to keep pace with the fundamental changes in the labor market, including the growth of low-wage and part-time work and the vastly expanding role of women workers.

In 1997, only 22.3% of the unemployed in Texas received unemployment insurance, which means Texas ranks as the eighth lowest state in the nation well behind any other large population state. Based on an analysis of data from the Survey on Income and Program Participation (SIPP) prepared for this report, it is clear that large segments of the state's most vulnerable workers are the hardest hit by the failures of the Texas UI system. This is true even for those workers who have significant attachment to the labor force. For these hard-working Texans, it is a misnomer to state that the system can be counted on as "insurance" during a spell of involuntary unemployment.

This report examines the problems of access to the Texas UI system in detail. It begins by documenting the inequitable treatment of low-wage, part-time, women and minority workers, and includes the following key findings:

- Unemployed workers who are not receiving UI in Texas have substantial attachment to the labor force averaging 36 weeks a year and 39 hours per week of work, only slightly less than the average of 44 weeks of work at 44 hours per week worked by UI recipients.
- Part-time and low-wage workers also have significant labor force attachment, yet they are still failing to access UI benefits. Specifically, part-time workers who are failing to access the UI system are working 30 weeks a year at an average of 30 hours a week, and low-wage workers who are not receiving UI are employed an average of 35 weeks a year working 38 hours a week.
- Despite their strong labor force attachment, part-time workers in Texas have only an 8.5% chance of recovering unemployment benefits. This represents half the national average and one-fourth the rate of full-time workers in Texas. The rate for low-wage workers is just 18.4%, compared with 41.3% for those workers earning more than \$8.00 an hour. Whites are also far more likely than Blacks and Hispanics to access unemployment benefits.

Next, the report surveys the specific features of the Texas UI laws that contribute to this breakdown in the system. This analysis is then integrated with a detailed set of recommendations for state legislation modeled after similar reforms adopted in other states. If adopted, these proposed reforms will go a long way to build equity in the Texas UI system and address the changing needs of today's working families. In brief, the report proposes the following set of UI

reforms:

- **Adopt the “alternative base period” to more accurately measure an individual’s work history.** More than any other specific feature of Texas UI law, the state’s standard for determining whether an individual has a sufficient work history to qualify for UI negatively impacts on part-time and low-wage workers. As defined by Texas law, the standard fails to include three to six months of the individual’s most recent work, thus penalizing those workers who most need to include their recent wages to qualify for UI.

This standard dates back to a time of hand-processed, wage-record reporting which produced a substantial delay between the time wages were reported by an employer and then made available to the state to determine an individual’s eligibility for benefits. A growing number of states have corrected for this anomaly by adopting an “alternative base period” (ABP), which includes information on an individual’s most recent work history when it is needed for the worker to qualify for benefits. According to a recent report commissioned by the U.S. Department of Labor, “the costs of implementing an alternative base period are not significant when compared with the benefits offered to a wider range of claimants.”<sup>1</sup> In Texas, 27% of those workers who initially failed to qualify for UI using the standard measure of work history would have been found eligible under the ABP. And the maximum cost of paying these 12,000 workers their UI amounts to only 2.4% of benefits paid last year. Thus, the report proposes that Texas follow the lead of several states by adopting the ABP.

- **Recognize compelling domestic circumstances as permissible grounds for leaving work and recovering UI.** The UI system in Texas is still premised on an outdated concept of today’s working families. For example, women workers, especially those who are single parents, are still denied UI when they are forced to leave work to handle an emergency child care problem or when they are the victims of domestic violence that follows them to the job. In fact, three times as many women as men report leaving work in Texas for reasons associated with domestic circumstances. Under Texas law, these workers are denied UI because the circumstances for leaving work are not directly “connected with the individual’s last work.” Texas law should evolve with the changing labor market and recognize compelling domestic circumstances for leaving work, consistent with the laws of many other states.
- **The state’s work-search rules should be amended so that workers are not denied UI merely because they are seeking part-time rather than full-time work** Under Texas law, all workers must be “available” for full-time work to remain eligible for UI benefits. This, in part, explains why part-time workers in Texas have only an 8.5% chance of recovering UI. However, part-time work is a necessity for many working families, especially households that are headed by woman who often must work multiple part-time jobs to balance their work and family obligations. Thus, Texas law should be amended to expressly allow part-time workers to be considered “available” for work where there is a demonstrated labor market for part-time work.

These reforms are also key to the success of the recent changes in the welfare system, now requiring larger numbers of welfare recipients to work and imposing a lifetime time limit on welfare benefits. The unemployment “insurance” system should be there in times of need to protect all workers, but especially these and other hard-working Texans and their families who are most in need of income support when unemployed.

## **I. Unemployment Insurance Unavailable to Most Hard-Working Texans**

The nation's unemployment insurance (UI) system is not working to meet its basic goal of providing a modest measure of income support to workers during times of unemployment. The problem lies in the fact that the UI system has failed to keep pace with the fundamental changes in the labor market, including the growth of low-wage and part-time work and the vastly expanding role of women workers. That is the conclusion of a recent bi-partisan federal commission, the Advisory Council on Unemployment Compensation, that spent over three years evaluating the UI system.<sup>2</sup>

The failure of the UI system is reflected, most prominently, in the dramatic decline in the percentage of the unemployed who are receiving unemployment benefits. Nationally, the proportion of the unemployed receiving unemployment benefits has dropped from an average of 49% in the 1950's and over 75% during the 1974-75 recession, to just 35% in the 1990's with significant variation across the states.<sup>3</sup> The situation in Texas is among the most severe in the country. Only 22.3% of the unemployed in Texas received unemployment insurance in 1997 (the most recent year when complete data is available), compared to the national average of 35.1%. Texas ranks as the eighth lowest state in the nation which is well below any other large population state.

The Texas average masks an even more serious problem. Based on an analysis of data from the Survey on Income and Program Participation (SIPP) prepared by the Institute for Women's Policy Research (IWPR) for this report, it is clear that large segments of the state's most vulnerable workers -- those working low-wage and part-time jobs -- are the hardest hit by the failures of the Texas UI system. This is true even for those workers who have significant attachment to the labor force as measured by their earnings and weeks and hours worked. For these hard-working Texans, it is a misnomer to state that the system can be counted on as "insurance" during a spell of involuntary unemployment.

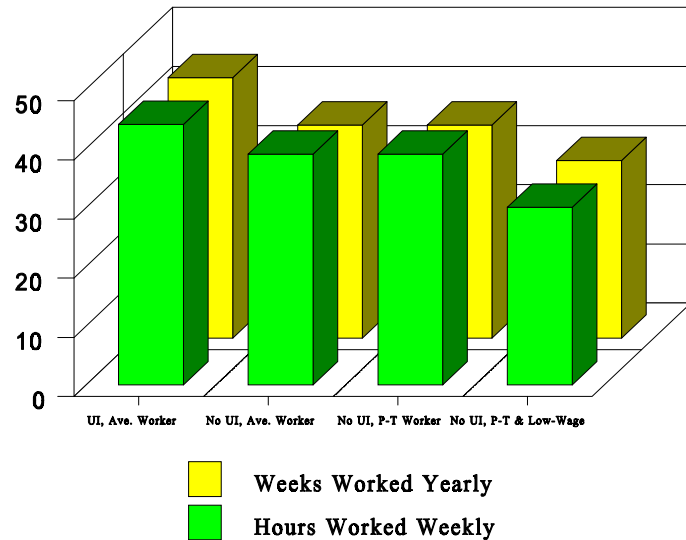
### **Working Hard, Without Unemployment Insurance**

If someone works hard for long stretches of time, most people still assume that the UI system will be there to deal with the person's job loss and help in the search for new work. Instead, as reflected in Table 1 (Appendix), it turns out that unemployed workers who were not receiving UI ("non-recipients") worked nearly as many weeks a year and nearly as many hours per week as UI recipients in Texas. According to the SIPP data for the years 1988-1994,<sup>4</sup> non-recipients worked an average of 36 weeks a year and 39 hours per week, a substantial amount of work by almost any measure. This compares with an average of 44 weeks of work at 44 hours

per week for UI recipients.

Unemployed workers who were employed full-time yet were not receiving UI benefits labored an average of 41 weeks a year and 45 hours per week. Part-time workers who are failing to access the UI system are working 30 weeks a year at an average of 30 hours a week, as compared to 37 weeks and 32 hours of work for UI recipients who worked part-time. The same pattern of strong labor force attachment plays out for low-wage workers (defined here as those working for less than \$8.00 an hour). These non-recipients still worked an average of 35 weeks a year at 38 hours a week, compared with 40 weeks a year worked at 46 hours a week for low-wage workers who recover unemployment benefits. If nothing else, it is clear that access to UI in Texas is not primarily a function of who worked and who did not. Both recipients and non-recipients have strong labor force attachment.

Work Characteristics of UI Recipients & Non-Recipients

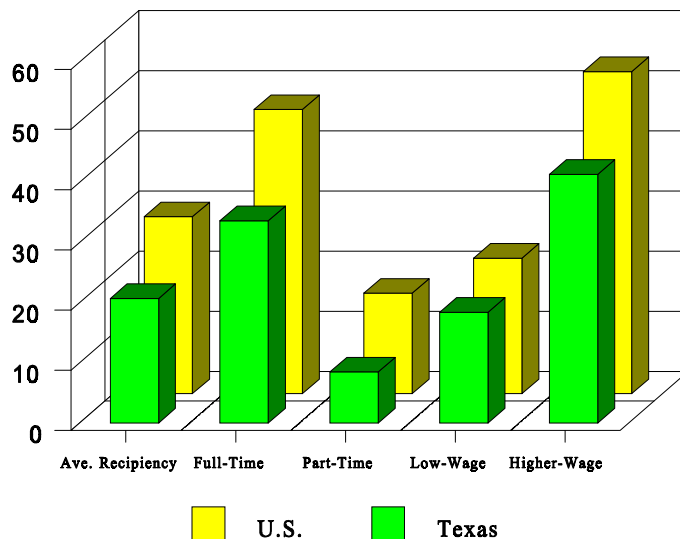


### Socioeconomic Characteristics of UI Recipients & Non-Recipients

The unemployment system in Texas is far beyond the reach of large and growing segments of the state's labor force. Ironically, these also are often the same workers -- part-time and low-wage workers, women, Black and Hispanic workers -- who suffer more often from unemployment and remain unemployed involuntarily for the longest periods of time.

The chances of recovering unemployment benefits for these workers are very low across the board. As set forth in Table 2 (Appendix), the average recipiency rate for the period 1988-94 as measured by the

UI Recipiency Rates, by Labor Market Characteristics



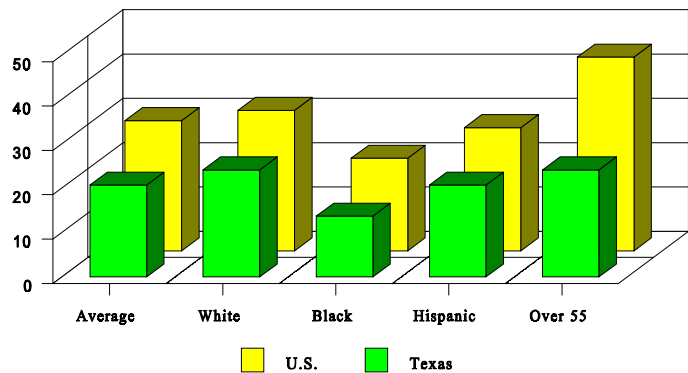


SIPP was 20.7% in Texas compared with 29.4% for the nation as whole. Part-time workers, most of whom have significant labor force attachment as described above, have only an 8.5% chance of recovering unemployment benefits, which is half the national average (16.7%). About one-third of full-time unemployed workers in Texas received unemployment benefits. While still far below the national average of 47.2%, full-time workers in Texas are nearly four times as likely as part-time workers to recover unemployment benefits. The reciprocity rate for low-wage workers is only 18.4%, compared with 41.3% for those workers earning more than \$8.00 an hour. For those who are working part-time in low-wage jobs, the reciprocity rate drops to 5.7%, even though on average these workers labored for 29 weeks a year at 31 hours per week.

Broken down still further -- by gender, race, ethnicity and age -- the data show several striking inequities. In Texas (Table 3, Appendix), the average reciprocity rate for men and women is comparable (21.2% for women versus 20.3% for men). However, the fact that women are doing as well as men in Texas is mostly a reflection of the particularly low reciprocity rate for men, especially unmarried men. In fact, only 8.9% of unmarried men in Texas are accessing the UI system, which compares with a rate of 31% for married men in Texas and 24% for unmarried men nationally.

According to the SIPP data, Blacks on average are much less likely to recover unemployment benefits than Whites (13.7% versus 24.1%). Hispanics also fall behind Whites (20.7% versus 24.1%). Finally, age is also a major factor in Texas, as it is nationally. The reciprocity rate for 18-24 year olds is extremely low (6.8%). It increases for 25-34 year olds (19.6%), but still remains below the state average. Thirty-five to 54-year olds fare best in Texas (34.2%). However, the rate drops off again significantly for next age group (55-64 year olds), down to 24.1%. This compares with a national average for 55-64 year olds of 43.7%, reflecting the largest discrepancy between Texas and the national average among any of the designated age groups.

UI Reciprocity Rates, by Race, Ethnicity & Age



## **II. Texas Qualifying Standards: Barriers to UI for Low-Wage, Part-Time & Women Workers**

In order to evaluate the factors that contribute to this disturbing evidence of limited access to UI, it is instructive to look next at the qualifying requirements of Texas law. The question then is where in the determination process are UI benefits being denied these workers?

### **Labor Force Attachment Requirements Discriminate Against Low-Wage & Part-Time Workers**

To qualify for UI in Texas, an unemployed worker has to first establish that he or she was sufficiently attached to the labor market. As described below, Texas laws defining the extent of work history needed to qualify for UI put low-wage and part-time workers at a significant disadvantage which, in turn, contributes to the low state reciprocity rate.

1. **Recent work history ignored by the Texas “base period”:** In Texas, an individual’s work history is defined as a stretch of time (the “base period”) that is limited to the first four of the last five completed calendar quarters of work. Thus, the base period excludes up to three to six months of an individual’s recent work history. For example, if Sonia applies for UI in mid-March 1999 -- two and one-half months into the first calendar quarter -- then her base period extends back from January 1, 1999 to September 31, 1997. Her work history counted for the purposes of determining eligibility for UI dates from September 31, 1997 to October 1, 1998, leaving out the period from October 1998 to mid-March 1999.

This anomaly in the way labor force attachment is measured dates back to a time of hand-processed, wage record keeping which produced a substantial delay between the time wages were reported by an employer and then made available to the state to process an individual’s claim for benefits. Thus, this approach is primarily the result of technological limitations which no longer apply to today’s more advanced claims processing systems. That is why eleven states,<sup>5</sup> covering almost one-third of the nation’s unemployment claims, have corrected for this inequity by adopting what is known as an “alternative base period” (ABP). The ABP allows an individual to include her more recent wages but only if she fails to qualify under the standard base period. Most states that have adopted the ABP include the individual’s most recent completed quarter called the “lag quarter”, while others also include the wages earned in the more recent, yet uncompleted, “filing quarter”. In Sonia’s case, for example, she would at least be entitled to include the wages earned during the “lag quarter”, the period from October 1, 1998 to December 31, 1998.

The effect of this change in law is significant, especially for low-wage and part-time workers. According to the simulation prepared by IWPR using the SIPP data, 23% of those workers who initially failed to qualify for UI in Texas using the standard base period would have been found eligible under an ABP that counts the individual’s “lag quarter” earnings. This is remarkably consistent with a recent analysis prepared by the Texas Workforce Commission (TWC) based on actual UI claims data. The report found that 27% of claimants who failed to qualify for UI in 1996-1997 using the regular base period would have qualified under the ABP.<sup>6</sup> These figures are also consistent with the findings of a recent national study of those states that

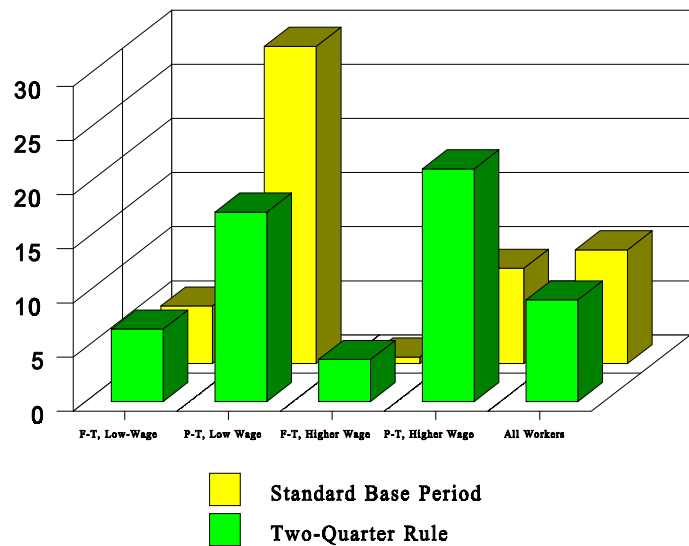
have adopted the ABP.<sup>7</sup> According to the TWC analysis, those who qualified using the ABP were disproportionately African-American (27%), Hispanic (34%) and low-income (averaging total earnings of \$7,363, or 26% of the average earnings for claimants who qualify using the standard base period).<sup>8</sup>

**2. Eligibility based on earnings, not hours or weeks worked, discriminates against low-wage workers.** In Texas, attachment to the labor force is also measured by the amount of money an individual earns within the base period, set at \$1,720 in 1997. On its face, this does not appear to be a large sum to earn in a one-year period of time (at the minimum wage of \$5.15 an hour, it requires 334 hours of work). However, when coupled with the absence of an ABP, the minimum earnings requirement has a dramatic negative impact on low-wage and part-time workers.

The SIPP data (Table 4, Appendix) documents the role of the minimum earnings requirement in denying UI benefits. Those people working part-time in low-wage jobs were most severely impacted. Close to 30% of those who worked part-time in low wage jobs failed to qualify for UI in Texas as a result of the minimum earnings requirement. That is more than three times the rate for higher-wage, part-time workers (8.8%). This discrepancy between low-wage and higher wage workers illustrates vividly how workers are discriminated against in the UI system based on income although their hours of work are otherwise comparable. By comparison, 10.5% of all workers -- full-time and part-time -- failed the eligibility screen for earnings.

**3. Requiring earnings in two quarters penalizes all part-time workers regardless of their income.** Finally, Texas law also requires that an individual have earnings in at least two calendar quarters during the base period in order to qualify for UI. As reflected in Table 4 (Appendix), the two-quarter earnings requirement significantly penalizes part-time workers. Overall, 9.4% of all workers counted as unemployed by the SIPP -- not including students, military personnel or the self-employed -- failed this eligibility requirement. 17.5% of part-time workers earning below \$8.00 an hour failed the two-quarter earnings requirement compared to only 6.7% of low-wage, full-time workers. And 21.5% of part-time workers earning higher wages failed compared to 3.9% of full-time workers earning higher wages.

Percent Who Fail Texas Monetary Eligibility Rules



### **Work & Family Restrictions** **Disproportionately Disqualify Women Workers**

Once an individual meets the first test to qualify for UI -- that is, she worked enough during the required time period and earned sufficient wages -- next she must show that she did not leave work for reasons that would be considered “disqualifying.” As described below, these rules make it far more difficult for working families, especially single parent households and low-wage earners, to access the UI system.

In Texas, quitting a job “voluntarily without good cause connected with the individual’s last work” is considered disqualifying.<sup>9</sup> The key phrase that limits access to UI for the growing number of workers balancing work and family obligations is “connected with the individual’s last employment.”<sup>10</sup> Many compelling family circumstances requiring workers to take time off from work even for a day, such as an emergency child care problem or a court appearance to gain an protective order in a case of domestic violence, are thus considered disqualifying. All too often, workers in these situations are forced either to quit their jobs or be fired for missing work which leaves them with a poor employment record.

In a limited set of circumstances, the Texas law recognizes that situations arise through no fault of the individual that force a worker to make an untenable decision between work and the obligation to care for oneself or one’s family. Thus, UI benefits are available to workers who must leave their jobs to care for themselves or a sick child. More specifically, the one exception which accommodates the work and family obligations of Texas workers covers an individual who left work because of an illness, injury, disability or pregnancy. In addition, it covers individuals who have to care for a minor who is sick when the employer refuses to provide the individual with time off during the child’s illness.<sup>11</sup>

The available data indicate that women workers were far more likely than men to cite family circumstances as the reason for having to leave a job in Texas. Of the questions asked by the SIPP listed in Table 6 (Appendix) -- becoming pregnant, having a child, health reasons, and “other family and personal reasons” -- 30% of women as compared to 8.2% of men cited domestic circumstances as the reason why they left their last job. Women were more than twice as likely as men (14.7% to 6.4%, respectively) to cite the catch-all category covering domestic circumstances (“other family and personal reasons”) as the reason for leaving the job.

This contrasts with the limited set of circumstances for leaving work recognized under Texas UI law. Women workers, especially single parents with significant family responsibilities and low-wage workers who often cannot afford reliable child care, are disproportionately affected by the failure of Texas UI law to accommodate family and other circumstances not directly attributable to their employment.<sup>12</sup>

### **Part-Time Workers are Not Eligible Unless “Available” for Full-Time Work**

To receive UI in Texas, the claimant must also be continuously “available for work”.<sup>13</sup> This is the third and final requirement -- after the individual has satisfied the multiple rules requiring sufficient attachment to the labor market and has established a qualifying reason for leaving work. This work-search requirement has been interpreted to require that all workers, including part-time workers, be available for full-time work or they will not remain eligible for unemployment benefits.<sup>14</sup>

As a result, those workers who have a history of part-time work or are required to limit their work to part-time shifts due to compelling domestic circumstances are denied UI. This is true even in those situations where the individual can show that there is demand in the labor market for part-time work. Working in tandem with the labor-force attachment requirements described above, the rule requiring availability for full-time work no doubt contributes to the low reciprocity rate for part-time workers in Texas.<sup>15</sup> In addition, women workers are negatively impacted by the work-search requirement because they disproportionately work in part-time jobs.

### **III. Policy Recommendations**

A bi-partisan federal commission, the Advisory Council on Unemployment Compensation (ACUC), recently completed a three-year evaluation of the nation’s unemployment compensation system. The ACUC issued a series of recommendations calling for state and federal reforms to increase access to the UI system for low-wage and part-time workers. Fueled by the ACUC’s recommendations, state legislatures across the country have been actively evaluating their UI programs and advancing legislation to address inequities in the system that limit access to low-wage, part-time and women workers in particular.<sup>16</sup>

In Texas as well, UI reform proposals are actively under review by the Legislature. The Economic Development Committee of the House of Representatives was charged with the responsibility to conduct a comprehensive review of the unemployment compensation system by the Speaker of the House of Representatives. Public hearings were held, which were recently followed by issuance of a report by the Economic Development Committee containing a detailed set of proposed legislative reforms.<sup>17</sup> What follows is a package of proposed UI reforms that were developed based on the recommendations of the ACUC, reforms proposed by several commentators, and models laws adopted in other states.<sup>18</sup>

□ **Adopt the alternative base period (ABP) and other more accurate measures of labor force attachment for low-wage and part-time workers**

**1. Adopt an alternative base period counting an individual's "lag quarter" wages.**

As described above, large numbers of Texans who initially failed to qualify for UI using the standard base period would have been found eligible under an ABP which counts the individual's "lag quarter" earnings. Eleven states have enacted ABP legislation, including several states that have done so just in the past few years (Michigan, New Hampshire, New Jersey, New York and North Carolina). The ABP was also a centerpiece of the recommendations for state legislation proposed by the ACUC.<sup>19</sup>

The U.S. Department of Labor recently commissioned a comprehensive national study to evaluate state experiences with the ABP and help inform decisions of the states considering ABP legislation.<sup>20</sup> As stated in the Executive Summary of the report: "The principal finding of the study was that the costs of implementing an alternative base period are not significant when compared with the benefits offered to a wider range of claimants."<sup>21</sup> Those who qualify for UI under the alternative base period represent 6-11% of the entire UI caseload in the states studied.<sup>22</sup> Low-wage and part-time workers benefitted most from the ABP.<sup>23</sup>

The state variation of 6-11% is the result of several factors. The rate was consistently lower in those states that include only the most-recently completed "lag quarter" wages, not the wages earned in the yet uncompleted filing quarter. Also significant is the fact that a large proportion of claimants who qualify under the ABP -- 39% percent according to a Washington study -- would be eligible under the regular base period if they wait to file their claims in the next calendar quarter. Thus, the estimate of the caseload increase does not factor in the number of claimants who would eventually qualify (after a three to six month delay) under the standard base period.

These findings are remarkably consistent with the recent analysis prepared by the Texas Workforce Commission (TWC) based on actual UI claims data in Texas. The analysis found that 27% of workers who failed to qualify for UI in 1996-1997 using the regular base period would have qualified under the ABP using the most-recently completed lag quarter wages.<sup>24</sup> According to the TWC, those who qualified using the ABP were disproportionately African-American (27%), Hispanic (34%) and low-income (averaging total earnings of \$7,363, or 26% of the average earnings for claimants who qualify using the standard base period).

In addition to the impact on claimants, the national report examined the impact on UI trust funds and state treasuries. The authors concluded that: "[m]ost states could adopt an ABP

without fearing an immediate and large drawdown of its UI trust fund.”<sup>25</sup> Specifically, an ABP that covers the last four completed quarters is estimated to raise benefit costs by 4 to 6%.<sup>26</sup> In Texas, the TWC projects that the maximum payout from the trust fund for ABP claims would be \$23,876,400, which is 2.4% of the total amount paid in benefits in 1997. However, as the TWC analysis recognizes, the actual payout is likely to be much smaller given that a significant proportion of eligible UI claimants never actually draw UI benefits.<sup>27</sup> Finally, these cost estimates do not take into account that some significant proportion of those who benefit from the ABP would have eventually been paid benefits in a later quarter, as documented by the Washington study. Because those who qualify under the ABP tend to earn less, the costs to the UI trust fund are also significantly lower relative to the number of new claimants who are able to access the system.

There will also be a favorable impact on state treasuries due to savings associated with payment of welfare benefits. According to the national ABP report, “implementing an alternative base period program may reduce the burden on welfare programs by providing the workers who are ineligible for UI benefits under the regular base period definition, an income source they are entitled to.”<sup>28</sup> This, of course, has special significance given the increasing number of low-income individuals who are now working due in part to changes in the welfare law.<sup>29</sup>

Finally, the costs of administering the ABP system are also not a barrier in Texas. The actual costs of administering an ABP, as documented in the national study, are much lower than many exaggerated estimates previously reported.<sup>30</sup> In Texas, the TWC estimates the on-going administrative costs of operating an ABP to be limited to \$153,000 a year.<sup>31</sup> Start-up costs are not included in the state’s estimate because the ABP programming capability already exists in the Texas system. These projected administrative costs are a small proportion of the state’s total administrative funding, and they compare quite favorably with the reported costs of operating other state ABP systems.<sup>32</sup>

**2. Shift to a measure of labor force attachment that is based on hours worked, not earnings, to treat low-wage, part-time workers more equitably.** Not surprisingly, the inequitable treatment of low-wage workers in Texas becomes most conspicuous when measuring the impact of the earnings requirement. As described above, 30% of those who worked part-time in low-wage jobs failed to qualify for UI as a result of the earnings test, which is more than three times the rate for higher-wage, part-time workers.

To treat low-wage workers more equitably, the labor force attachment requirement should be based instead on hours worked, not earnings.<sup>33</sup> Alternatively, the earnings requirement should be lowered to capture larger numbers of low-wage, part-time workers. For example, based on a simulation using the SIPP data prepared for this report, lowering the earnings test in Texas from

the current level of \$1,720 to \$1,390 would increase UI receipt among low-wage, part-time workers by between 6 and 7%.

**3. The two-quarter earnings requirement should be eliminated to increase access to UI for part-time workers.** As reported earlier, the two-quarter earnings requirement in the Texas law has a significant disparate impact on part-time workers of all income levels. Low-wage, part-time workers failed this eligibility screen at more than twice the rate as their counterparts working full-time. For higher-wage workers, the impact of the two quarter earnings requirement was even more extreme (21.5% of higher wage, part-time workers versus 3.9% of full-time workers failed this eligibility screen). Eliminating the two-quarter earnings requirement would thus substantially improve the ability of part-time workers to access the UI system. At a minimum, adopting the ABP to allow more part-time workers to count their most recent earnings would assist in creating a UI system that treats part-time workers more equitably.

- **Recognize compelling domestic circumstances as permissible grounds for recovering UI and charge these benefits to the UI trust fund’s “pooled account” rather than individual employers**

The UI system in Texas is still premised in large part on outdated concepts of work and family roles.<sup>34</sup> For example, women workers, especially single headed households, are denied UI when forced to leave work to handle an emergency child care problem or when they are the victims of domestic violence that follows them to the job. As described above, three times as many women as men report leaving work in Texas for reasons associated with domestic circumstances. Yet, under Texas law, these workers are denied UI because such domestic circumstances are not directly “connected with the individual’s last work.”

As far back as 1975, the U.S. Department of Labor called on the states to “change by legislation the legal inequities between the sexes” in relation to the UI system, specifically citing some of the laws that still exist in Texas.<sup>35</sup> About one-third of the states do not limit UI to those workers whose reason for leaving their job was directly connected or attributable to their employment.<sup>36</sup> These states typically extend UI benefits to cover an unspecified range of “compelling and necessitous” individual circumstances for leaving work. Many more states have carved out specific exceptions to cover circumstances such as domestic violence, emergency child care, sexual harassment and other compelling circumstances.<sup>37</sup> This is the approach that Texas has adopted in the case of the provision covering individuals who leave work due to illness.

To eliminate these historical inequities in the UI system and begin recognizing the family circumstances of working women, especially single heads of households and low-income women, Texas law should be reformed as follows:

- Eliminate the provision in Texas law requiring that the reason for leaving work be



“connected with the individual’s last employment” and replace it with language recognizing “necessitous and compelling” individual circumstances for leaving work.

- Build on the precedent established by the illness exception in the state’s UI law by recognizing other selected circumstances that will address the realities of today’s working families. These should include domestic circumstances where reasonable efforts are made to preserve the employment (as in the case of domestic violence), circumstances where the individual’s minor child or an elder family member requires care or supervision and there is no reasonable alternative but to leave work, and other compelling circumstances that are not, strictly speaking, connected to the individual’s last employment.

These proposed reforms are consistent with the recommendations of the ACUC,<sup>38</sup> a 1980 national UI commission<sup>39</sup> and the National Commission on Employment Policy.<sup>40</sup> Significantly, in cases where an individual recovers UI due to these changes in law, the claim does not have to be charged against the employer’s UI tax rate (the “experience rating”). Instead, it is common practice in the states to allow that such payments be considered “non-charged” benefits, meaning that the benefits are absorbed by the UI trust fund and not by individual employers.

**□ The work-search rules should be amended so that workers are not denied UI merely because they are seeking part-time rather than full-time work**

As documented above, part-time workers have only an 8.5% chance of recovering UI in Texas despite the fact that they work an average of 30 weeks a year and 30 hours a week. Full-time workers are thus four times more likely to recover unemployment benefits than part-time workers. However, part-time work is a necessity for many working families, especially households that are headed by woman who work part-time - often multiple part-time jobs - to balance their work and family obligations.

One of the most conspicuous features of Texas law that contributes to this disturbing phenomenon is the provision requiring that all workers be “available” for full-time work. Unfortunately, Texas law is not unusual in this regard. However, many states have laws that provide benefits to part-time workers provided the individuals also have a history of part-time work.<sup>41</sup> Still others states apply a rule that an individual who limits her work search to part-time employment is considered “available” for work provided there is good cause for restricting the hours of her work availability and there is a labor market in the area for part-time work.<sup>42</sup>

As recommended by the ACUC and others,<sup>43</sup> Texas law should thus be amended to expressly allow that part-time workers be considered “available” for work in appropriate circumstances. Eligibility should be extended to all part-time workers, not just to those workers

with a history of part-time employment. In its recent report to the House Economic Development Committee, the TWC projects that a change in the law benefiting part-time workers will increase the number of UI claimants by 4.07%.<sup>44</sup> While cautioning that its estimate is “highly speculative”, the TWC concluded that the total payments to part-time workers would be \$25,166,245.<sup>45</sup> However, as in the case of the ABP estimates prepared by the TWC, the projected costs may be overstated. For example, the estimates assume that all part-time workers who are eligible will draw down their benefits, when fewer than 70% of all eligible workers actually do so.<sup>46</sup>

#### **IV. Conclusion**

If adopted, these proposed reforms will go a long way to build equity in the Texas UI system and address the changing needs of today’s working families.

Fortunately, with the official unemployment rate declining over the past several years, Texas has been accumulating greater reserves in its UI trust fund to help finance an expansion of UI benefits. For example, from October 1995 to the second quarter of 1998, the trust fund balance has increased steadily by over 51% (from \$648,574,790 in 1995, to \$697,607,001 in 1996, to \$739,462,496 in 1997, to \$979,962,947 in the second quarter of 1998). While there are still serious concerns with the ability of the Texas trust fund to handle the demand for benefits in the event of an economic downturn, the trust fund will continue to build reserves well into the foreseeable future given the expected low levels of unemployment.

In addition, financing reforms could be enacted to improve the solvency of the trust fund. For example, Texas employers are taxed on only the first \$9,000 in wages paid to each employee, which is just \$2,000 higher than the federal minimum and lower than the “taxable wage base” of twenty-three other states. While the issue of UI financing reform is beyond the scope of this report, a range of other options are also available to improve the solvency of the state’s trust fund.<sup>47</sup> Given the favorable economic outlook for the state, the time is right to explore these financing options and enact long-overdue adjustments in the UI program.

#### **Endnotes**

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1. Planmatics, Summary of Findings on the Alternative Base Period, (Vol. I) (October 1997), at 3.
  2. Advisory Council on Unemployment Compensation, Collected Findings & Recommendations:

1994-1996. These concerns were also the focus of a recent U.S. Department of Labor (DOL) initiative. U.S. Department of Labor, “A Dialogue: Unemployment Insurance and Employment Service Programs” (1998) (hereinafter “Dialogue Paper”).

3. The reciprocity rates vary dramatically from state to state. In 1997, the state with the highest rate of unemployed workers recovering unemployment benefits was Rhode Island at 59.3%, while the lowest state was Virginia where only 19.2% of the unemployed received unemployment benefits. Dialogue Paper, at 13-14.

4. The Survey of Income Program Participation is an on-going longitudinal household survey conducted by the U.S. Bureau of the Census. Each panel year of data follows the same respondents over a period of two-and-one-half to three years and provides a rich source of detail about an individual's employment and income over time. The most recent data available is from the 1992 panel, which includes data on individuals followed from 1992 to early 1995. In contrast, the 1997 UI data referenced in this report are annual data collected by the U.S. Department of Labor, but do not include information as detailed as the SIPP concerning the characteristics of unemployed workers. Four panels of SIPP data were combined for the purposes of this report to generate the largest possible sample size for state-level analysis. The four panels include information from surveys conducted from 1988 to early 1995 and include unemployment spells recorded from 1989-1994 (to allow enough time to calculate earnings for a year-long base period for those unemployed in 1989, and to observe UI receipt into 1995 for those unemployed in 1994). This choice of years includes the experience of respondents in the national recession years of 1991-1992 and in boom years of the late 1980's and mid 1990's. As such, they accurately reflect average trends in unemployment data upon which current UI policy should be based to include the experiences of individuals in both the peaks and valleys of the business cycle.

5. The states that have adopted an ABP by legislation include: Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Washington and Vermont.

6. Texas Workforce Commission, Special Report for House Economic Development Committee (February 2, 1999), at 1.

7. Summary of Findings on the Alternative Base Period, at 16-17.

8. Special Report for House Economic Development Committee, at 2.

9. Tex. Code Ann., Unemployment Compensation Act § 207.045(a).

10. Id.

11. Tex. Code Ann., Unemployment Compensation Act § 207.045(d).

12. Amy Chasanov, “Clarifying Conditions for Nonmonetary Eligibility in the Unemployment Insurance System,” 29 U. Mich. J.L. Ref. 89, 123-128 (Fall 1995/Winter 1996).

13. Tex. Code Ann., Unemployment Compensation Act § 207.021(a)(4).

14. *Texas Employment Commission v. Hays*, 360 S.W.2d 525, 530 (1962) (despite availability for part-time jobs during after-school hours and clear prospects for part-time work, a student was held not “available” for work because the “real labor market for workers of respondent’s qualifications were full-time jobs.”); Appeal No. 378-CSUA-76 (claimant who was required to work part-time to care for her sick mother held ineligible for benefits because she was not available for full-time work); Appeal No. 4009-CSUA-76 (claimant who was willing to work six and one-half hours a day considered not available for full-time work).

15. Wayne Vroman, Labor Market Changes and Unemployment Insurance Benefit Availability (Urban Institute, January 1998), at 12-13.

16. For more information on recent state legislative activity, see National Employment Law Project, “Unemployment Insurance Legislative Highlights (1996-1998)” (October 1998). Following the ACUC’s lead, two states (Maine and New Hampshire) established commissions specifically charged with evaluating the effectiveness of their UI laws with regard to contingent and low-wage workers. In New Hampshire, a state where only one in five unemployed workers recovers unemployment benefits, comprehensive UI reforms were enacted into law. The legislation now protects domestic violence victims from the “voluntary quit” disqualification, implements an alternative base period, increases benefit levels by 16-20%, and exempts workers with permanent mental or physical disabilities from having to accept full-time work.

17. House Committee on Economic Development Committee, Texas House of Representatives, Interim Report on Unemployment Insurance (October 1998).

18. National Employment Law Project, Women, Low-Wage Workers and the Unemployment Compensation System: State Legislative Models for Change (October 1997); National Employment Law Project, Mending the Unemployment Compensation Safety Net for Contingent Workers (October 1997); Advisory Council on Unemployment Compensation, Collected Findings and Recommendations: 1994-1996; National Commission on Employment Policy, Institute for Women’s Policy Research, Unemployment Insurance: Barriers to Access for Women and Part-Time Workers (July 1995), at 41-46; Wayne Vroman, Stephen Woodbury, Increasing

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Unemployment Insurance Benefit Reciprocity (December 2, 1996, Draft), at 10-18.

19. Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, Coverage (February 1995), at 17 (“All states would use a movable base period in cases in which its use would qualify an Unemployment Insurance claimant to meet the state’s monetary eligibility requirements.”).

20. Planmatics, Inc. Summary of Findings on the Alternative Base Period (Vol. I), Impact of the Alternative Base Period on Administrative Costs (Vol. II), Impact of the Alternative Base Period on Employers (Vol. III), Impact of the Alternative Base Period on the Trust Fund (Vol. IV), Demographics Profile of Unemployment Insurance Recipients Under the Alternative Base Period (Vol. V), Handbook for Implementing the Alternative Base Period (Vol. VI) (October 1997).

21. Summary of Findings on the Alternative Base Period, at 3.

22. Demographic Profile of Unemployment Insurance Recipients Under the Alternative Base Period, at 4.

23. Id. at 4 (finding that in Washington, the average wage of ABP eligibles was 57% lower than those qualified under the regular base period, and 69% lower for ABP eligibles in New Jersey).

24. Texas Workforce Commission, Special Report for House Economic Development Committee (February 2, 1999), at 1.

25. Impact of the Alternative Base Period on the Trust Fund, at 108-109.

26. Wayne Vroman, Alternative Base Period in Unemployment Insurance: Final Report (Urban Institute, January 1995), at 2.

27. Special Report for House Economic Development Committee, at 1.

28. Summary of Findings on the Alternative Base Period, at 5. In California, for example, it was determined that the state would save \$41 million dollars in welfare benefits paid out to 121,000 workers who are awaiting unemployment benefits until their recent wages are eventually counted under the standard base period. Letter from Al Lee, Chief Deputy Director, California Health and Welfare Agency, to the Hon. Patrick Johnston, California State Senate (dated November 22, 1996).

29. The ACUC also concluded that: “As the country moves to reform its welfare system, attention must be given to the effects that welfare legislation may have on the Unemployment Insurance System.” Advisory Council on Unemployment Compensation, Unemployment

Insurance in the U.S.: Benefits, Financing, Coverage (1995), at 16. In Washington, the state's Employment Security Department has been tracking welfare recipients, their work experiences and their interactions with the UI system for the past several years. See "Comparison of General UI Population, TANF Recipients Who Applied for a UI Claim and Low UI Entitlement Claimants" (unpublished data for the period July 1997 to August 1998 provided by Judy Johnson, State of Washington, Employment Security Department, Unemployment Insurance Policy Unit). Significantly, the state found that 19.3% of participants in the Temporary Assistance for Needy Families (TANF) program used the ABP to qualify for UI. It is fair to assume that these same working families who now qualify for UI no longer have to rely on the state treasury for public assistance or use up their time limited welfare benefits.

30. Testimony Before the Human Resources Subcommittee, United States House Ways and Means Committee, by the Honorable Loleta A. Didrickson, Comptroller of the State of Illinois (July 11, 1996) (in contrast to the far more modest actual costs later documented in the U.S. Department of Labor report for the six states studied, this testimony estimated start-up and on-going costs to run at least \$14 million).

31. Special Report for House Economic Development Committee, at 3.

32. Summary of Findings on the Alternative Base Period, at 6-7.

33. This recommendation is consistent with the position of the ACUC and others have also suggested a shift to hours worked as the basis for measuring labor force attachment to benefit low-wage workers. ACUC, at 19-20; Vroman, Woodbury, Increasing Unemployment Insurance Benefit Reciprocity (December 2, 1996, Draft), at 6.

34. Diana Pearce, "Toil and Trouble: Women and Unemployment Compensation," 10 Journal of Women in Culture and Society 439, 443 (1985); Martin Malin, "Unemployment Compensation in a Time of Increasing Work-Family Conflicts," 20 U.Mich.J.L.Ref. 131 (1996).

35. U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 33-75 (December 8, 1975).

36. National Employment Law Project, Women, Low-Wage Workers and the Unemployment Compensation System: State Legislative Models for Change (October 1997), at 15.

37. For example, former California Governor Pete Wilson recently signed legislation that extends UI benefits to domestic violence victims in selected circumstances. North Carolina and New Hampshire also recently enacted similar legislation. A report prepared for the North Carolina Legislature included cost estimates for the legislation, finding that the costs to the trust

fund of paying UI benefits to domestic violence victims were expected to be quite low. Terry Sanford Institute of Public Policy (Duke University), Domestic Violence and Unemployment Insurance in North Carolina (Report Prepared for the Employment Security Commission of North Carolina, May 1998).

38. ACUC 1996 Report, Recommendation #8, at 12-13.

39. National Commission on Unemployment Compensation, Unemployment Compensation: Final Report (1980), at 49 (“there should be no disqualification in the case of voluntary quit for ‘good cause’, including sexual harassment and compelling family circumstances.”).

40. National Commission on Employment Policy, Institute for Women’s Policy Research, Unemployment Insurance: Barriers to Access for Women and Part-Time Workers (July 1995), at 41-46.

41. Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, Coverage (February 1995), at 119-120.

42. See, e.g., Cal. Code Regs. tit. 22, Section 1253(c)-1(b).

43. ACUC 1995 Report, Recommendation #20 at 18; National Commission on Employment Policy, Institute for Women’s Policy Research, Unemployment Insurance: Barriers to Access for Women and Part-Time Workers (July 1995), at 41-46; Wayne Vroman, Stephen Woodbury, Increasing Unemployment Insurance Benefit Reciprocity (December 2, 1996, Draft), at 10-18.

44. Special Report for House Economic Development Committee, at 10.

45. Id.

46. Id. at 1.

47. For a discussion of financing reforms adopted in other states, see Wayne Vroman, Topics in Unemployment Insurance Financing (W.E. Upjohn Institute for Employment Research, 1998).