

# NELP

**National  
Employment  
Law  
Project**

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## **Between a Rock and a Hard Place:**

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### **Confronting the Failure of State Unemployment Insurance Systems to Serve Women and Working Families**

**July 2003**

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## ABOUT THIS REPORT

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### **National Employment Law Project**

NELP is a non-profit policy and legal organization based in New York City. NELP has advocated on behalf of low-wage and unemployed workers for over 30 years, and is particularly concerned with assisting these workers in overcoming barriers to employment and government systems of support. For further information about NELP, visit our website at [www.nelp.org](http://www.nelp.org) or contact our Communications Director, Sarah Massey, at (212) 285-3025, ext. 109.

NELP's Unemployment Insurance Safety Net Project supports expanding state unemployment insurance reform efforts, especially those directed at expanding UI eligibility for low-wage, women, and part-time workers. To carry out this work, NELP provides technical assistance and advice to legislators and their staff, advocates, unions, and other policy makers involved in state-level unemployment insurance (UI) reform efforts, and monitors federal UI legislative and administrative developments. For copies of other reports and materials on unemployment insurance and related NELP projects, visit our website's publications page at [www.nelp.org](http://www.nelp.org).

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## EXECUTIVE SUMMARY

The unemployment insurance system—which serves as the first line of defense for millions of workers and their families when they lose their jobs—fails to meet the needs of American women. A survey of state unemployment insurance (UI) programs shows a tremendous "gender gap" in qualification standards for UI benefits. In 41 states, men are more likely to receive unemployment insurance benefits than are women. In some states, men receive UI at a rate as much as 20 percent higher than women. Critically, among workers who quit their jobs, women are 32 percent less likely to qualify for UI benefits than men.

The problems are structural: unemployment insurance programs are based on an outdated "male breadwinner" model that has little relevance to today's workforce in which 60 percent of women work outside the home. Changes adopted since the early years of UI have exacerbated the problems originally built by the male breadwinner model. Specifically, by eliminating options to leave work for reasons not directly related to work and increasing disqualification penalties, states have made it more difficult for women to qualify for UI. For example:

- ❑ **30 states lack adequate provisions that recognize family reasons as "good cause" to leave a job.** "Good cause" is defined as leaving a job because of personal factors such as illness or pregnancy, care of a family member, domestic violence, sexual harassment, or following a spouse who relocates. In most states, these reasons disqualify the worker from receiving UI benefits. Such restrictive policies disproportionately affect women since they more likely to leave their jobs due to domestic responsibilities.
- ❑ **43 states do not pay UI benefits to part-time workers under the same rules that apply to full-time workers.** Part-time work is a significant means through which women adjust work schedules to accommodate or avoid work/family conflicts. State rules regarding part-time work should be more consistent with the reality that working women are full participants in the labor force.
- ❑ **46 states lack temporary disability insurance (TDI) programs that pay benefits, generally via the unemployment insurance system, to workers who are unable to work because of their own disability.** TDI programs offer partial wage replacement to workers who are temporarily unable to work because of illness or disability, usually including illnesses and disabilities relating to pregnancy. They fill in the gaps left by systems that offer unpaid leave or payment based only on availability for work, and they keep workers attached to the labor force.

In addition, the report finds:

- ❑ **Only 15 states have specific provisions to allow individuals who must quit work because of illness, disability, or care for a sick family member to be covered by UI.** Sixty-five percent of mothers with children under the age of six and 78 percent of mothers of children age six to 13 work outside the home. Since women are more likely to leave their job to be primary providers when family members are ill or need child care, women are disproportionately affected.
- ❑ **Only 13 states have specific provisions that allow a woman to quit her job because of sexual or other personal harassment and receive UI benefits.** Almost half of all women will

suffer sexual harassment at least once in their work life. Of these, nine percent will quit a job to avoid harassment, with as little as 20 percent filing a formal complaint regarding the harassment. Women who leave their jobs under these circumstances should be covered by the UI system.

- ❑ **Twenty-four states now have specific provisions that allow women who quit their jobs due to domestic violence to qualify for UI.** Of women who are victims of domestic violence, studies show that abuse follows women to work in three-quarters of the cases. When a woman is forced to leave a job for reasons of abuse, she should have access to UI benefits.
- ❑ **Only 14 states provide extra UI benefits to dependents of the unemployed.** In most states, UI benefits are set according to a formula based on a fraction of the worker's prior earnings with no consideration of the number of dependents supported by the worker. In twelve states, an additional stipend is paid for dependents, in order to help families meet their basic needs.

States should adopt policies that close the "gender gap" in their UI systems. Because the states operate their own UI systems with little oversight by the federal government, they are also free to address these issues in state legislation. States can provide for general rules that "personal compelling" reasons justify an individual leaving his or her job. Or they can enact general rules relating to domestic circumstances. Finally, they can enact specific statutes that provide that it is "good cause" to leave a job due to child care conflicts, care-giving responsibilities, illness, sexual harassment and domestic violence. These are essential steps towards restoring gender and family balance to the UI system.

## SUMMARY OF RECOMMENDATIONS

General “Good Cause” rules: State laws should include broad language that recognizes individual circumstances as good cause for leaving employment. The language in the Pennsylvania statute, which provides that no disqualification will result if the separation is caused by events of a “necessitous and compelling nature,” provides an appropriate and flexible model.

Quits “Attributable to the Employer:” States should also acknowledge that when a claimant leaves her job due to unilateral changes in conditions of employment that create undue family hardship, she has done so with good cause. The model voluntary leaving provision addressing this issue can be found in Connecticut.

Carving out Particular “Good Cause” rules: Creating exceptions addressing specific issues, such as separations due to marital obligations or domestic violence, will reduce arbitrary disqualifications that disproportionately impact women and low-wage workers. In California, for example, the voluntary separation statute does not require that the reason for leaving work be attributable to the employer. The statute and accompanying regulations provide guidance on how numerous individual circumstances that often lead to job separation should be handled in eligibility determinations.

Quitting a job when a spouse relocates: States should repeal provisions that affirmatively disqualify individuals who terminate employment to accompany a spouse to a new location or to marry. State law should dictate that individuals who quit to accompany a spouse or partner, to marry, or to preserve family unity, will not be disqualified based on a “voluntary” separation determination. California provides a good model statute for states to adopt.

Child Care: States should enact statutes that provide that it is good cause to leave a job when child care becomes unavailable. California and Arizona have model regulations on this point. States should enact provisions that a worker who cannot be available for work at particular times of the day due to child care conflicts is nonetheless eligible for UI. North Carolina has enacted a statute that can serve as a model.

Illness of self or family member: State law should include an exception from disqualification if the separation from employment is due to temporary illness of a worker or of a family member (which need not be caused or aggravated by work), that renders the individual physically unable to perform her job. Maine and Illinois have such provisions.

States should also provide that a worker has good cause to terminate employment if the employer refuses to grant a worker the leave to which she is entitled under FMLA. States should suspend the base period during the time that leave is used so that an individual is not penalized, in terms of required labor force attachment, because she is physically unable to work or must care for an ill family member.

Pregnancy: State law should provide that an individual who is temporarily unable to perform her job due to pregnancy, will not be denied benefits based on a “voluntary” separation, and that pregnancy will be treated equally with illness or disability in terms of “availability” determinations. Mississippi provides a good model

for “good cause” provisions, and DC and Utah have good availability provisions. State laws or regulations that discriminate against pregnancy, like those in Alabama and Arizona, should be repealed.

Domestic Violence: States should enact broad domestic violence UI laws, covering a range of issues of violence against women in the workplace, and include special provisions acknowledging a victim’s attempts to find work must accommodate her need to address the effects of violence on herself and her family. Massachusetts and Washington provide the best examples.

Sexual Harassment: State law should specifically provide that sexual harassment constitutes good cause for a woman to quit her job voluntarily, consistent with the standards that apply under State or Federal sexual harassment laws. Massachusetts law, for example, provides that an individual shall not be disqualified from receiving benefits if it is established that the reason for leaving work is due to sexual harassment “where the employer, its supervisory personnel or agents knew or should have known of such harassment.” The statute also includes a comprehensive definition of the term “sexual harassment.” California and Utah regulations also provide good models.

Part time work: Part-time workers should not be categorically denied benefits, but should receive UI benefits so long as they remain available for a reasonable number of jobs despite any restrictions on their availability. California provides a good model because its statute permits workers with a past history of part-time work to get UI benefits while its rules state that jobless workers with good cause for restricting their availability remain eligible for UI.

Temporary Disability Programs: States should consider enacting temporary disability (TDI) provisions that would cover individuals who are attached to the labor market, but who are temporarily unable to work because of their own disability.

In addition, TDI provisions can be a source for paid family leave, as has been very recently enacted in California.



## INTRODUCTION: A Frayed Unemployment Insurance Safety Net for Working Women

Women participate in paid work to a greater extent than ever before in the United States, but women receive unemployment insurance (UI) benefits at a rate considerably lower than men. This skewed reciprocity rate reflects that many state UI laws do not view the primary reasons that women stop or cut back on work as “involuntary” or justified by “good cause.” For example, increased female participation in the formal labor market has not been matched by a reduction in working women's domestic responsibilities. Many women, and similarly situated men, are forced to either cut their work hours or to quit their jobs in order to fulfill their family responsibilities. Yet many state UI laws disfavor these workers. This report explores how state disqualification provisions disadvantage working parents who need to reduce or stop working as the result of their family responsibilities, to protect themselves from sexual harassment or domestic violence, or to seek part-time work. The report also features recommended state UI rules that better accommodate the everyday realities of working women and their families.

While this report focuses on the experiences of women workers, it is important to note that family friendly UI policies are important to the entire workforce. One out of four workers has significant elder care responsibilities in each calendar year, with a third of these workers losing work time because of this conflict.<sup>1</sup> Moreover, as women have increased their role in the workplace, men have increased their role in the domestic sphere, and are taking on more responsibility for child and elder care. A 2000 U.S. Department of Labor study found that close to 24 million workers had taken family or medical leave. Half of these took leave for reasons other than their own health during an 18-month period in 1999-2000.<sup>2</sup>

Unemployment insurance is a federal-state program. In large measure, states decide the eligibility and disqualification criteria that apply in their jurisdictions. These UI rules, both in their genesis and their evolution, give insufficient consideration to the needs of working families and, in particular, the needs of women who are forced to leave work for reasons beyond their effective control.

State courts interpret state UI laws and regulations pertaining to eligibility. Four state court decisions illustrate the dilemmas that are investigated more thoroughly in this report.

*A Utah Court finds that a young woman's decision to quit her job and follow her husband to his new home and school in California is, “though commendable,” not a good enough reason to qualify her for unemployment compensation.<sup>3</sup>*

*In Arizona, state regulations provide that a pregnant woman is presumed to be unable to work during the eight weeks prior to delivery and the six weeks following delivery; she is therefore presumptively ineligible for unemployment compensation if she loses her job.<sup>4</sup>*

*A lower court in Oregon finds that a single parent who quit his job as a truck driver because the substantial overtime made it hard for him to care for his two children did not have “good cause” to quit work. A pediatrician testified that the children suffered emotional adjustment issues after a lengthy custody battle, and that they needed extra time and attention from their father. The Oregon Supreme Court reverses the decision.<sup>5</sup>*

*An Idaho court examines a claim that a woman quit her job because she had been sexually harassed by a coworker. Despite her own testimony, and that of other witnesses, that a*

*male colleague had touched them inappropriately and even regularly fondled himself in front of them, the court concluded that she did not have "good cause" for quitting.<sup>6</sup>*

Fortunately, states have begun to address these situations by modifying UI rules to permit payment of UI benefits in these and similar cases. By increasing scrutiny of these common injustices and furnishing examples of how they can be addressed, this report encourages the spread of family-friendly UI policies.

## **I. IN THE BEGINNING: THE MALE BREADWINNER MODEL**

Unemployment insurance was first established in the United States in 1935 with the passage of the Social Security Act, a major political response to the mass unemployment of the Great Depression. A system was established whereby states that passed UI laws meeting basic federal requirements were allowed a credit against an otherwise-imposed federal payroll excise tax. As a result, state UI laws today follow general federal guidelines.

From its earliest days, our nation's UI program was based upon the "male breadwinner" ideal, reflecting a model household that consisted of a male supporting his family with full time, paid work and a female spouse performing the unpaid, domestic work and child rearing duties. Isaac Rubinow, a principal "founding father" of UI, explicitly stated the terms of this model in his 1934 book, *Quest for Security*, focusing his main concern upon families with "[a] father who works. A mother who tends house. Children who look to mother for care and to father for support."<sup>7</sup>

Based upon this male breadwinner model, UI rules at their genesis assumed that workers held and should seek full-time work and not have to worry about accommodating paid work demands with domestic responsibilities like housework, child rearing, or caring for elderly parents. As a result, early UI eligibility rules did not generally permit part-time work, limits on availability due to child care obligations, and other common responses to work-family conflicts.

Several decades later, seven million families have a mother who works, tends house and cares for her children as a single head of her household. Another one and a half million men are single fathers with children in their households. And millions more families have two working spouses who strive to balance work and family responsibilities.<sup>8</sup> Yet, because UI rules were based on the assumption that men would be the primary, if not sole, income earner, they disadvantage both male and female workers who have living or working arrangements that do not conform to these traditional roles. These include working single parents, part-time workers, workers who are pregnant or have recently given birth, and workers in many two-parent families facing common work-family conflicts.<sup>9</sup> Addressing the myriad ways that UI eligibility and disqualification rules disadvantage workers whose lives do not conform to the ideal male breadwinner model underlying UI is a principal aim of this report.

## **II. FROM BAD TO WORSE: STATES GET TOUGHER**

States initially adopted state UI laws based upon models provided by the federal government. While these laws differed in their particulars, all included roughly similar eligibility and disqualification provisions. In brief, to establish UI eligibility workers must demonstrate that they have sufficient attachment to the labor market and are available for suitable work. Workers generally show this by meeting states' monetary earnings or hours of work requirements as well as demonstrating that they are available for suitable work.

Workers can be disqualified when separations from employment are deemed "voluntary," chiefly when they are fired for misconduct, quit their jobs without good cause, or refuse suitable work without good cause.<sup>10</sup>

Although early state UI laws reflected the male breadwinner model, many had more favorable rules with respect to work-family conflicts than they do today. This is especially true with respect to voluntary quit disqualifications. Voluntary quit disqualifications are now imposed in many situations that were not disqualifying in the early days of the program. The penalties imposed for disqualifications are much stricter than those imposed in the early days of UI. In order to explain this shift toward more stringent rules, we must examine the concept of "good cause" in greater detail and discuss the range of penalties imposed for disqualifications.

Workers leaving their jobs for reasons amounting to "good cause" are not disqualified, since their unemployment is not properly viewed as voluntary in such situations. In all but seven states in 1940, "good cause" included valid personal reasons that would compel a similarly situated "reasonable person" to leave their job. In other words, 41 of 48 states permitted workers to leave jobs for so-called "personal causes" without disqualification.<sup>11</sup> However, states soon started adopting statutory language that restricted the types of good cause to reasons "attributable to the employment." As a result, leaving employment because of child care responsibilities, or to accompany a relocating spouse or similar personal causes were no longer viewed as valid "good cause" permitting payment of benefits.

By 1948, 16 states had adopted language that restricted good cause to work-related reasons. The number of states restricting good cause grew to 26 by 1971 and to 37 by 1990, although some of these states added narrower exceptions that partially restored specific personal reasons for good cause for leaving work.<sup>12</sup> Today, about 20 states have statutes that do not restrict the reasons for good cause.<sup>13</sup> However, because court decisions have narrowed eligibility in many states, only 15 have true unrestricted "good cause" provisions.

In addition to restricting the reasons that can constitute good cause legally excusing a quit, states have dramatically increased the severity of disqualifications imposed under their voluntary leaving provisions. In the early days of UI, most states used a "denial period" as a penalty for quits and other separation-related disqualifications. In other words, if a worker quit her job without good cause, or for reasons deemed personal in those states requiring work-related good cause, then the worker was denied benefits for a fixed period of weeks. If the worker remained unemployed and otherwise eligible for UI benefits, he or she would draw benefits at the end of the denial period. Denial periods for quits ranged from one to five weeks in 11 states, and between five and nine weeks in all but two of the remaining original 48 state UI laws.<sup>14</sup>

States have shifted from denial periods to "durational disqualifications" over the years. These penalties effectively deny benefits for the entire spell of unemployment, rather than simply delaying payments as with a denial period. Under a durational disqualification penalty, a jobless worker must find new work and earn a specified amount of wages in a specified number of weeks, for example, seven times the weekly benefit amount for seven weeks. As a consequence, the worker is denied benefits for the duration of his or her current spell of unemployment, since he or she must find a new job, earn the specified wages in the required number of weeks, and be separated from that job for non-disqualifying reasons in order to purge the disqualification and receive UI benefits. In 1948, 11 states had durational disqualifications for voluntary leaving, a number that increased to 28 states in 1971 and 50 states by 1990. As a result of the spread of durational disqualifications, the penalties for quits are considerably sterner than those found in the earliest days of UI programs.

The combination of the male breadwinner model, the spread of statutes restricting consideration of good cause to work-related reasons, and the adoption of durational disqualification penalties translates to the denial of UI benefits for many individuals separated from work for compelling domestic reasons. In this paper, we survey state UI eligibility rules that impact working families, particularly female workers. Our survey shows that while a majority of states have outdated UI rules that disadvantage unemployed female workers, a significant minority has adopted more favorable practices. This paper will outline both types of state UI rules in an effort to expose outdated provisions to scrutiny while promoting the adoption of more favorable policies in other states. Included in Appendix A are model statutes; Appendix B includes all-state charts that show how each state measures up.

## **PART ONE. OVERVIEW: Today's Labor Market Meets Yesterday's Unemployment Insurance Rules**

As a result of the outdated framework upon which UI law is based, working families' access to UI has been significantly curtailed. In particular, in a majority of states, UI laws exclude workers from UI benefits if they leave their jobs to care for a newborn or sick child or elderly parent, move to accompany a spouse to a new location, or work part-time.

Many of these disqualifying provisions have been the subject of scrutiny dating back to 1975, when in response to the declaration of the International Women's Year, the Ford Administration pledged to "support and strengthen laws prohibiting discrimination based on sex" in relation to the nation's unemployment laws. The U.S. Department of Labor issued a directive at the time urging states to "change by legislation the legal inequities between the sexes," including the repeal of discriminatory unemployment compensation provisions, such as those that disqualify women due to pregnancy or based on domestic or marital obligations.<sup>15</sup>

### **I. WOMEN AND THE WORKFORCE**

The normative model of male wage and salary work and unpaid female domestic work is no longer valid. The percentage of adult women participating in the labor force (labor force participation rate) was twenty percent in the 1930s. By the 1970s, this rate had doubled to 40 percent and now has tripled, reaching 60 percent in 2001.<sup>16</sup> From 1970 to 1990, the number of women in the labor force doubled, growing from 31 million in 1970 to 66 million in 1990.

**This growing participation accounts for a large portion of overall growth in the American labor force, with women now representing 46 percent of the workforce, a gender balance that was unthinkable just 40 years ago.<sup>17</sup>**

A major reason for this increase is that child-bearing and wage and salary work are no longer considered incompatible: 65 percent of mothers with children under the age of six, and 78 percent of women with children age six to 13, are in the labor force.<sup>18</sup> Social forces pushing women into work have clearly become a cross-class phenomenon as welfare reform has pushed substantial numbers of low-income mothers into the labor force. Women now represent a majority of low-income workers.<sup>19</sup>

Despite the increasing numbers of women working outside the home, working women are socially expected to bear the burden of family responsibility, and still do.<sup>20</sup> Mothers spend 3.1 hours of each work day on chores, compared to 2.2 hours for fathers.<sup>21</sup> Moreover, low-income women appear to bear a higher burden of housework, partly because they are unable to afford replacing their labor.<sup>22</sup> In the area of family care, mothers spend 3.2 hours per day on workdays on child-rearing (8.3 hours/day on non workdays), one hour more a day than fathers. In fact, research indicates that working women in dual earning families are quite likely to be a major source of child care: indicating "the lengths to which some employed parents go to address primary child care needs within their immediate families by adjusting their work schedules."<sup>23</sup> Such workers are particularly vulnerable to shift changes that upset a carefully crafted work-family balance. Disruptions in child care and other elements of work-family conflict push women into unemployment at a

much higher rate than men: one study of workers in Texas found that three times as many women as men report leaving work for reasons associated with domestic circumstances.<sup>24</sup>

One way many women are able to accommodate both outside employment and domestic responsibilities is to work part-time. One out of every four female workers work part-time (less than 35 hours a week), compared to only one out of every 10 male workers.<sup>25</sup>

**More critically, seven million women are working part-time during their peak earnings years (ages 25-44) when the wage replacement function of UI is most critical to family well being, compared to only 1.8 million men.**

It is important to note that these women are firmly attached to the labor market and provide crucial income to their families. The growing numbers of women in the workforce—and the relatively high concentration of these workers in part-time work—make the issues described in this paper of growing salience to the future effectiveness of the UI system as a whole.

## **II. WOMEN AND UI RECIPIENCY**

The data confirm that there is indeed cause for concern relating to women and UI reciprocity. Women receive unemployment insurance at a lower rate than men. As measured by percent of unemployed workers who receive UI benefits (the IU/TU ratio), 2001 male UI reciprocity was 46.9 percent and women's reciprocity was 40.0 percent.<sup>26</sup> It is worth noting that there is great variability when we look at state data, in terms of gender differences in UI reciprocity. The gender gap in UI reciprocity is as large as 24.8 percent in North Dakota, and as high as 10 percent in large states like Illinois, Michigan and Washington. Overall, women have lower UI reciprocity rates in 41 states.<sup>27</sup> On the other hand, women receive UI at higher rates than men in nine states.

There are several factors that help explain why women receive UI at lower rates than men. First, women are concentrated in industries with low UI reciprocity – half of non-agriculturally employed women work in the service industry, which has a UI reciprocity rate of under 15 percent.<sup>28</sup> They are also under-represented in industries with higher UI reciprocity, such as construction and manufacturing. Second, union representation is associated with higher UI reciprocity: an area where women (13.1 percent) still trail men (16.5 percent).<sup>29</sup>

Third, gender plays a significant role in the cause of unemployment. As illustrated in the table below, laid off men and women apply for and receive UI benefits at similar rates. However, the gender gap is quite different for job leavers – workers who initiate their separation of unemployment. One 1993 study showed that 21.9 percent of male job leavers receive UI benefits compared to only 14.9 percent of female job leavers.<sup>30</sup>

**In other words, adult women who quit their jobs have a 32 percent lower probability of receiving UI than do adult men.**

This is important context for the remainder of this paper, which focuses on a variety of factors where women may have to show “good cause” for quitting their jobs. The failure of the ‘male breadwinner model’

to accommodate the experiences of claimants (such as leaving work because of child care conflicts, sexual harassment or domestic violence) may explain a significant part of the gender gap in reciprocity.

**Table 1: Unemployment Insurance Reciprocity by Gender and Reason for Unemployment Among Adults (ages 25 and older)**

	<b>Job Losers (Lay Offs)</b>	<b>Job Leavers (Quits)</b>
Men	55.6 %	21.9 %
Women	53.9 %	14.9 %
<b>Female Disadvantage<sup>31</sup></b>	<b>3.0 %</b>	<b>31.9 %</b>

Source: (Authors' recalculation of data from Wander and Stettner, 2000)

## **PART TWO. The State of the Law on Unemployment Insurance and Family Responsibilities: Today's Working Families Choose Family and Lose Unemployment Insurance Benefits**

### **I. GOOD CAUSE BASICS**

**Recommendation:** State laws should include broad language that recognizes individual circumstances as good cause for leaving employment. The language in the Pennsylvania statute, which provides that no disqualification will result if the separation is caused by events of a “necessitous and compelling nature,” provides an appropriate and flexible model.

States should also acknowledge that good cause exists when a claimant leaves her job due to unilateral changes in conditions of employment that create undue family hardship. The model provision addressing this issue can be found in Connecticut.

In addition, creating exceptions addressing specific issues, such as separations due to marital obligations or domestic violence, will reduce arbitrary disqualifications that disproportionately impact women and low-wage workers. In California, for example, the voluntary separation statute does not require that the reason for leaving work be attributable to the employer. The statute and accompanying regulations, however, specifically identify numerous compelling individual circumstances that often lead to job separation, providing guidance on how these issues should be handled in eligibility determinations.

The law of voluntary quitting disqualifications is critical in expanding eligibility for working parents forced to leave work due to family responsibilities. While leaving work “voluntarily” often leads to disqualification, that is by no means a uniform result. In all states, those who leave work with “good cause” related to work are not disqualified. Nationally, about 22 percent of males unemployed and classified by the Bureau of Labor Statistics as “job leavers” receive UI benefits, while only 15 percent of female job leavers get UI benefits. At least one significant reason for this gap in UI reciprocity, in our view, is that women disproportionately must choose between work and family obligations and many states treat these separations harshly under their voluntary leaving disqualification provisions.

States vary considerably as to whether “good cause” excusing a job separation must be related to work, or whether family obligations or other compelling personal reasons are sufficient reasons to excuse a quit. In addition, a number of states restricting “good cause” to those reasons related to employment have adopted specific provisions permitting quits for “personal emergencies” or “undue family hardships.”

The law of voluntary leaving disqualifications involves three main elements. First, the separation from work should be “voluntary.” In one case, a Michigan Supreme Court justice said that the term voluntary “must connote a decision based upon a choice between alternatives which ordinary men (sic) would find reasonable—not mere acquiescence to a result imposed by physical and economic facts utterly beyond the individual's control.”<sup>32</sup> The concept of choice in many work-family contexts is problematic. While a mother has a “choice” not to care for a sick child or to not relocate to accompany her spouse and family to a new location, there are severe social and economic costs associated with those “choices.” Despite this reality,



UI agencies and courts have generally not had difficulty viewing many of the decisions made by workers to leave work in response to work-family conflicts as "voluntary" or "personal."<sup>33</sup>

The second element of a voluntary leaving disqualification under UI law is "good cause." In an early leading case, a Pennsylvania court stated that good cause must be ". . . such a cause as would reasonably motivate in a similar situation the average able-bodied and qualified worker to give up his [or her] employment with its certain wage rewards in order to enter the ranks of the 'compensated unemployed.'"<sup>34</sup> In Oregon, state rules define good cause as a cause ". . . such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work."<sup>35</sup> This, or a similar "reasonable person" standard, is commonly employed when applying the good cause language to everyday UI claims.

The third, and often-decisive, element of voluntary quit law is whether a state statute or the courts have limited the permissible reasons for good cause to those that are connected to work or attributable to employers. In the absence of this sort of restrictive language, many workers leaving work due to conflicting family responsibilities will get UI benefits. As the early Pennsylvania decision found, ". . . if a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause, and under the act he is entitled to benefits. The pressure of necessity, or legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment."<sup>36</sup>

The importance of statutory language regarding the reasons for good cause can be illustrated by cases involving quits for compelling personal reasons. For example, under a Kentucky statute that did not restrict the consideration of good cause for leaving a job to work-related reasons, a woman who quit work to care for her terminally ill spouse was held not disqualified.<sup>37</sup> In contrast, a woman whose spouse was seriously injured in an accident was disqualified in Michigan, where the statute requires good cause related to her employment and she quit work to care for him.<sup>38</sup> While both courts recognized the compelling nature of the reasons for quitting, only the Kentucky claimant was in a position to draw UI benefits.

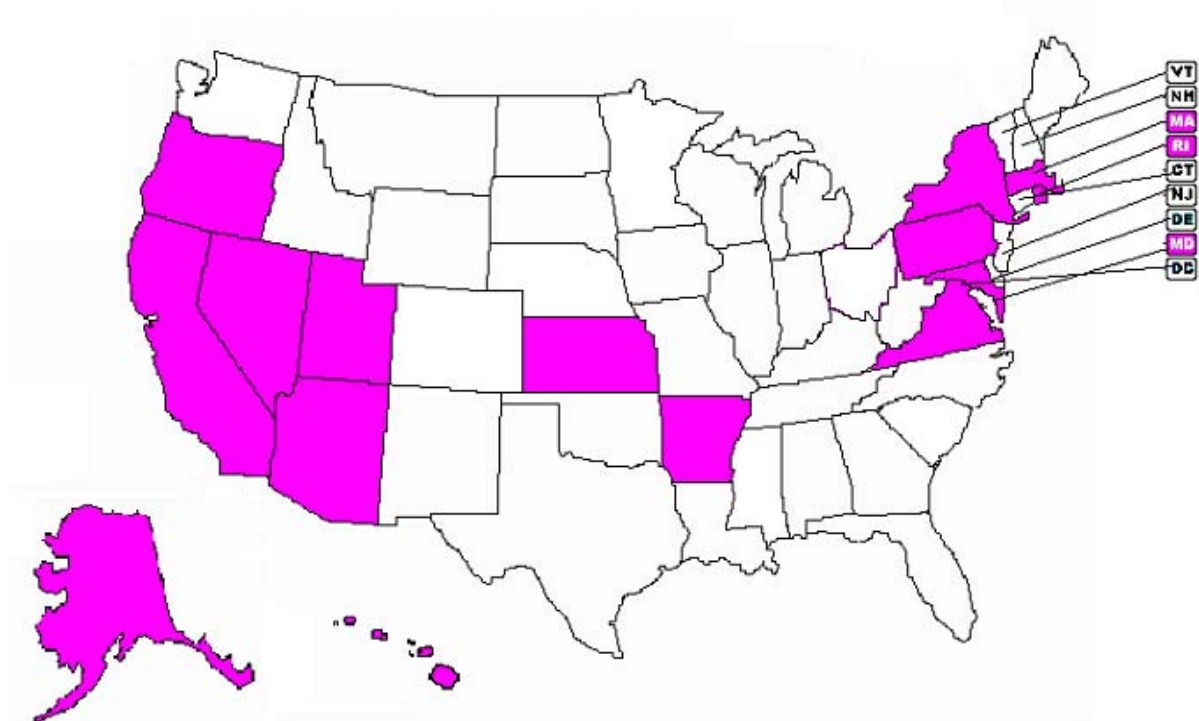
While broad statutory language is no guarantee (because courts or agencies sometimes impose limitations not grounded in statutory language),<sup>39</sup> the repeal of any statutes or rules limiting the reasons for good cause to those arising from employment is a key step toward making UI laws more family friendly. Certainly, the reversal of the restrictive approach to good cause for voluntary leaving needs to be recognized, along with other measures such as part-time UI, as a significant part of the puzzle in bringing UI programs more closely into alignment with the realities of working families' lives.

According to NELP's survey of state laws, 15 states have favorable general policies with respect to job separations caused by work-family conflict.<sup>40</sup> The following seven states have unrestricted good cause, i.e., no work-related requirement that should permit compelling personal or domestic circumstances to excuse a quit: Alaska, Hawaii, Nevada, Oregon, New York, Rhode Island, and Virginia. Statutes in eight additional states recognize domestic responsibilities as valid reasons for leaving work. These states are Arizona, Arkansas, California, Kansas, Maryland, Massachusetts, Pennsylvania, and Utah. For example, Kansas law permits benefits in cases involving quits due to "a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification."<sup>41</sup> Either type of provision, when interpreted correctly by the courts, should address quits due to work-family conflicts.<sup>42</sup>

The variety of family circumstances makes for a range of options in addressing them legislatively. Creating exceptions addressing specific issues, such as separations due to marital obligations or domestic violence, will clarify the issues and ultimately reduce arbitrary disqualifications that disproportionately impact women and low-wage workers. In California, for example, the voluntary separation statute does not require that the reason for leaving work be attributable to the employer. The statute and accompanying regulations specifically identify numerous compelling individual circumstances that often lead to job separation, providing guidance on how these issues should be handled in eligibility determinations. Appendix A of this report contains samples of current UI rules from California, Kansas, and Pennsylvania. Appendix B, Chart 1 contains an all-states chart of state law provisions on particular good cause issues.

### **MAP 1: U.I. BEST PRACTICES-DOMESTIC NEEDS**

States that view domestic or family obligations as “compelling personal circumstances” for quitting a job.



## II. KEEPING THE FAMILY TOGETHER: QUITTING A JOB TO FOLLOW A SPOUSE WHO RELOCATES

**Recommendation: States should repeal provisions that affirmatively disqualify individuals who terminate employment to accompany a spouse to a new location or to marry. State law should dictate that individuals who quit to accompany a spouse or partner, to marry, or to preserve family unity, will not be disqualified for voluntarily leaving work.**

Ours is a mobile society. When a spouse or partner gets a new job or is transferred to a new location and both the moving party and the non-moving party work, the non-moving individual must decide whether or not to quit his or her job to accompany the moving party to the new location. In order to keep the family unit intact and to avoid the economic, social, and emotional costs that accompany establishing two separate households, many of the non-moving individuals (sometimes termed "trailing spouses") quit work. In other cases, individuals must quit work to move in order to care for partners, sick parents or other significant persons.

Most states with broad good cause measures should pay UI benefits in quits for domestic or familial circumstances. However, the restriction of acceptable good cause reasons to those that are work related is problematic for these quits. For example, Massachusetts defines "good cause" to include reasons for leaving work that are "urgent, compelling, and necessitous."<sup>43</sup> Under this broad statutory rule for good cause, unrestricted to reasons related to work, the Massachusetts Supreme Judicial Court held, in a case called *Reep v. Commissioner*, that an individual leaving her work to accompany her non-marital partner was not subject to disqualification.<sup>44</sup> However, but the statute was subsequently amended to provide for a disqualification for leaving " . . . to accompany or join one's spouse or another person at a new locality."<sup>45</sup>

These so-called "quits to accompany a spouse" have created a significant number of other statutory amendments and reported cases.<sup>46</sup> A few states have addressed the issue favorably, providing that a quit to move with or follow a spouse is not disqualifying. For example, Maine amended its law to provide that a voluntary quit is with good cause if the leaving " . . . was necessary for the claimant to accompany, follow, or join his (sic) spouse in a new place of residence."<sup>47</sup> Indiana furnishes another positive example. Its law generally requires that good cause be "in connection with the work" but also states that an individual who moves " . . . to another labor market to join a spouse who had moved to that labor market" is not disqualified.<sup>48</sup>

Although positive, both the Maine and Indiana laws fail to recognize the large numbers of workers compelled to move to accompany a partner, despite the legal prohibition or absence of a marital relationship. Thus far, California is the only state that covers individuals who follow a domestic partner to another location. Working adult children also leave work to move with parents whom they still live with, or to return home to care for aging parents. Ideally, these sorts of familial obligations can be addressed in addition to the more traditionally contested "quits to accompany a spouse."

Several states have statutes that single out quits to accompany a spouse as disqualifying workers from benefits. Mississippi furnishes an example of a state with broad good cause language that is not otherwise limited to reasons related to work, but containing restrictive language that " . . . marital, filial, and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection."<sup>49</sup>

Colorado law requires a denial of benefits if the employee quits employment "to move to another area as a matter of personal preference or to maintain contiguity with another person or persons, unless such move was for health reasons. . . ."50

Our survey found 10 states that provide for "good cause" for a spouse who relocates.<sup>51</sup> At least one additional state, Pennsylvania, reports good cause law on this point. In most general "good cause" states noted in Map 1, relocation of a spouse will be good cause. However, Maryland, Massachusetts, Utah and Virginia, all general "good cause" states, each provide that relocation to accompany a spouse is NOT good cause.<sup>52</sup> The State of North Carolina took a step forward in 2003 with enactment of a provision that reduces the disqualification for leaving work to accompany a relocating spouse from five weeks to two weeks.<sup>53</sup> In 2003, the State of Washington took a step backward by limiting this "forced quit" provision to spouses who follow a spouse on a military transfer only.<sup>54</sup>

The topic of quits to accompany a spouse or partner has a long history of debate. In the long run, if our unemployment insurance safety net is going to meet the challenge of promoting the economic security of working families in the variety of circumstances in which they are forced to leave work, statutory amendments addressing these quits are going to have to be enacted in all states except those that recognize broad, personal reasons as good cause.

### **III. CHILD CARE CONFLICTS: HOW UI CAN SERVE WORKERS' NEED FOR CHILD CARE FLEXIBILITY**

**Recommendation: States should enact statutes that provide that it is good cause to leave a job when child care becomes unavailable. California and Arizona have model regulations on this point.**

**States should enact provisions that a worker who cannot be available for work at particular times of the day due to child care conflicts is nonetheless eligible for UI. North Carolina has enacted a statute that can serve as a model.**

As has been shown above, as today's workforce meets yesterday's UI system, women workers are the most frequent casualties. Many of the issues involve care giving responsibilities, either for children, disabled family members, or self-care during pregnancy or a period of disability. As will be shown in this section, UI issues and family care-giving responsibilities collide in at least three different measures of UI eligibility: First, is a quit "voluntary" and "without good cause" when a worker leaves her job in order to care for herself, a child or a family member? Second, may a worker limit her hours or conditions of work to accommodate care-giving responsibilities and still be considered "able and available" to work? Finally, may a worker turn down a job offer if it cannot accommodate care-giving responsibilities without triggering provisions that disqualify for failure to accept "suitable" work? This section will examine the legal arguments under existing laws, and highlight the country's best laws.

In the absence of specific UI statutes covering child care conflicts, courts and statutes address these issues first as "quits," either attributable to the employer (because of a shift change or other employer-initiated change of working conditions) or attributable to the worker's own changed circumstances and therefore "voluntary." Next, courts and statutes address whether the "voluntary quit" is "with good cause." Finally, courts, more often than statutes, have addressed the issues of "availability" and "suitability" outlined above.

In many reported cases, the issues are merged. Here they are treated separately since the tests are legally distinct.

### **Child Care Conflicts and Quits not “Voluntary” or Affirmatively “Attributable to the Employer:” Nine States Lag Behind the Other 41.**

Most states have adopted policy that allows for workers who must quit their job due to an employer-initiated change of working conditions that conflict with family obligations to qualify for UI. In December 2000, the GAO published a report entitled, *Unemployment Insurance: Role as Safety Net for Low-Wage Workers is Limited*.<sup>55</sup> In the study, state administrators were asked certain questions about family responsibilities and eligibility for UI in their state. All but nine states said that where an employer changed hours to a night shift, and the worker quits because child care is unavailable, the worker would qualify for unemployment benefits. These nine states are Colorado, Georgia, Idaho, Maine, Michigan, Nevada, Ohio, Oregon and Virginia.<sup>56</sup> Advocates in these states should consider litigating individual cases in order to establish this principle, which is accepted in the other 41 states. Clearly, where the employer changes work hours and it is impossible or unreasonable for the working parent to find new child care arrangements in the interim, any quit is with good cause attributable to the employer.<sup>57</sup>

### **“Good Cause” Where Child Care Conflicts are Not Attributable to the Employer**

What about the more common case, where an employee must quit her job because child care suddenly becomes unavailable? In most states, where the quit cannot be considered “attributable to the employer” or “work-connected,” the employee will not qualify for UI because her reasons for leaving are unrelated to her employer. In the 15 states listed in Map 1, the worker should be eligible because she has established “good cause.”

The states’ responses to the GAO report mentioned above confirm that workers only qualify for UI if their state has a general “good cause” exception to its voluntary quit statute. Thirteen states indicated to GAO that a worker who quits her job because child care becomes unavailable and the employer cannot reschedule hours would be eligible for UI. These were Alaska, Arkansas, Arizona, California, Hawaii, Iowa, Kansas, Massachusetts, New York, Oregon, Pennsylvania, Rhode Island and Virginia. Each of these states does so under a statute that does not require that “good cause” be attributable to an employer.<sup>58</sup> In addition, Maryland, Nevada, and Utah, all states that allow personal reasons to be “good cause” for a quit, should allow claimants in this situation to receive UI.

Three states, two of which already have a general “good cause” exemption for quits due to personal or family circumstances, also have rules that specifically address child care conflicts and “good cause” quits. These are Arizona, California and North Carolina.<sup>59</sup> These are noted in Appendix B, Chart 1. North Carolina has enacted an “undue family hardship” provision that specifically allows families to refuse to accept certain jobs that create a family conflict, and that covers job separations as well as job availability.<sup>60</sup> The North Carolina statute is reprinted in Appendix A. In addition, a number of states report favorable case law on this point, including Delaware, Indiana, Massachusetts, Minnesota, Mississippi, New York, North Dakota, Pennsylvania and Vermont.

## **Child Care Conflicts, “Availability” and “Suitability:” States Should Consider Explicit Regulation**

*Maria Sanchez worked at jobs both in the restaurant industry and in factories. She was unemployed and looking for work. Sanchez told the California state agency that she could not accept weekend work because she had to care for her four-year-old son. Ms. Sanchez’ sister had been providing care for the child, but had left for Mexico. The California Supreme Court said that parents or guardians of minor children have “good cause” to refuse work “which conflicts with parental activities reasonably necessary for the care or education of the minor if there exists no reasonable alternative means of discharging those responsibilities.”<sup>61</sup>*

The issue of “availability” and child care conflicts is related to that of voluntary quits. Rather than focusing on the circumstances of a worker’s job separation, these questions concern the work search. They come into play once the separation from employment has been held “attributable to the employer,” “involuntary” or with “good cause” under the governing statute. If a worker is not “available” for work, she will still not qualify for UI. The availability question is concerned with whether a worker who is available only during particular hours because of child care responsibilities is eligible for UI. The related suitability question concerns whether a worker may refuse an offer of work because it conflicts with child care responsibilities. Generally, tests of availability are more liberal than those that disqualify workers for quitting their jobs. Workers who place some restrictions on their hours of work are generally viewed with favor by courts and legislatures.<sup>62</sup>

The courts are, however, divided on whether unavailability for shift work due to family obligations constitutes “availability” under the law. In some early cases, courts in South Carolina and Vermont held that claimants may not restrict their availability to certain shifts, due to child care or other conflicts.<sup>63</sup> The better approach is for a state to adopt regulations or a statute that specifically deal with shift work and child care. That has been done in Connecticut, North Carolina, New Hampshire, Maine and Wisconsin.<sup>64</sup>

## **IV. PREGNANCY, ILLNESS, AND DISABILITY: HOW STATES CAN ACCOMMODATE TIME OFF FOR HEALTH REASONS**

Frequently, workers must take leaves of absences or shorter times off from work because of illness or disability of themselves or of a family member, such as a spouse, parent, or child. These include complications from pregnancy, which impact only women workers, and a host of other illnesses for which women are generally the primary caregivers.

Research indicates that while most workers only need to take short family and medical leaves (less than 10 days), substantial numbers of workers need to take longer leaves with about 10 percent taking 41 to 60 days and 10 percent taking more than 60 days. Not surprisingly, the longest leaves are for maternity-disabilities (with close to 70 percent of all such leaves exceeding 30 days) and care for a new child (with more than 30 percent of such leaves exceeding 30 days.) Women are substantially more likely than men to take leave, with women representing 58 percent of leave-takers, but only 46 percent of the covered workforce. Both living with children and being married increases the probability of taking family or medical leave.

This section covers pregnancy and other illnesses and disabilities. It supplements the states listed in Map 1 as having general “good cause” provisions with those that have laws specific to pregnancy, illness or disability. It also covers issues such as illness and disability that are attributable to the employer, in states

where that is required, and issues relating to availability for work. It highlights models for states to adopt on particular issues.

## **A. ILLNESS OR DISABILITY OTHER THAN PREGNANCY; ILLNESS OF A FAMILY MEMBER**

**Recommendations: State law should include an exception from disqualification if the separation from employment is due to temporary illness of the worker or of a family member (which need not be caused or aggravated by work), that renders the individual physically unable to perform her current job, but nonetheless available for other work. Maine and Illinois have such provisions.**

**States should also provide that a worker has good cause to terminate employment if the employer refuses to grant a worker the leave to which she is entitled under FMLA. States should suspend the base period during the time that leave is used so that an individual is not penalized, in terms of required labor force attachment, because she is physically unable to work or must care for an ill family member.**

A special report prepared by Weststat for the U.S. Department of Labor found that nearly 24 million workers took family or medical leave during an 18-month period from 1999-2000.<sup>65</sup> In addition, 3.5 million workers needed family leave but were unable to take it, during the same time period- meaning that a total of more than 27 million workers needed family or medical leave (about one in five employees nationwide). Workers took family and medical leave for a wide variety of reasons: 52 percent for their own health, 18 percent to care for a new child, 13 percent to care for an ill parent, 11 percent to care for an ill child, eight percent for a maternity related disability and six percent to care for an ill spouse. Not surprisingly, men are more likely to take leave to deal with issues related to their own health, while women are more likely to take leave for issues related to the health of others. In terms of family issues, 38 percent of all women who took leave did so to deal with issues relating to their children, compared to only 31 percent of male leave takers.

### **Disability or Illness “Work-Connected” or “Attributable to the Employer”**

*Lula Mae Cawthron, a night shift worker, had gall bladder surgery. Mrs. Cawthron suffered from nervous tension before and after the operation and could not sleep during the day. For this reason, her doctor had advised her to quit work unless her employer would transfer her to another shift. There were no vacancies on the first and second shifts; and her employer could not transfer her. A co-worker had injured her wrist in a non-work related event, but quit work because the performance of her work caused her to suffer severe pain in her injured wrist. Her work required constant movement of her right wrist. The court found no causal connection between either woman’s illness and the work, and they were disqualified from benefits.<sup>66</sup>*

Unlike pregnancy and some child care conflicts, illnesses and disabilities at work may be “attributable to the employer,” under state laws that require that quits be the fault of the employer in order for a claimant to be eligible for UI. However, since the approaches taken by the courts are not uniform, the better approach is to have a particular state law covering illness and disability and “good cause.”

### **Illness and Disability and Voluntary Quits: States Should Enact Specific “Good Cause” Provisions.**

A worker who must quit his or her job because of her own disability or disability of a family member for whom s/he must provide care would always have “good cause” to quit his or her job in a state that has

“compelling and necessitous” or other personal reasons to justify a quit. (See Map 1). Although s/he may face issues with respect to availability for work, those would be analyzed similarly to the child care and pregnancy issues outlined above.

In addition, our survey 15 states that have specific statutes covering the illness and disability of a worker or family member and “good cause,” where a worker must quit his or her current job but is nonetheless able to perform other work. These are: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Maine, Maryland, Minnesota, North Carolina, North Dakota, Texas, Washington and Wisconsin.<sup>67</sup> In addition, Kentucky and Ohio have favorable case law on illness and disability and “good cause.” While Arkansas and Maryland are among the states listed in Map 1 that have general good cause statutes, these other states set up illness and disability as a specific example of “good cause” to quit a job, whether the illness or disability is work-connected, or even in some cases, whether it is the worker’s own illness or that of a family member.

The Maine law provides a good model for a “good cause” separation because of illness or disability, but where a worker is nonetheless able and available to perform other work. It covers a worker’s own illness and the death, illness or disability of a member of the worker’s family.<sup>68</sup> A new statute enacted in North Carolina in 2003 also covers the illness or disability of a family member.<sup>69</sup> The Maine statute is reprinted in Appendix A.

## **B. PREGNANCY**

**Recommendation: State law should provide that an individual who is temporarily unable to perform her job due to pregnancy will not be denied benefits based on a “voluntary” separation, and that pregnancy will be treated equally with illness or disability in terms of “availability” determinations. Mississippi provides a good model for “good cause” provisions, and DC and Utah have good availability provisions.**

*Flight attendants were forced on unpaid maternity leaves after the 27<sup>th</sup> week of pregnancy. They filed for unemployment insurance. They were held “separated from a job” under the Colorado statute. Since the women were available for other suitable jobs, they were granted benefits under a specific provision of Colorado law dealing with pregnancy and UI.<sup>70</sup>*

Like issues surrounding illness and disability, issues surrounding pregnancy and UI arise in at least two contexts: some women workers are forced off the job due to pregnancy itself or pregnancy-related health complications. These women confront issues about whether or not the job separation was “voluntary,” and “attributable to the employer,” in states other than those listed in Map 1, where “good cause” can be established only by work-connectedness. These women may also confront issues regarding their “availability” for work during and after pregnancy. Other women are not reinstated to their former positions after childbirth, and may face disqualifications for voluntarily quitting their jobs without “good cause.”

Statutory provisions that exclude women from benefits during specific weeks or months of pregnancy violate FUTA, which provides that no state shall deny unemployment compensation “solely on the basis of pregnancy.”<sup>71</sup> In addition, women workers who are covered under the Family and Medical Leave Act may have the right to take unpaid leave during or after a pregnancy and birth, and to reinstatement when they are able to resume employment.<sup>72</sup>



### **“Good Cause” Where Pregnancy Limits Work Activities: Few States Provide Coverage.**

*A Michigan woman worked for six years as a waitperson. She became pregnant and her doctor advised her to avoid bending or lifting during the remainder of her pregnancy. After she left her job, she was held ineligible for unemployment compensation. The Michigan Court of Appeals stated that she did not qualify because her pregnancy could not be attributed to the employer under Michigan law.<sup>73</sup>*

What about women who must quit their jobs due to pregnancy, but who remain available for other work? In addition to the states that have general “personal reasons - good cause” provisions, or specific “good cause” provisions covering illness or disability, three jurisdictions have specific regulatory or statutory provisions stating that inability to perform certain work due to pregnancy constitutes “good cause” for a pregnant woman to quit her job. These are Arkansas, Colorado, Mississippi, Missouri, Texas, and Washington.<sup>74</sup> Arizona and California, both general “good cause” states, have favorable regulations on this point.<sup>75</sup> The Mississippi law is reprinted in Appendix A. The states of Connecticut, Michigan and Ohio have favorable case law on this issue.

### **Pregnancy, “Availability” and “Suitability:” Conflicting Court Decisions Make Regulation Necessary in Some States.**

*Geneva Taylor, a pregnant mail carrier, was told by her doctor to avoid heavy lifting and excessive standing and bending. Under a Michigan statute that requires individuals to be available for full-time work of the type they have performed in the past, Ms. Taylor was denied UI on the basis that she was not “available” for work.<sup>76</sup>*

*Nancy Bogucki was a cook in a restaurant who could no longer perform heavy work due to her pregnancy. Her willingness to perform light work, combined with her doctor’s statement that she was able to do light work, satisfied the court as to availability.<sup>77</sup>*

**Availability during pregnancy.** Although pregnancy should be treated equally with other physical conditions in assessing “availability” for work, the case law is often conflicting. This makes statutory change important in many states. The state of Utah has a regulation that simply provides that pregnancy shall be treated the same as other conditions in terms of measuring availability for work.<sup>78</sup> The District of Columbia has an availability provision specifically addressing availability where pregnancy has required a woman to quit one job, but she can perform another.<sup>79</sup> A few states have more ambiguous provisions that indicate that pregnancy shall be treated equally with other physical conditions, or that a person shall not be denied benefits solely on the basis of pregnancy. New Mexico and Oklahoma have such provisions, likely enacted because of the FUTA revisions of 1976. These would cover cases in which pregnancy is treated differently than other physical conditions.<sup>80</sup> They would, for example, cover the fact patterns noted in the *Frontier Airlines* case cited here.

**Availability after pregnancy.** Where a claimant seeks benefits after her employer refuses to rehire her following parental or pregnancy leave, the claimant should be able to avoid the “good cause” trap.<sup>81</sup> Such a job separation is, in reality, the fault of the employer, and women terminated under such circumstances should qualify for UI benefits under normal rules in every state. Nevertheless, statutory or regulatory changes can address this issue. Some states have limited provisions that specifically confirm eligibility in this case. Two of these are Iowa and Tennessee.<sup>82</sup> Regulations in New Hampshire rightly term this circumstance a job separation attributable to the employer, and award benefits.<sup>83</sup>

**Illegal provisions that should be changed** Two states have provisions that discriminate against pregnancy, and that presumably violate the FUTA provisions enacted in 1976.<sup>84</sup> While Arizona has particular provisions that allow pregnant women to quit work with “good cause,” other regulations include a presumption that a pregnant woman is unable to work for eight weeks prior to delivery and for six weeks after delivery.<sup>85</sup> Alabama law disqualifies a pregnant woman until ten weeks after termination of pregnancy.<sup>86</sup>

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### **A Word About the Family and Medical Leave Act (FMLA)**

FMLA, passed in 1993, has allowed millions of Americans to take leave to care for themselves or sick family members. FMLA protects the rights of workers who must temporarily leave their job in order to take care of himself or herself, or of a sick child, parent or spouse, or to take care of a new child.

FMLA covers “serious health conditions” lasting longer than three days. The leave under FMLA is job-protected, meaning that an employer cannot fire a worker for having taken leave. In addition, employers must continue health coverage during a leave, which may not exceed 12 weeks.

FMLA has major shortcomings for many working families. The primary one is that FMLA leave is **unpaid leave**. Secondly, **many workers are not covered** because coverage is limited to companies that have 50 workers in a 75 mile radius of their business, and because a worker must be employed 1,250 hours in the past year in order to qualify for leave.

Theoretically, a worker taking unpaid FMLA leave could qualify for unemployment compensation if she or he were unable to work for her employer because of pregnancy or other serious health condition, no accommodation was available, but she or he is still “able and available” for other jobs. This would be a rare occurrence. There are no reported cases under such a factual situation.

State voluntary quit statutes should provide that a worker has good cause to terminate employment if the employer refuses to grant a worker the leave that she is entitled to under the FMLA. In addition, absences caused by personal or family illness that qualify for FMLA leave should not count against a worker’s attendance record (which may lead to a misconduct disqualification based on absenteeism). Finally, states should suspend the base period during the time that FMLA leave is used so that an individual is not penalized, in terms of the required labor force attachment, for taking FMLA leave.

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### **C. PAID FAMILY LEAVE**

The United States and Australia are the only two industrialized nations that do not offer paid maternity leave to new parents. The U.S. Department of Labor released rules in June 2000 allowing state use of state unemployment insurance funds to pay employees on leave related to the birth or adoption of a new child. Birth and Adoption Unemployment Compensation, often referred to as “baby UI,” was based on an interpretation of FUTA by the Clinton administration that permitted states to grant UI to new parents. The baby UI initiative kicked off a flurry of expressions of anxiety by its opponents regarding the solvency of UI trust funds, a concern most opponents had not expressed while a majority of the states gave employer tax holidays and widespread tax cuts throughout the 1990s.<sup>87</sup> Opponents argued that the UI system was not intended to cover “voluntary quits” and that it is a misuse of the system to allow parents who are not currently “able and available” for work to collect UI benefits.<sup>88</sup> This virulent opposition eventually resulted in a Bush administration decision to withdraw the baby UI regulations in December 2002.<sup>89</sup>

The baby UI initiative came about after many gaps in the Family and Medical Leave Act (FMLA) were illustrated in national reports. Two reports, prepared by DOL after the passage of FMLA, found that two-thirds to three-quarters of “leave-needers” – persons who needed, but did not take, family leave, did not do so because they could not afford to take unpaid leave.<sup>90</sup> Nearly 90 percent of these “leave-needers” said that had there been compensation available, they would have taken family and medical leave. Of those surveyed who took leave, 38 percent either had to borrow money or rely on public assistance to make ends meet during their leave. Those who took unpaid leave, and had no provision for paid leave by their employers, were on the older and younger ends of spectrum, in the lowest education and income groups, and more likely to be non-salaried and non-union workers.<sup>91</sup>

“Baby UI” stretched UI to better address the needs of a changing workforce. Its supporters said it advanced a central goal of the UI program, to help workers maintain their long-term attachment to the labor force. Available data shows that parents who are given family leave return to their jobs and demonstrate a clear attachment to the workforce. The DOL surveys found that 98 percent of FMLA leave-takers returned to their jobs. The UI system, with its established infrastructure in all 50 states and its pooled financing scheme, was viewed as a suitable place to begin developing a system of partial wage replacement for workers on family and medical leave. In light of the withdrawal of federal authorization for baby UI, however, further developments intended to use UI in this avenue will have a suspect legal basis. For this reason, we discuss some non-UI options for providing parental leave.

Many states have explored other alternatives for providing paid family leave to workers. These include proposals to use existing temporary disability programs to provide paid leave, establishing new temporary disability programs, allowing employees with sick leave provided to use it to care for sick children and family members, allowing state employees to “donate” their sick and vacation leave to a general fund, and studying paid family leave.

## **D. TEMPORARY DISABILITY INSURANCE PROVISIONS**

**Recommendation: States should consider enacting temporary disability insurance (TDI) provisions that would cover individuals who are attached to the labor market, but who are temporarily unable to work because of their own disability.**

**In addition, TDI provisions can be a source for paid family leave, as has been very recently enacted in California.**

Six jurisdictions, including five states (California, Hawaii, New Jersey, New York and Rhode Island) and Puerto Rico, have disability benefit programs that offer partial wage replacement for workers who are unable to work due to their own disability. These programs generally pre-date the Family and Medical Leave Act, but partially fill in the gaps between the unemployment compensation, family and medical leave, and workers' compensation programs. They compensate in part for the wage loss sustained by individuals unemployed because of sickness or injury. They generally cover workers who are attached to the workforce, but who, because of mental or physical illness or injury, are unable to perform work.<sup>92</sup>

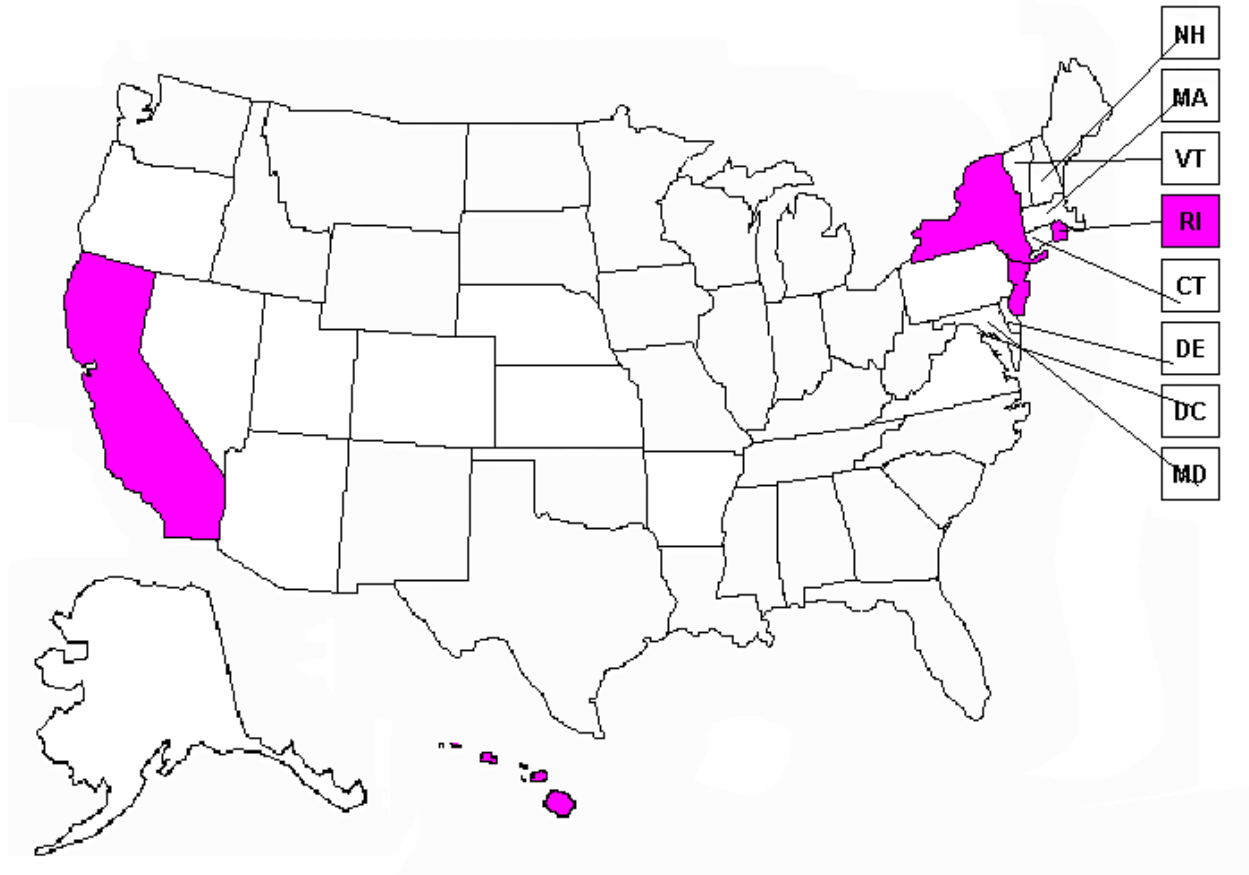
Unlike the "good cause" provisions outlined above, these programs cover people who are, at present, unable to work. The programs do not cover wage loss due to the claimant's family responsibilities, but only due to the claimant's own disability. Nevertheless, they are commonly used during periods of disability due to pregnancy and childbirth.

The programs in three states are operated through the unemployment insurance program, using separate funding and a separate payroll tax deduction. These are California, New Jersey and Rhode Island. In New York, the program is operated through the workers' compensation system, and in Hawaii, the program is a separate program within the Department of Labor.

Each program has qualifying requirements, similar to UI, that are intended to show attachment to the labor force. These range from a flat \$300 in wages in California to a New York provision that the worker have worked 20 of the 30 weeks prior to disability. Each program requires medical certification for initial claims. All programs but California's pay up to 26 weeks of benefits; California's pays a maximum of 52 weeks. The programs all depend on employee payroll taxes. In most states, employees contribute .5 percent of wages up to a particular maximum (1.5 percent in CA). In Hawaii, New York, New Jersey, and Puerto Rico, employers also contribute, generally at a flat percentage of wages up to a maximum taxable wage base. The TDI laws were all passed in the states from 1942 (Rhode Island) to 1969 (Hawaii). No state has passed a TDI law in recent past, though California's new paid family leave law is paid through the state's TDI system.

## MAP 2: TEMPORARY DISABILITY PROGRAMS

States that have existing T.D.I. Programs



## **California's Paid Family Leave Law**

On September 23, 2002, California governor Gray Davis signed the first paid family leave law in the country. The California program is part of the state's Disability Insurance law, discussed above. The new law provides for wage replacement of 55 percent of a worker's wages, up to \$728 per week, for up to six weeks of leave to care for a new child or sick relative. Workers finance the California SDI program: the average annual cost to workers of the new provisions is \$36.00. The historic legislation was supported by scores of labor unions, women's groups and civil rights organizations. Benefits are payable under the new law after July 1, 2004.<sup>93</sup> More detail on California's new law, including a link to the law itself, appears in Appendix A.

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### **A Word on the Interaction Between UI and TDI Benefits and the ADA**

The Americans with Disabilities Act (ADA), (P.L. 101-336), enacted into law on July 26, 1990, prohibits private sector employers who employ 15 or more individuals and all State and local government employers from discriminating against qualified individuals with disabilities in all aspects of employment. Under the ADA, a person who can perform her job, but who needs an accommodation from her employer in order to perform, would need to request an accommodation before leaving a job. For example, if a business moves to a new location where there are no handicapped-accessible restrooms conveniently located to the employee's workstation, she would need to request accommodation. If the employer accommodates the worker, then there is no UI issue, because no job separation has occurred.

If the employer cannot accommodate, the job separation should probably be characterized as "involuntary," and the worker should qualify for UI in every state.

What if the employee has a stress-related disability and her physician believes that she should work a modified work schedule, such as a switch from night shift to day shift? Under the ADA, s/he must request an accommodation. If the employer refuses to accommodate, and the claimant is forced to leave her job, she would have a claim for UI under any statute giving "personal compelling" reasons to support a quit, under a theory that her quit was due to "work-connected" factors, and under many of the disability provisions outlined above. In addition, she may have an ADA claim against her former employer.

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## **V. DOMESTIC VIOLENCE AND SEXUAL HARASSMENT: HOW UNEMPLOYMENT INSURANCE IS A SAFETY NET FOR VICTIMS OF DOMESTIC VIOLENCE AND WORKPLACE DISCRIMINATION**

### **A. DOMESTIC VIOLENCE AND UNEMPLOYMENT INSURANCE**

**Recommendation:** States should enact broad domestic violence UI laws, covering a range of issues of violence against women in the workplace, and include special provisions acknowledging a victim's attempts to find work must accommodate her need to address the effects of violence on herself and her family. Massachusetts and Washington provide the best examples.

#### **Domestic Violence and the Workplace**

Domestic violence is widespread in America. Each year, 1.5 million women are physically or sexual assaulted by an intimate partner.<sup>94</sup> Job loss and the threat of job loss prevent many battered women from escaping violent relationships by removing their ability to sustain themselves and their children.<sup>95</sup> Domestic violence follows its victims to work – Many who remain at work have difficulty functioning because of the violence they are experiencing at home.<sup>96</sup> Ninety-six per cent of employed domestic violence victims in one survey stated that the domestic violence in their lives interfered with their ability to work.<sup>97</sup> A woman may be harassed by threatening phone calls at work or may need to miss days of work because of injuries or attempts to seek legal remedies for the abuse. In the worst cases, a victim may be attacked by the perpetrator at work.

Nationally, between 35 and 56 percent of employed battered women were harassed at work by their batterers; 55 to 85 percent missed work because of domestic violence; and 24 to 52 percent lost their jobs as a result of the abuse.<sup>98</sup>

Despite these grim realities, in the majority of states, where there is no broad definition of “good cause,” domestic violence victims who have left their jobs in an effort to secure their safety from domestic violence have usually been denied benefits.<sup>99</sup>

#### **Domestic Violence and “Good Cause” Legislation: Twenty-four States Enact Legislation in Only Seven Years**

It is this connection between domestic violence and work and the failure of UI systems to address this quintessential example of “good cause” for leaving a job that has led 24 states in the past seven years to adopt legislation specifically covering domestic violence as “good cause” to leave work. These are California, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Washington, Wisconsin and Wyoming.<sup>100</sup> In recent legislative sessions, bills were introduced in Arizona, Georgia, Hawaii, Iowa, Maryland, North Dakota, Tennessee, Vermont and West Virginia. The newest states added to the list, in 2003, are Kansas, Indiana, New Mexico, Oklahoma, South Dakota, and Texas.<sup>101</sup> Four additional states, Alaska, Arkansas, Florida and Pennsylvania, have specific favorable case law on DVUI. The states are listed in the all-state chart in Appendix B, Chart 1.

## **Domestic Violence and Suitable Work**

Advocates have found that simply saying domestic violence is “good cause” to quit a job isn’t enough for many DV survivors. In some states, women may have “good cause” to quit their job, but not be considered eligible because they are not able to actively search for work. State laws often include burdensome work search requirements that may interfere with a survivor’s ability to get medical or legal help or find a safe place to live.

At least three states, Kansas, Massachusetts and Washington, have enacted legislation that helps a woman continue to receive compensation while she is seeking safety. In a letter to NELP in fall of 2000, the U.S. Department of Labor agreed that states may, consistent with federal law, change their laws to liberalize their work-search requirements for survivors of domestic violence. Like these three states, other states are free to simply require survivors of domestic violence to register for work, without engaging in extensive work search, and claimants may refuse job offers that interfere with their ability to get safe.

## **B. SEXUAL HARASSMENT AND UNEMPLOYMENT INSURANCE**

**Recommendation: State law should specifically provide that sexual harassment constitutes good cause for a woman to quit her job voluntarily, consistent with the standards that apply under State or Federal sexual harassment laws. Massachusetts law, for example, provides that an individual shall not be disqualified from receiving benefits if it is established that the reason for leaving work is due to sexual harassment “where the employer, its supervisory personnel or agents knew or should have known of such harassment.” The statute also includes a comprehensive definition of the term “sexual harassment.” California and Utah regulations also provide good models.**

*A Pennsylvania woman was the only female employee at a workplace with 300 men. She was subjected to sexual remarks and notes in her car and was kissed by a male co-worker against her will. She complained to management, but quit complaining on each occasion that she was harassed because she found that management wasn’t responding to her complaints. Instead, she quit her job.*

*There was evidence that the claimant reported several incidents of harassment to her supervisors and that she attempted to secure a job transfer or a new position without success. The Pennsylvania court had no trouble finding that sexual harassment was a “necessitous and compelling reason” to justify a quit.<sup>102</sup>*

Women experience a broad range of social-sexual behaviors at work as harassment. Gutek (1995) finds that 24 percent of women have experienced harassing sexual touching, 11 percent of women have experienced harassing expectations to socialize, and 7.6 percent have experienced the most serious form of harassment: expectations of sexual activity.<sup>103</sup> Gutek’s survey results match other research, which indicated that slightly less than half of all women experience sexual harassment at least once in their career.<sup>104</sup>

Sexual harassment significantly disrupts the lives of working women. For example, 31 percent of women surveyed had been forced to take drastic action related to their labor force attachment because of sexual harassment. On a lifetime basis, 10 percent quit trying for a job because they were harassed, and over five percent transferred within the company. Perhaps most importantly for the purposes of this paper, Gutek finds that six percent of women surveyed had lost a job because they refused sex and nine percent of women have quit a job in their lifetime because of sexual harassment.



Finally, it is important to recognize that for a variety of reasons ranging from self-blame to a desire to move on, a majority of women do not report sexual harassment or make a complaint. An extensive survey of federal workers found that only 31 percent of women who had experienced sexual harassment reported it to their supervisors, and only two to three percent pursued formal institutional remedies.<sup>105</sup> As evidenced by the study, sexual harassment victims have few effective means of recourse – only half of the women who reported sexual harassment thought it made a difference and even fewer found that ignoring it made things better.

Thus, like victims of domestic violence, women who have been sexually harassed on the job face obstacles to pursuing legal remedies to protect them against harassment, including the stigma of reporting harassment, employers who are unresponsive to their complaints, the fear of a retaliatory discharge, and the risk, expense, and emotional turmoil of litigation. Frequently, the most reasonable course of action is for a victim of sexual harassment to quit her job and seek a better work environment elsewhere.

Sexual harassment presents a quintessential case of “good cause attributable to the employer.” Thus, even in states with restrictive rules on voluntary quits, a woman who has been subjected to sexual harassment should qualify for UI. In the states mentioned above where there is a more liberal “good cause” provision, sexually harassed women should also prevail. At least four states without more general good cause provisions nonetheless have favorable case law on sexual harassment (Connecticut, New Hampshire, Ohio and West Virginia). Finally, some states have made explicit provision that sexual harassment constitutes “good cause” for leaving work.<sup>106</sup> According to the Department of Labor, forty-six jurisdictions make some provision, either in statute, regulation or interpretation, for victims of sexual harassment to leave work and remain eligible for UI.<sup>107</sup>

**Caution: Requirements for burdens of proof and “reasonable steps” shouldn’t further victimize sexual harassment survivors claiming UI.**

The critical issues for voluntary quits due to sexual harassment, such as those related to domestic violence, include how a court or statute defines sexual harassment, the level of proof required to assert a claim, the “reasonable steps” an employee might be required to take before leaving her job, and the confidentiality provisions of the statute, if any. With respect to levels of proof, states do not generally impose a particular level of proof on other good cause claimants; sexual harassment victims should resist burdensome proof requirements such as letters of complaint, action by the EEOC or testimony of a counselor or psychologist.

As in the domestic violence statutes cited above, the better approach is for a state statute to cover sexual harassment, but for the statute to express the legislature’s understanding that matters of sexual harassment should not be held to an unreasonable burden of proof. Massachusetts laws and the regulations in California and Utah provide good models. The Massachusetts law is reprinted in Appendix A. With respect to conduct that would give rise to a “good cause” quit related to sexual harassment, 12 states, plus the District of Columbia, have statutes or regulations that provide that sexual harassment is “good cause” justifying a woman leaving her job.

Many states require, for all “voluntary quit” circumstances, that the claimant have taken “reasonable steps” to preserve employment before resorting to a quit. In the *Homan* case cited above, the Pennsylvania agency adopted a rule that a woman who has been sexually harassed must take “commonsense action” so that the employer is given an opportunity to understand and solve the problem.<sup>108</sup> The claimant in *Homan*

met this requirement by alerting the employer to the harassment and requesting a transfer. In addition, the California regulations provide that a woman need not take steps to preserve her employment that would be “futile.”

## VI. PART-TIME WORK AND UNEMPLOYMENT INSURANCE

**Recommendation: Part-time workers should not be categorically denied benefits, but should receive UI benefits so long as they remain available for a reasonable number of jobs despite any restrictions on their availability. California provides a good model because its statute permits workers with a past history of part-time work to get UI benefits while its rules state that jobless workers with good cause for restricting their availability remain eligible for UI.**

Part-time employees comprise about 17 percent of the workforce, including some of the most vulnerable workers in the economy: mothers, low-income workers and individuals with disabilities. Family responsibilities often serve as a reason why individuals work part-time, and for that reason adopting more favorable policies toward part-time workers is an important step toward making state UI laws more family friendly. Given the importance of part-time work in the U.S. labor market, combined with recent policies that encourage low wage women to leave welfare, Congress and state legislatures should work to repair the holes in the safety net by eliminating restrictive UI eligibility provisions directed at part-time workers.

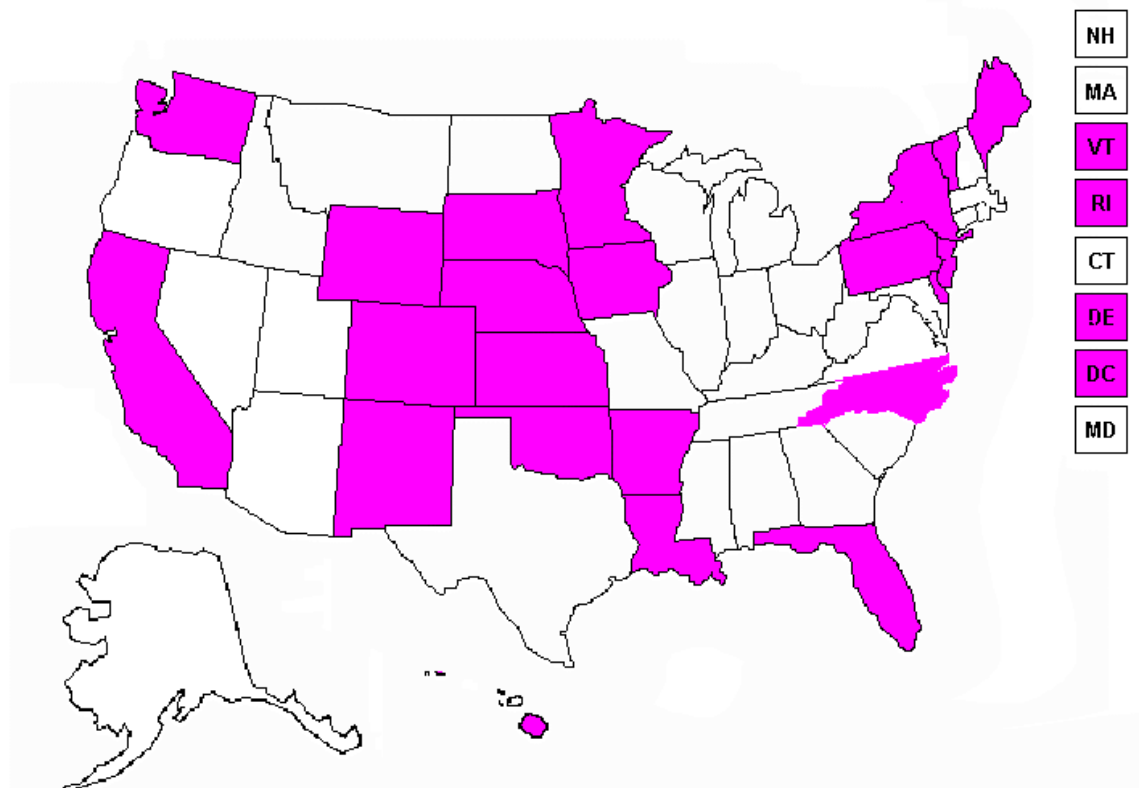
The main legal barrier to payment of UI benefits to jobless part-time workers is the application of state “availability” rules to require full-time work.<sup>109</sup> Coupled with the availability requirement, nearly all states’ UI statutes require that UI claimants seek suitable work. UI claimants that express a need or desire to accept only part-time work are ineligible for UI benefits in the 29 jurisdictions that require full-time work in order to satisfy their availability requirements.

While all state UI statutes have availability provisions, for the most part these statutes do not discuss part-time work explicitly. This is true both in those states that pay UI benefits to laid-off part-time workers by treating them with parity, as well as in many of the states that deny UI eligibility to part-time workers. In either case, state agencies (or the courts) have interpreted state UI statutes that are “silent” on the question of full-time or part-time availability. Some have done so favorably to part-time workers, while the majority has adopted restrictive applications of their statutes. In states that do not have explicit part-time UI rules in statute or controlling case law, governors or state agencies are free to adopt more expansive policies regarding eligibility for part-time workers. In states with statutes that specifically treat part-time availability, favorable policy for part-time workers requires legislative amendments.

Twenty-eight states and jurisdictions have restrictive policies regarding part-time work. Only eight states (California, Delaware, Kansas, Nebraska, Pennsylvania, South Dakota, Vermont, and Wyoming) permit jobless part-time workers to draw UI benefits on the same basis as full-time workers. The remaining 17 jurisdictions either recognize good cause as a reason for limiting search to part-time work or a history of part-time work to limit their availability to part-time work (Arkansas, Colorado, District of Columbia, Florida, Hawaii, Iowa, Louisiana, Maine, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Puerto Rico, Rhode Island and Washington).<sup>110</sup> Adopting more favorable policies toward part-time workers is a significant step toward making UI more accommodating to working families.

### MAP 3: UI BEST PRACTICES: PART-TIME BENEFITS

States that provide eligibility generally, or with a history of part-time work



### VII. DEPENDENTS' ALLOWANCES

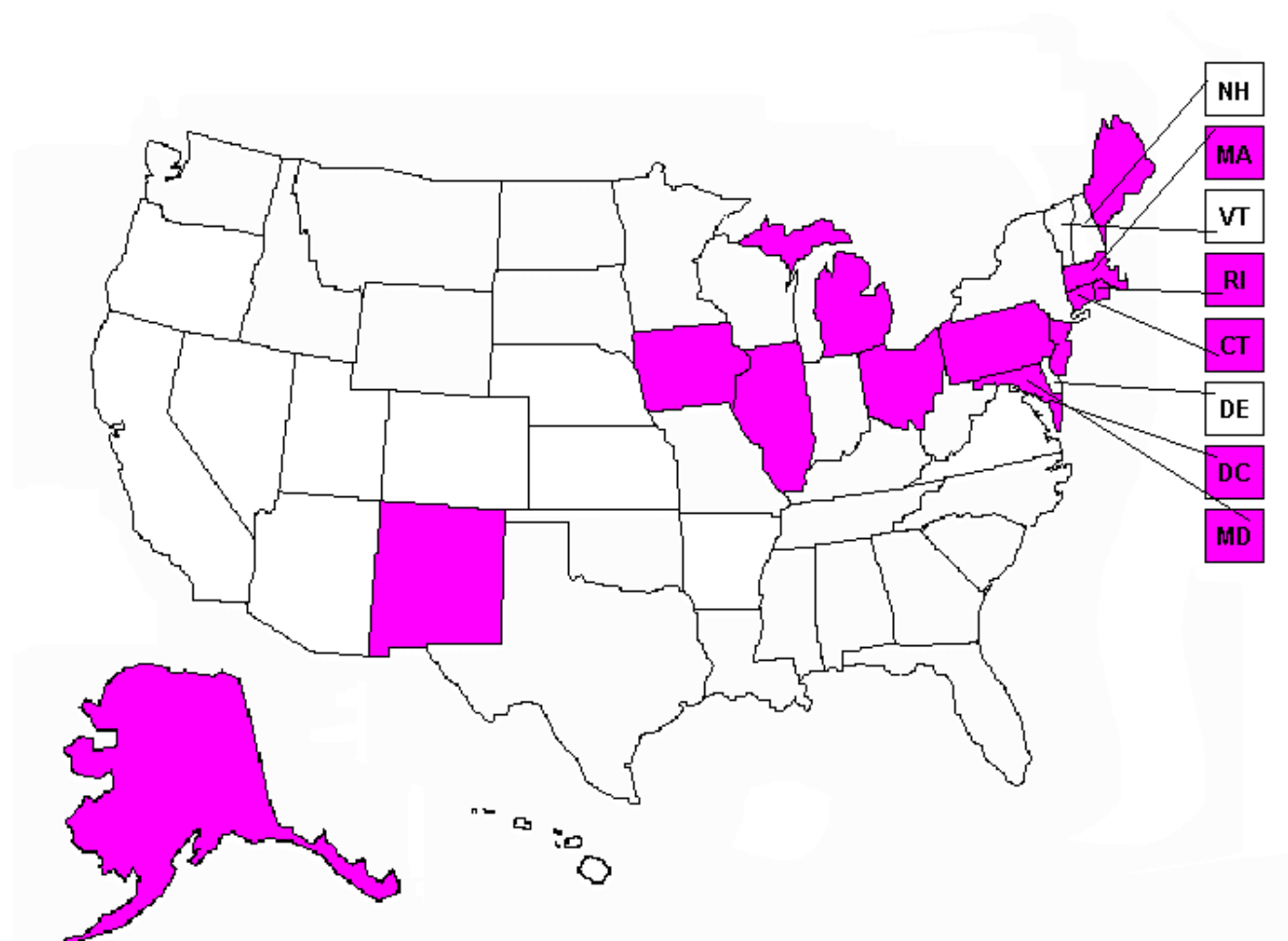
Unemployment benefits are set according to a formula based on a fraction of the worker's prior earnings. The Advisory Council on Unemployment Insurance (ACUC) recommends that average benefits amount to 50 percent of the state's average weekly wage.<sup>111</sup> Few states provided sufficient benefits to meet the needs of low-wage workers. For example, the ACUC found in 1995 that those families earning less than \$15,000 spent 65 percent of their income on necessities, while only three states paid sufficient benefits to meet this level of need.<sup>112</sup>

Unlike the other subjects of this paper, the issue of dependents' benefits has more to do with the amount of benefits received by a family than with eligibility for benefits. Thirteen states, plus the District of Columbia, address the special hardships for families trying to subsist on an unemployment check by paying a regular weekly dependent allowance to at least some workers as part of a UI check. These are Alaska, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Ohio, Pennsylvania, and Rhode Island.<sup>113</sup> Benefit amounts vary widely across the states, with the lowest maximum weekly benefit varying from a low of \$190 in Alabama to a high of \$512 in Massachusetts. In eight states, Alabama, Arizona, Louisiana, Mississippi, Missouri, Nebraska, South Carolina and South

Dakota, the maximum weekly benefit amount falls below the poverty level for a one parent, two-child family.<sup>114</sup> Each pays benefits for dependent children up to a certain age. All but Maryland's also pays benefits for older children who are not able to work. Many also cover spouses, and the Iowa and Michigan statutes cover dependent parents and brothers and sisters as well.

## MAP 4: UI BEST PRACTICES: DEPENDENTS' BENEFITS

States that Augment Regular UI Benefits to Support Dependents



None of the statutes provides for a very large dependent benefit, and each is capped at a particular dollar amount, portion of the weekly benefit amount, or number of dependents. Massachusetts is the most generous, paying \$25.00 per dependent up to a maximum of one-half the workers' weekly benefit amount.<sup>115</sup> Alaska pays a weekly allowance of \$24 per dependent up to a maximum of \$72 per week.<sup>116</sup>

In Iowa, for the benefit year beginning July 2, 2000, the maximum weekly benefits are \$273 for an individual with no dependents, \$283 for an individual with one dependent, \$293 for an individual with two dependents, \$309 for an individual with three dependents, and \$335 for an individual with four or more dependents.<sup>117</sup> Michigan pays \$6.00 per dependent up to a maximum of \$30.00.<sup>118</sup> Pennsylvania pays \$5.00 for the first dependent and \$3.00 for one other dependent.<sup>119</sup> New Jersey makes payments based

on a percentage of the worker's weekly benefit amount; so low-wage workers are disadvantaged by this formula.<sup>120</sup> Rhode Island employs a similar system, with a minimum payment of \$10.00 per child.<sup>121</sup>

Massachusetts provides the best model for a state wishing to enact a dependant benefit provision, as opposed to a provision adopting benefit increases overall. Massachusetts pays \$25.00 per child under the age of 18 (or 24, if a student) with no cap on the number of dependents for whom a family can receive benefits. The Massachusetts statute is reprinted in Appendix A.

## **PART THREE. Conclusions and Model Legislation**

The states' unemployment insurance systems were built on a "male breadwinner" model that has little relevance to today's workforce, where 60 percent of women work outside the home. Because women are more likely to be the family's caregivers, they are also more likely to quit jobs due to these domestic responsibilities. Consequently, there is a gender gap built in to most states' unemployment insurance systems. Men are 47 percent more likely to qualify for UI benefits than are women.

Because the states operate their own UI systems with little oversight by the federal government, they are also free to address these issues in state legislation. States can provide for general rules that "personal compelling" reasons justify an individual leaving his or her job. Or they can enact general rules relating to domestic circumstances. Finally, they can enact specific statutes that provide that it is "good cause" to leave a job due to child care conflicts, care-giving responsibilities, illness, sexual harassment and domestic violence.

States are also free to enact state laws that govern "availability" for work, so that families in certain circumstances can more easily tailor their work search to meet the needs of the family.

States should consider the models outlined in this paper in order to close the gender gap between women and men who qualify for UI.

In addition, states should consider special programs for disabled and ill workers, such as Temporary Disability Programs, and financing paid family leave through these and other systems. For families needing to take time off after the birth or adoption of a child, these should include their unemployment insurance system.

Finally, states should consider enacting dependents' allowances as a way to address the inadequacy of UI benefits to low-income families.

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- <sup>1</sup> Bond, Galinsky and Swanberg, *The 1997 National Study of the Changing Workforce*, Families and Work Institute, 1998.
- <sup>2</sup> U.S. Department of Labor, *Balancing the Needs of Families and Employers: The FMLA Surveys 2000 Update*, 2000 (“FMLA Surveys”), 2.1.1 and Table 2.3.
- <sup>3</sup> *Julie M. Child v. Board of Review*, 657 P.2d 1375 (1983).
- <sup>4</sup> ARIZ. ADMIN. CODE R6-3-52235(2001).
- <sup>5</sup> *Hertel v. ED and Viking Industries*, 724 P. 2d 338 (1986).
- <sup>6</sup> *Jensen v. Siemsen*, 794 P.2d 271 (Idaho 1990).
- <sup>7</sup> Isaac Rubinow, *Quest for Security* (1934), quoted by Alan Hawley, *Struggles for Justice: Social Responsibility and the Liberal State* (1991), 383.
- <sup>8</sup> Elaine McCrate, *Working Mothers in a Double Bind*. Economic Policy Institute [Briefing Paper](#) (May 2002), 2.
- <sup>9</sup> See generally Richard W. McHugh and Ingrid Koch, *Unemployment Insurance: Responding to the Expanding Role of Women in the Work Force*, 27 *CLEARINGHOUSE REVIEW* 1422 (1994).
- <sup>10</sup> Saul J. Blaustein, *Unemployment Insurance in the United States: The First Half Century*, (Kalamazoo, MI: W.E. Upjohn Institute, 1993), 159-160, 165-166, 278-287.
- <sup>11</sup> Blaustein, 166.
- <sup>12</sup> Blaustein, 283.
- <sup>13</sup> National Foundation for Unemployment Compensation and Workers’ Compensation, *Highlights of State Unemployment Compensation Laws*, Jan. 2002, (“Highlights”), Table 26. Many of these states are not included in our list of general “good cause” states because court decisions and other legal provisions restrict good cause. See, e.g., note 32, *infra*.
- <sup>14</sup> Blaustein, 167.
- <sup>15</sup> U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 33-75 (Dec. 8, 1975). See also, Margaret M. Dahm and Phyllis H. Fineshriber, *Disqualifications for Quits to Meet Family Obligations*, UNEMPLOYMENT COMPENSATION: STUDIES AND RESEARCH (National Commission on Unemployment Compensation, July 1980), 9; and *The Issue of Part-Time Employment*, UNEMPLOYMENT COMPENSATION: STUDIES AND RESEARCH, 29, *Ibid*.
- <sup>16</sup> Lovell and Hill, *Today’s Women Workers: Shut Out of Yesterday’s Unemployment Insurance System*, Institute for Women’s Policy Research, 2000
- <sup>17</sup> Author’s calculations of CPS data.
- <sup>18</sup> *Id.*
- <sup>19</sup> Bernstein, et al. *State of Working America, 2001*, Economic Policy Institute, 2002.
- <sup>20</sup> Greenhaus and Beutell. *Sources of Conflict between Work and Family Roles*. THE ACADEMY OF MANAGEMENT REVIEW. 10(1) (Jan. 1985), 76-88.
- <sup>21</sup> *Id.*, Bond, et.al. (1998).
- <sup>22</sup> Brines, *Economic Dependency, gender and the division of labor at home*, AMERICAN JOURNAL OF SOCIOLOGY, 76(4), 1994.
- <sup>23</sup> Bond et al, (1998).
- <sup>24</sup> Emsellen, Allen, Shaw, *The Texas Unemployment Insurance System: Barriers to Access for Low-Wage, Part-Time and Women Workers*, NATIONAL EMPLOYMENT LAW PROJECT, 1999.
- <sup>25</sup> Bureau of Labor Statistics, *Highlights of Women’s Earnings in 2001*, May, 2002, Report 960.
- <sup>26</sup> *Id.*, Bureau of Labor Statistics.
- <sup>27</sup> Maurice Emsellem, et.al., *Failing the Unemployed: A State by State Examination of Unemployment Insurance Systems*, (Economic Policy Institute, Center on Budget and Policy Priorities, National Employment Law Project, March 2002), Table 1, available at < <http://www.nelp.org/pub100.pdf>.>
- <sup>28</sup> U.S. Gen. Accounting Office, *Unemployment Insurance: Role as Safety Net for Low Wage Workers Is Limited*, December, 2000 (GAO Report), available at <<http://www.gao.gov>.>
- <sup>29</sup> *Id.*, Bureau of Labor Statistics. >
- <sup>30</sup> Wander and Stettner, *Why are Many Jobless Workers Not Applying for Benefits?* MONTHLY LABOR REVIEW, June, 2000.
- <sup>31</sup> This is the increased likelihood of men to receive UI, in other words  $\rho_{women}/\rho_{men} - 1$
- <sup>32</sup> *Lyons v. Employment Security Comm’n*, 108 NW2d 849, 853 (1961)(opinion of Justice Edwards), adopted in *Laya v. Cebarr Construction*, 101 Mich.App. 26 (1980).
- <sup>33</sup> Choice is sometimes used to explain why women work in greater numbers in low-paying jobs or accept part-time work, as if this explanation means that the resulting costs should be borne by those women and their families rather than being an object of corrective policy. For a critique of these defenses of the status quo, see Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* (New York, Oxford University Press, 2000).
- <sup>34</sup> *Bliley Electric Co. v. Bd. of Rev. (In re Sturdevant)*, 45 A2d 898 (1946).

<sup>35</sup> OREGON CODE REG. 471-30-038(4) (2001).

<sup>36</sup> *Bliley Electric, supra*.

<sup>37</sup> *Cantrell v. Unemployment Insurance Comm'n*, 450 S.W.2d 235 (Ky.App. 1970). The Kentucky statute was subsequently amended to restrict good cause to reasons "attributable to the employment." KY. REV. STAT. § 341.370(1)(C).

<sup>38</sup> *Leesberg v. Smith-Jamieson Nursing*, 386 N.W.2d 218 (Mich. App. 1986).

<sup>39</sup> For example, Nebraska's voluntary quit statute does not contain language limiting valid reasons for good cause to those connected to work, but its courts consistently interpret its law to require work connection to excuse a quit. *Woodmen of the World v. Olsen*, 4 N.W.2d 923 (1942).

<sup>40</sup> These states either impose no "work-connected" requirement on "good cause" quits, or that broadly allow personal reasons as "good cause" to justify a quit: Alaska, ALASKA ADMIN. CODE tit. 8, § 85.095 (2002), Arizona, ARIZ. REV. STAT. § 23-775(1) (2001), Arkansas, ARK. CODE ANN. § 11-10-513(b) (2002); California, CAL. UNEMP. INS. CODE § 1256 (2001); Hawaii, HAW. REV. STAT. § 383-30(1) (2002); Kansas, KAN. STAT. ANN. 44-706 (2001); Maryland, MD. CODE ANN., LAB. & EMPL. § 8-1001 (2002); Massachusetts, MASS. ANN. LAWS ch. 151A, § 24 (2001); Nevada, NEV. REV. STAT. 612.380 (2002); New York, N.Y. Lab. Law Sec. 593 (2002); Oregon, OR. REV. STAT. § 657.176; Pennsylvania, PA. STAT. ANN. § 802 (2002); Rhode Island, R.I. GEN. LAW § 28-44-17 (2001); Utah, UTAH CODE ANN. § 35A-4-405 (2000); Virginia, VA. CODE ANN. § 60.2-618 (2001).

<sup>41</sup> KAN. STAT. ANN. § 44-706(a)(11). See also ARK. CODE ANN. § 11-10-513(b).

<sup>42</sup> Some states are listed in Department of Labor and other literature as having no "work-connected" requirement: See, e.g., *Highlights, infra* n. 2 at Table 26. However, our survey shows that many of these have case law that restricts eligibility to work-connected factors. An example is Nebraska, noted above in n. 32.

<sup>43</sup> MASS. GEN. LAWS CH. 151A, § 25(e)(1).

<sup>44</sup> *Reep v. Commissioner*, 593 N.E.2d 1297 (Mass. 1992).

<sup>45</sup> MASS. GEN. LAWS CH. 151A, § 25(e).

<sup>46</sup> See Annotation, *Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location or Residence*, 21 A.L.R.4th 317 (1997).

<sup>47</sup> ME. REV. STAT., tit. 26, §1193(1)(A) (2001).

<sup>48</sup> INDIANA CODE ANN. § 22-4-15-1(c)(7) (2001).

<sup>49</sup> MISS. CODE § 71-5-513 (2001).

<sup>50</sup> COLO. REV. STAT. § 8-73-108(5)(e)(IV)(2001).

<sup>51</sup> ALASKA ADMIN CODE TIT. 8 § 85.095; ARIZ. ADMIN CODE R6-3-50155(C); CAL. UI CODE § 1256 (2002); IND. CODE ANN. § 22-4-15-1; ME. REV. STAT. tit. 26 Sec. 1193; N.C. GEN. STAT. Sec. 96-13(1d) (2001); OKLA. STAT. ANN. Tit. 40 Sec. 2-405 (2001); R.I. GEN. LAWS § 28-44-17; TEX. LAB. CODE § 207.045 (2002); WASH. REV. CODE § 50.20.050 (2002).

<sup>52</sup> MD. CODE ANN. LAB. & EMPL. § 8-1001; MASS. GEN. LAWS CH. 151A § 25(e); UTAH CODE ANN. § 35A-4-405; VA. CODE ANN. § 60.2-618.

<sup>53</sup> North Carolina, SB 439 Sec. 6, available at

<<http://www.ncleg.net/html2003/bills/AllVersions/Senate/S439vc.html>>

<sup>54</sup> Washington, SB 6097 (Chap. 4, 2003 Laws, 2d Special Sess.) Sec. 4, available at <[http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097\\_sl\\_06302003.txt](http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097_sl_06302003.txt)>

<sup>55</sup> *Id.*, GAO Report.

<sup>56</sup> *Id.*, GAO Report at 51. It is not clear why Colorado, Nevada, Oregon, and Virginia answered "no" to this question. Each is a state that has a general "good cause" provision or a provision that allows workers who must quit work due to "personal reasons" to qualify for UI. Logically, each should have answered "yes."

<sup>57</sup> See, e.g., *Newland v. Job Service*, 460 N.W.2d 118 (N.D. 1990).

<sup>58</sup> *Id.*, GAO Report at 50. It is not clear why administrators in Iowa answered "yes." Under the Iowa statute, a worker would only be eligible for UI if s/he left work due to a personal emergency and then returned and requested reinstatement; that is, only after returning to work and being notified that no position was available. Iowa Code § 96.5(f).

<sup>59</sup> ARIZ. ADMIN. CODE R6-3-50155; CAL. CODE REGS. TIT. 22 §1256-9.

<sup>60</sup> N.C. GEN. STAT. § 96-8(10a); N.C. GEN. STAT. § 96-14-(1g).

<sup>61</sup> *Sanchez v. Unemployment Insurance Appeals Board*, 569 P.2d 740 See also, *In re Watson*, 161 S.E.2d 1 (N.C. 1968), where a factory worker laid off her first-shift job refused recall to a second-shift job. Her spouse worked out of town, and the worker had been unable to make arrangements for child care during the second shift. The court found that Watson's refusal to work at night did not render her "unavailable" for work, and that she had "good cause" to refuse the night work.

<sup>62</sup> Advocates should note that most refusal of work statutory provisions, unlike the voluntary quit provisions, permit personal reasons for refusing a job offer. U.S. Department of Labor, Employment & Training Admin. *Comparison of State UI Laws* 4-33 (2001), available at <<http://workforcesecurity.doleta.gov/unemploy/uilaws.asp>>

<sup>63</sup> *Judson Mills v. UCC (In re Gaines)*, 28 SE2d 535 (1944); *Nurmi v. ESB*, 197 A2d 483 (1964); *overruled in Shufelt v. Department of Education and Training*, 531 A2d 894 (1987); compare, *In re Watson*, 161 S.E.2d 1 (N.C. 1968).



- <sup>64</sup> N.H. REV. STAT. ANN. § 282-A:32 (2002); ME. REV. STAT. tit. 26 § 1192; WIS. STAT. § 108.04 (2001).
- <sup>65</sup> *Id.*, FMLA Surveys, 2.1.1 and Table 2.3.
- <sup>66</sup> *Cawthron v. Commissioner*, 400 SW2d 240 (Tenn.1966).
- <sup>67</sup> ARIZ. ADMIN. CODE R6-3-50235(B) and R6-3-50155(F); ARK. CODE ANN. § 11-10-513(b); CAL. CODE REGS. TIT. 22 § 1256-15(a); COLO. REV. STAT. 8-73-108(4)(b)(1); CONN. GEN. STAT. § 31-236 (2001), CONN. AGENCIES REGS. SEC. 31-236-11; FLA. STAT. CH. 443.101 (2001); 48 ILL. COMP. STAT. ANN. PARA. 405 § 601 (2001); MD. CODE ANN. LAB. & EMPL. § 8-1001(c)(2); MINN. STAT. § 268.095(2001); ME. REV. STAT. TIT. 26 § 1193; N.C. GEN. STAT. § 96-14 ; N.D. CENT. CODE Sec. 52-06-02 (2001); TEX. LAB. CODE § 207.045; WASH. REV. CODE § 50.20.050(2)(b) ; WIS. STAT. § 108.04(7)(c) (2001).
- <sup>68</sup> ME. REV. STAT. TIT. 26 § 1193.
- <sup>69</sup> HB 439, available at < <http://www.ncleg.net/html2003/bills/AllVersions/Senate/S439vc.html>.>
- <sup>70</sup> *Frontier Airlines v. Industrial Commission*, 734 P.2d 142 (Colo. Ct. Apps. 1986); COLO. REV. STAT. § 8-73-108(4)(b)(l) (2002).
- <sup>71</sup> 26 U.S.C. § 3304(a)(12) (1999).
- <sup>72</sup> See generally, Family and Medical Leave Act, 29 U.S.C. § 2601 *et. seq.*
- <sup>73</sup> *Watson v. Murdock's Food and Wet Goods*, 385 N.W.2d 693 (1986), later all but overruled in *Warren v. Caro Community Hospital*, 579 N.W.2d 343 (Mich.1998).
- <sup>74</sup> See ARK. CODE ANN. § 11-10-513(b); COLO. REV. STAT. § 8-73-108(4); MISS. CODE ANN. § 71-5-513(1)(a); MO. REV. STAT. § 288-050. TEX. LAB. CODE ANN. § 207.045; WASH. ADMIN. CODE 192-150-060.
- <sup>75</sup> ARIZ. ADMIN. CODE R6-3-50235; CAL. CODE REGS. TIT. 22 § 1256-15(d)(3).
- <sup>76</sup> *Taylor v. U.S. Postal Service*, 413 N.W.2d 736 (Mich. App.1987).
- <sup>77</sup> *Bogucki v. Board of Review*, 421 A.2d 528 (1980).
- <sup>78</sup> UTAH ADMIN. CODE R994-403-116(c)(2002).
- <sup>79</sup> D.C. MUN. REGS. TIT. 7 § 311.10; COLO. REV. STAT § 8-73-108(4)(b)(l).
- <sup>80</sup> D.C. CODE ANN. § 51-110(2001); NM STAT. ANN. § 51-1-7(A)(2002); OKLA. STAT. TIT. 40 § 2-414.
- <sup>81</sup> See, e.g., *Gocke v. Weisleley*, 18 Utah 2d 245 (1966)(claimant who, after giving birth, filed for UI and conducted a work search was eligible for UI benefits).
- <sup>82</sup> IOWA CODE § 96.5(1)(c); TENN. CODE ANN. § 50-7-303 .
- <sup>83</sup> N.H. CODE ADMIN. R. ANN. EMP. § 503.01(2002).
- <sup>84</sup> 26 U.S.C. Sec. 3304(a)(12). See also, *Turner v. Utah Department of Employment Security*, 423 U.S. 44 (1975).
- <sup>85</sup> ARIZ. ADMIN. CODE R6-3-52235.
- <sup>86</sup> ALA. CODE § 25-4-78(2)(a)(4).
- <sup>87</sup> Marc Baldwin, *Beyond Boom and Bust: Financing Unemployment Insurance in a Changing Economy* (National Employment Law Project, April 2001).
- <sup>88</sup> A lawsuit brought by businesses challenging the Baby UI regulations was dismissed in June 2002 as not yet ripe, because no state had yet passed Baby UI legislation. See *LPA, Inc. v. Chao*, 211 F.Supp. 2d 160 (D.C. 2002).
- <sup>89</sup> U.S. Department of Labor, *Notice of Proposed Rule Making*, 67 Fed. Reg. 72122 (December 4, 2002).
- <sup>90</sup> U. S. Commission on Family and Medical Leave A Workable Balance, 1996.
- <sup>91</sup> *Id.*
- <sup>92</sup> See generally, CAL. UI CODE § 2601 *et. seq.*; HAW. REV. STAT. § 392-1 *et. seq.*(2002); N.J. REV. STAT. § 43-21-25 *et. seq.*, NY CONS. LAWS, CH. 67, ART 9 §200 *et. seq.*; P.R.LAWS ANN. § 139, Sec. 1 *et. seq.*, R.I. GEN. LAWS § 28-39-1 *et. seq.*(2002).
- <sup>93</sup> The text of the California law, SB 1661 (2002) is available at: 2002 Cal. Legis. Serv. Ch. 901.
- <sup>94</sup> *Tjaden & Thoennes, Nat'l Inst. of Justice & Ctrs. for Disease Control & Prevention, Extent Nature and Consequences of Intimate Partner Violence 9* (2000).
- <sup>95</sup> Runge, Robin R., and Hearn, Marcellene, *Employment Rights Advocacy for Domestic Violence Victims*, 5 Domestic Violence Rep. 17, 2000.
- <sup>96</sup> Runge, Robin, *Double Jeopardy: Victims of Domestic Violence Face Twice the Abuse*, 25 SPG HUMAN RIGHTS 19, 1998.
- <sup>97</sup> Stanley, Connie, *Domestic Violence: An Occupational Impact Study*, 1999.
- <sup>98</sup> U. S. Gen. Accounting Office, *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients 19* (Nov. 1998) .
- <sup>99</sup> See e.g., *Hall v. Florida Unemployment Appeals Commission and Laro, Inc.*, 697 So.2d 541 (Fl. 1997); *Pagan v. Board of Review*, 687 A.2d 328 (N.J. 1997).
- <sup>100</sup> CAL. UNEMP. INS. CODE §§ 1030, 1032, 1256 (2001); COLO. REV. STAT. § 8-3-108; CONN. GEN. STAT. § 73-108(1)(r); DEL. CODE ANN. TIT. 19, § 3315(1); ME. REV. STAT. ANN. TIT. 26. § 1043(23)(b)(3); MASS. GEN. LAWS ANN. CH. 151A §§ 1,14,25,30; MINN. STAT. § 268.095(1)(8); MONT. CODE ANN. § 39-51-2111; NEB. REV. STAT. § 48-628(1)(a) (2000); N.H. REV. STAT. ANN. TIT. 23 § 282-A:32(l)(a)(3); N.J. REV. SAT. § 43:21-5(j); N.Y. LAB. LAW § 593(1)(a); N.C. GEN. STAT. § 94-14(1f); OR. REV. STAT. §

657.176(12)(2001); R.I. GEN. LAWS § 28-44-17.1; WASH. REV. CODE §§ 50.20.050, 50.20.100, 50.20.240 AND 50.29.020); WIS. STAT. § 108.04(7)(s); WYO. STAT. § 27-3-311.

<sup>101</sup> Indiana: 2003 Ind. Acts 189, Kansas: H.B. 2353, 2003-2004 Sess., New Mexico, 2003 N.M. laws 47, Oklahoma, 2003 Okla. Sess. Laws 177 (enacted as S.B. 741, 49<sup>th</sup> Leg.), South Dakota: 2003 S.D. Laws 258 (to be codified at S.D. CODIFIED LAWS § 61-6-13.1, and Texas, SB 280, Sec. 7A, 78<sup>th</sup> Reg. Session (2003), available at < [<sup>102</sup> \*Homan v. Pennsylvania Unemployment Compensation Bd.\*, 527 A.2d 1109 \(1987\).](http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00280&VERSION=5&TYPE=B.></a></p></div><div data-bbox=)

<sup>103</sup> Gutek, *Sex and the Workplace* (Jossey-Bass, 1985).

<sup>104</sup> Gutek and Done, *Sexual Harassment* in Unger, ed. HANDBOOK OF THE PSYCHOLOGY OF WOMEN AND GENDER (John Wiley and Sons, 2001).

<sup>105</sup> U.S. Merit Systems Protection Board. *Sexual Harassment in the Federal Workplace: Is It a Problem*, 1981.

<sup>106</sup> CAL. CODE REGS. TIT. 22 § 1256.7; D.C. MUN. REGS. TIT. 7 § 311.7(a); IDAHO CODE § 72-1366(5) AND IDAHO REGS. 09.01.30.625; 82 ILL. COMP. STAT. ANN. PARA. 405 § 601(b)(4); KAN. STAT. ANN. § 44-706(a)(7); MASS. GEN. LAWS ANN. CH. 151A § 25(e); MINN. STAT. § 268.095(3)(E); R.I. GEN. LAWS § 28-44-17; WIS. STAT. 108(7)(B); UTAH ADMIN. CODE R994-405-107. In addition, Maine has a regulation that covers sexual harassment, at CODE ME. R. CH. 17 § 6. Two other states, Georgia and Colorado, have provisions on personal harassment which would encompass sexual harassment. COLO. REV. STAT. § 8-73-108(4)(O); GA. COMP. R. & REGS. R. 300-2-9-.05(1)(b).

<sup>107</sup> U.S. Department of Labor, Employment and Training Administration, *Comparison of State Unemployment Insurance Laws 2003*, p. 5-2.

<sup>108</sup> *Homan, id.*, at 1109.

<sup>109</sup> Rick McHugh, Nancy E. Segal, Jeffrey B. Wenger, *Laid Off and Left Out: Part-Time Workers and Unemployment Insurance Eligibility: How States Treat Part-Time Workers and Why UI Programs Should Include Them* (February 2002) available at <[<sup>110</sup> See \*Laid Off and Left Out, supra\*, Appendix II for a full listing of state policies on part-time work. The four additional state laws passed in 2003 are New Jersey, P.L. 2003. C. 107, available at < \[North Carolina, SB 439 Sec. 5, available at < \\[Washington's extremely limited provision can be found at, SB 6097 \\\(Chap. 4, 2003 Laws, 2d Special Sess\\\), section 12, available at <\\\[<sup>111</sup> Advisory Council on Unemployment Insurance, \\\\*Unemployment Insurance in the United States\\\\*. \\\\(1995\\\\), 126-127 \\\\("ACUC Report\\\\)."\\\]\\\(http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097\\\_sl\\\_06302003.txt.></a></p></div><div data-bbox=\\\)\\]\\(http://www.ncleg.net/html2003/bills/AllVersions/Senate/S439vc.html.></a> Maine, LD 240, available at <<a href=\\)\]\(http://www.njleg.us/2002/Bills/A3500/3702\_R1.PDF.></a> New Mexico, HB 261, available at <<a href=\)](http://www.nelp.org.></a></p></div><div data-bbox=)

<sup>112</sup> *Id.*, 1995 ACUC report, at 132-133.

<sup>113</sup> ALA. CODE § 23.20.350; CONN. GEN. STAT. § 31-234; D.C. CODE § 51.107; ILL. ANN. STAT. ch. 820, § 405-401; IOWA CODE § 96.3.4; ME. REV. ST. TIT. 26 § 1191; MD. CODE ANN. LABOR & EMPL § 8-804; MASS. GEN. LAWS CH. 151A § 29; MICH. COMP. LAWS § 421.27; N.J. REV. STAT. § 43:21-3; New Mexico, HB 261 Sec. 1(C) (2003), OHIO REV. CODE § 4141.30; 43 P.S. § 804; R.I. GEN. LAWS § 28-44-6.

<sup>114</sup> Emsellem, Maurice, et. al., *Failing the Unemployed, A state by state examination of unemployment insurance systems* (2002), available at <

<sup>115</sup> MASS. GEN. LAWS ANN. CH. 151A § 29(c).

<sup>116</sup> ALASKA STAT. § 23.20.350(F).

<sup>117</sup> IOWA CODE § 96.3.4, *IWD RELEASE* (6/12/2001).

<sup>118</sup> MICH. COMP. LAWS § 421.27(b)(1)().

<sup>119</sup> PA. STAT. ANN. TIT. 43 § 404(e)(3).

<sup>120</sup> N.J. REV. STAT. § 43-21-3(c)(2)(A).

<sup>121</sup> R. I. GEN. LAWS § 28-44-6(b)(1).

## **Appendix A: Model Legislation**

### General “Good Cause”

(California - regulation)

(b) Good Cause for Leaving Work. "Good cause" exists for leaving work, when a substantial motivating factor in causing the claimant to leave work, at the time of leaving, whether or not work connected, is real, substantial, and compelling and would cause a reasonable person genuinely desirous of retaining employment to leave work under the same circumstances. Generally good cause for leaving work is decided on the facts at the time the claimant left work.

Cal. Code Regs. tit. 22 § 1256-10

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(Pennsylvania statute)

An employee shall be ineligible for compensation for any week—

In which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature.

Pa. Stat. Ann. tit. 43 § 402(b)

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(Kansas statute)

An individual shall not be disqualified from receiving unemployment benefits if, after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification.

Kan. Stat. Ann. § 44-706(a)(11)

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### Quit to follow a spouse (California)

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent.

Cal. UI Code § 1256.

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Shift Change conflicting with family duties

(North Carolina)

“Undue family hardship” arises when an individual is unable to accept a particular shift because the individual is unable to obtain (i) child care during that shift for a minor child who is in the legally recognized custody of the individual, (ii) elder care during that shift for an aged or disabled parent of the individual, or (iii) care for any disabled member of that individual’s immediate family.

N.C. Gen. Stat. §96-8

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Pregnancy and “good cause.”

(Mississippi)

An individual shall be disqualified for benefits:

(1)(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the commission, and for each week thereafter until he has earned remuneration for personal services performed for an employer as in this chapter defined equal to not less than eight (8) times his weekly benefit amount, as determined in each case, provided that marital, filial, and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

Miss. Code Ann. 71-5-513(A)(1)(a).

Pregnancy and availability

(District of Columbia)

There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue with respect to the reason for separation from employment.

D.C. Code Ann. § 51-110.

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Illness of self or family member

(Maine)

The leaving was caused by the illness or disability of the claimant or an immediate family member and the claimant took all reasonable precautions to protect the claimant's employment status by promptly notifying the employer of the reasons for the absence and by promptly requesting reemployment when again able to resume employment;

Me. Rev. Stat. tit. 26 § 1193.

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### Paid Family Leave

(California)

Full text of the bill is available at: <[http://www.leginfo.ca.gov/pub/bill/sen/sb\\_1651-1700/sb\\_1661\\_bill\\_20020926\\_chaptered.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_1651-1700/sb_1661_bill_20020926_chaptered.html)>

Summary:

*Employee contributions.* To cover the initial start-up costs of family temporary disability insurance (FTDI) benefits, the employee contribution rate will be increased by 0.08 percent for the 2004 and 2005 calendar years. Note that the rate may not exceed 1.5 percent or be less than 0.1 percent, and may not decrease from the rate in the previous year by more than 0.2 percent.

*Notice to employees.* Every employer must provide notice of the FTDI program to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, because of pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member or new child who is unable to care for himself or herself.

*Maximum benefit amount.* The maximum amount of FTDI benefits payable to an individual will be six times his or her weekly benefit amount, except that the total benefit amount may not exceed the total wages paid to the individual during his or her disability base period.

*Definitions.* "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands in *loco parentis* to that child. "Family care leave" includes both leave for reason of the birth of a child of the employee or the employee's domestic partner, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee or domestic partner, or the serious health condition of a child of the employee, spouse or domestic partner, or leave to care for a parent, spouse, or domestic partner who has a serious health condition. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider.

*Eligibility requirements.* An individual is eligible for FTDI benefits on any day in which the individual is unable to perform regular or customary work because he or she is caring for a new child during the first year after the birth or placement of the child or a seriously ill child, parent, spouse, or domestic partner, subject to a waiting period of one week during which no benefits are paid.

*Optional condition of eligibility.* An employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of benefits as a condition of receiving FTDI benefits during any 12-month period.

(Reprinted from CCH on-line).

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Dependents' Benefits

(Massachusetts)

An individual in total or partial unemployment and otherwise eligible for benefits shall be paid for each week of such unemployment, in addition to the amount payable under subsections (a), (b), or (d) as the case may be, the sum of twenty-five dollars for each unemancipated child of such individual who is in fact dependent upon and is being wholly or mainly supported by such individual, and who is under the age of eighteen or who is eighteen years of age or over and is incapable of earning wages because of mental or physical incapacity, or who is under the age of twenty-four and is a full-time student at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, or who is in custody pending the adjudication of a petition filed by such individual for the adoption of such child in a court of competent jurisdiction, and for each such child for whom he is under a decree or order from a court of competent jurisdiction to contribute to such child's support and for whom no other person is receiving allowances hereunder; provided, that such child is domiciled within the United States or the territories or possessions thereof.

Mass. Ann. Laws. Ch. 151A § 29(c)

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Sexual Harassment

(Massachusetts)

An individual shall not be disqualified, under the provisions of this subsection, from receiving benefits if it is established to the satisfaction of the commissioner that the reason for leaving work and that such individual became separated from employment due to sexual, racial or other unreasonable harassment where the employer, its supervisory personnel or agents knew or should have known of such harassment.

Mass. Gen. Laws tit. 151A, Sec 25

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Domestic Violence (Adapted from several state laws)

Language on "good cause"

An individual shall be eligible for waiting period credit or benefits notwithstanding [cite to state law on voluntary quit and on discharge] if that individual voluntarily leaves work or is discharged due to circumstances directly resulting from domestic abuse, as defined in [cite to state law defining domestic abuse, sexual assault or stalking, if favorable], and the individual: (i) reasonably fears future domestic

abuse at or on route to or from the individual's place of employment; (ii) wishes to relocate to another geographic area in order to avoid future abuse against the individual, the individual's family, or co-workers; (iii) reasonably believes that leaving work is necessary for the future safety of the individual, the individual's family, or co-workers; (iv) is required to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence and sexual assault, or (v) reasonably believes for any reason related to domestic violence that termination of employment is necessary for the future safety of the individual, the individual's family, or co-workers.

*Adapted from Rhode Island, Connecticut, and Delaware laws.*

### Suitable work

For individuals who qualify for unemployment compensation benefits under *[cite to section on domestic violence victims and "good cause"]* "suitable work" must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic violence.

## APPENDIX B Chart 1 - State UI Systems with Specific & General Statutory Good Cause for Family Reasons

	State has a general "Good Cause" provision <sup>1</sup>	State accepts these specific reasons as "good cause" for leaving a job <sup>2</sup>					
		Illness, Disability or Care of Sick Family Member (should include pregnancy)	Child Care	Domestic Violence	Sexual Harassment	Spouse Relocates	Pregnancy
Alabama							
Alaska	Y					Y	
Arizona	Y	Y	Y			Y	Y
Arkansas	Y	Y					Y
California	Y	Y	Y	Y	Y	Y	Y
Colorado		Y		Y	Y	N	Y
Connecticut		Y		Y			
Delaware				Y			
D. C.					Y		
Florida		Y					
Georgia					Y		
Hawaii	Y						
Idaho					Y		
Illinois		Y			Y		
Indiana				Y		Y	
Iowa							
Kansas	Y			Y	Y		
Kentucky							
Louisiana							
Maine		Y		Y	Y	Y	
Maryland	Y	Y				N	
Massachusetts	Y			Y	Y	N	
Michigan							
Minnesota		Y		Y	Y		
Mississippi							Y
Missouri							Y
Montana				Y			
Nebraska				Y			
Nevada	Y						
New Hampshire				Y			
New Jersey				Y			
New Mexico				Y			
New York	Y			Y			
North Carolina		Y	Y	Y		Y	
North Dakota		Y					
Ohio						N	
Oklahoma				Y		Y	
Oregon	Y			Y			
Pennsylvania	Y						
Rhode Island	Y			Y	Y	Y	
South Carolina							
South Dakota				Y			
Tennessee							
Texas		Y		Y		Y	Y
Utah	Y				Y	N	
Vermont							
Virginia	Y					N	
Washington		Y		Y		Y	Y
West Virginia							
Wisconsin		Y		Y	Y		
Wyoming				Y			

1. These states allow persons to leave jobs and remain eligible for UI under a general provision for "personal emergencies" or "compelling circumstances." In states with a general good cause provision, quits due to child care conflicts, illness, domestic violence, spousal relocation and others should also be covered. State administrative practices could, however, affect this determination.

2. These states cover specific reasons that a person might leave a job, and remain eligible for UI, either through statute, administrative rule or court decision. Chart includes only states with specific statutory provisions; states with case law on these issues are listed in the text.



**Chart 2 - State Family Friendly UI Policies**

	State recognizes Family reasons as “Good cause” to leave a job <sup>1</sup>	Part Time Workers Treated Favorably	Dependents' Benefits Are Provided	Temporary Disability Insurance Provides Benefits for Temporarily Disabled Workers
Alabama				
Alaska	Y		Y	
Arizona	Y			
Arkansas	Y	Y		
California	Y	Y		Y
Colorado	Y	Y		
Connecticut	Y		Y	
Delaware		Y		
D. C.		Y	Y	
Florida		Y		
Georgia				
Hawaii	Y	Y		Y
Idaho				
Illinois		Y	Y	
Indiana				
Iowa		Y	Y	
Kansas	Y	Y		
Kentucky				
Louisiana		Y		
Maine	Y	Y	Y	
Maryland	Y		Y	
Massachusetts	Y		Y	
Michigan			Y	
Minnesota		Y		
Mississippi				
Missouri				
Montana				
Nebraska		Y		
Nevada	Y			
New Hampshire				
New Jersey		Y	Y	Y
New Mexico		Y	Y	
New York	Y	Y		Y
North Carolina	Y	Y		
North Dakota				
Ohio			Y	
Oklahoma		Y		
Oregon	Y			
Pennsylvania	Y	Y	Y	
Rhode Island	Y	Y	Y	Y
South Carolina				
South Dakota		Y		
Tennessee				
Texas				
Utah	Y			
Vermont		Y		
Virginia	Y			
Washington	Y	Y		
West Virginia				
Wisconsin	Y			
Wyoming		Y		
<b>Total</b>	<b>21</b>	<b>24</b>	<b>13</b>	<b>5</b>

1. States either have a general good cause provision or 4 of the 6 provisions listed in Chart 1