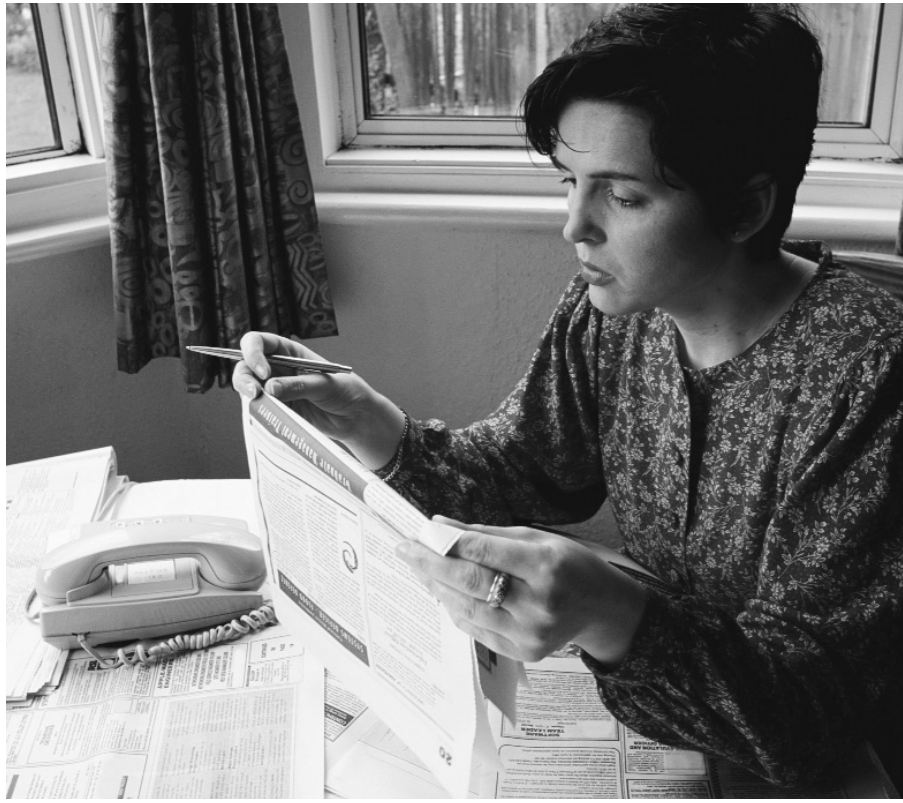


Changing Workforce, Changing Economy

State Unemployment Insurance Reforms for the 21st Century



National Employment Law Project

Changing Workforce, Changing Economy: State Unemployment Insurance Reforms for the 21st Century

National Employment Law Project

By Andrew Stettner, Rebecca Smith and Rick McHugh

Edited by Liz Schott

Endorsed by the following national organizations concerned with the well-being of working families

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Foreword

In the past thirty years, the economy has changed in profound ways leaving workers with less job security even in the best of economic times. A broad spectrum of protections workers relied on to shield them – health care, pensions and severance pay – have been cut or eliminated.

One in four working families today is low-income. These low-wage jobs are in the heart of our economy and our lives – in such growing sectors as health care, child care, education and technology. However when these low-wage working families face the increasing prospects of being laid off, they often cannot draw unemployment benefits because the unemployment insurance program has failed to keep pace with the new realities of our diverse and changing workforce.

Those who care about working families need to promote a new agenda that includes access to affordable health care, child care and decent wages for those who are struggling against all odds to make ends meet. At the center of that agenda is a stronger unemployment insurance safety net that provides real economic and financial security for all hard-working families.

The National Employment Law Project (NELP) has been at the forefront of a national movement to reform the unemployment system to respond to the new realities of working families and ensure that the system lives up to its goals. This invaluable resource, *Changing Workforce, Changing Economy*, provides a compelling agenda for state reform and the best information to advocate effectively. I urge you to join the successful movement to build a stronger unemployment safety net and make this new vision a reality.

Beth Shulman, Author

The Betrayal of Work: How Low-Wage Jobs Fail 30 Million Americans (New Press, 2003)
October 2004

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I N T R O D U C T I O N

Our nation is experiencing dramatic, and accelerating, economic change. Jobs that once provided a lifetime of employment are rare today, replaced by jobs with higher turnover, more unequal pay, and fewer fringe benefits. Manufacturing jobs are disappearing, while service-sector and temporary jobs are increasing. The nation's workforce is evolving in major ways. Women's employment is increasing, and working women often furnish the sole support for their families or work part-time jobs while fulfilling family responsibilities. African-American, Latino, and other people of color account for a growing share of the workforce and often find themselves working harder for wages and benefits insufficient to support their families. In an environment of rapid globalization, sweeping technological change, and a focus on the corporate bottom line, job insecurity is widespread.

These forces of change require a fundamental shift in the nation's unemployment insurance program, created as part of the New Deal to help jobless workers stay afloat while looking for new work. If it is to fulfill its basic purpose, unemployment insurance must change to keep pace with changes in our economy and in our workforce. For many jobless workers, state unemployment insurance programs often fail to live up to their purpose. During the latest recession, less than half of jobless workers received unemployment benefits in 40 states. And unemployment insurance benefits are often inadequate for those jobless workers who do receive them.

The good news is that a movement has taken hold in the states to get the unemployment insurance program back on track. In the past five years, nearly half of the states have adopted UI reforms that fill gaps in this safety net. Many states have changed policies that too often had denied benefits to low-wage, part-time and women workers. States have raised the weekly benefit amount and taken other significant steps to make this program meet the needs of a greater share of jobless workers and their families. These recent state efforts provide a track record for policymakers and advocates in every state to promote a new vision of the unemployment system, one that modernizes the program to meet the needs of today's changing economy. This publication provides essential resources for this growing movement.

The Basic Goals of the Unemployment System

The basic goals of the unemployment system are simple, and they remain as critically important today as they were when the program was created. As described by a bipartisan federal commission established during the recession of the early 1990s:

*The related goals of the UI program are providing involuntarily unemployed workers with adequate, temporary income replacement as well as automatically stabilizing the economy by using accumulated trust funds to maintain consumer spending during an economic downturn. Secondary goals include supporting the job search of unemployed individuals by permitting them to find work that matches their prior experience and skills, as well as enabling employers to retain experienced workers during layoffs.*¹

When jobless workers are able to receive unemployment insurance benefits – and the benefits are of sufficient amount and duration – these basic goals are furthered.

Unemployment insurance alleviates family hardship. As any family who has collected an unemployment check knows, the program helps keep the jobless afloat, especially when severance pay, health insurance and other benefits are disappearing. Unemployment benefits help keep food on the table, pay the rent and other necessities, and cover health care costs. Indeed, jobless workers who do not receive UI experience significantly higher poverty rates and are more likely to sell their homes and deplete their savings than jobless workers who do receive unemployment insurance.²

Unemployment benefits stabilize the economy and save jobs. The unemployment insurance program provides a significant boost to our economy, especially in communities hard hit by job losses. According to a major study of five recessions, each dollar of unemployment benefits produces \$2.15 in economic growth with unemployment benefits circulating in the form of hard cash spent by unemployed families on basic goods and services.³ The same study found that the program saved an average of more than 130,000 jobs in each downturn. This means that a stronger unemployment program provides greater economic stimulus to a state's economy.

Employers and workers preserve skills with the help of unemployment benefits. Income provided by unemployment checks gives workers breathing room needed to search for a good job, avoiding pressure to accept low-paying jobs that don't match skills and past experience well. The unemployment insurance program also helps workers return to their previous employer, preserving the talent and skills of that employer's workforce.

The New Workforce Faces Major Program Barriers

The goals of unemployment insurance apply in today's economy as much as ever. Yet, the evolving profile of the nation's workforce has made access to benefits elusive for many workers. Often, core state eligibility policies have not changed significantly in the 65 years since the program was created. At that time, unemployment was designed for a male

breadwinner supporting a family with a full-time job, often working for his entire career for the same employer and with a wife at home caring for the family. With today's workforce increasingly diverging from this pattern, an increasing proportion of the workforce has been left out of the unemployment insurance program because of eligibility rules that disproportionately deny benefits to low-wage workers, particularly women.

- **Low-wage workers are 44 percent less likely than higher-wage workers to receive unemployment benefits.**⁴ With the shift toward low-pay work, especially in the growing service and retail sectors, many low-wage workers are unable to qualify for unemployment benefits. In most states, eligibility rules look to the amount of a worker's past earnings rather than the number of hours that the individual has worked with the result that the program discriminates against low-wage workers.
- **Women are 15 percent less likely than men to receive unemployment benefits.** Women represent nearly half the workforce today, compared to 20 percent in the 1930's. First, as lower-wage workers, women are less likely to receive unemployment benefits. (The average income for a female-headed household is just \$26,000 compared to \$60,000 for all families.) In addition, the reasons that women must leave a job often arise from their balancing act between work and family obligations. A problem with child care or an unexpected illness can force women workers into joblessness for reasons not covered by many state unemployment programs. As a result, women are less likely than men to get unemployment insurance protection.
- **Adult temporary workers are 28 percent less likely than all other workers to receive UI.**⁵ **Adult part-time workers are 59 percent less likely than full-time workers to collect UI.** Employers increasingly meet their labor requirements through "nonstandard" work arrangements, including part-time workers and temporary and contract workers. Workers with these sorts of employment arrangements tend to earn far less and often fail to receive even minimal health care and other fringe benefits. Despite their significant need for protection from loss of work, nonstandard workers face major barriers to receiving unemployment benefits due to restrictive program rules.
- **Latino and African-American workers are about 25 percent less likely than white workers to receive unemployment benefits.**⁶ The workforce is more racially and linguistically diverse than ever before. Many non-English speaking workers who are eligible for unemployment benefits don't apply for benefits due to language and other barriers. Even when they do apply, they face agency processes that don't provide adequate translation services. Despite far more joblessness, African-American workers still receive unemployment benefits at much lower rates as compared to whites.

The Changing Nature of Unemployment

There has been a major shift in the nature of unemployment over the past thirty years. Throughout the 1960s, 1970s and early 1980s, many unemployed individuals were on “temporary layoff,” meaning they would be recalled to the same job once business picked up. This was especially true with manufacturing. Even workers permanently laid off were likely to return to jobs in similar industries or occupations.

This now has changed, especially since the recession of the early 1990s. With the shift away from manufacturing and towards more service sector work, the share of layoffs that are permanent has risen significantly. An increasing share of today’s employment is in sectors that are undergoing permanent structural changes. (According to a Federal Reserve study, 80 percent of all jobs in the 2001 recession were in industries undergoing structural changes as compared to 57 percent during the recession of the early 1990s, and 51 percent during the early 1980s downturn.)⁷ In 2003, worker displacement from long-tenured jobs reached a twenty-year high.

In this economic context, it has become much harder for unemployed workers to get back to work, with lengthening spells of unemployment putting even more economic and emotional stress on families hit by loss of work. Long-term unemployment was worse during the 2001-2003 jobs slump than in previous economic recessions, and even during the boom of the late 1990s, unemployment spells were longer than in other comparable upswings. All indications are that prolonged unemployment is here to stay, even with the return of modest job growth.

These circumstances create an historic challenge for unemployment insurance programs to better coordinate with training and employment opportunities and provide adequate levels of income support while retraining workers for well-paying jobs in the new economy.

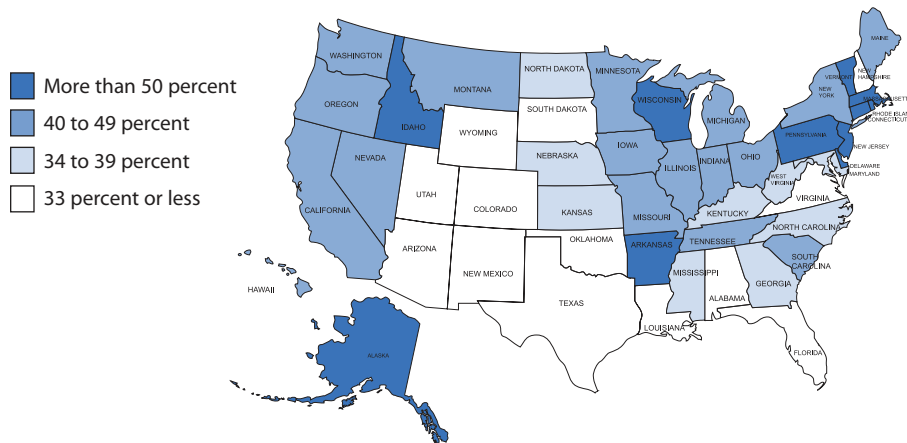
The Movement to Modernize Unemployment Insurance

In recent years – especially as more states began debating “make work pay” policies in the wake of the 1996 federal welfare law – the level of interest and activity relating to unemployment insurance reform has increased significantly. Major policy changes have been adopted in nearly half the states, with more states actively debating reforms.

The pace of state reform and the broad alliances that have formed in support of reform initiatives have been especially impressive. For example, in three of the states with the most restrictive programs in the country – Georgia, New Mexico and Virginia – the labor movement joined forces with women’s groups and low-income advocacy organizations in successful campaigns specifically targeting improved access to UI benefits for low-wage and women workers.

Despite this significant recent progress, there's much work still ahead to fill the gaps in the unemployment insurance safety net. For example, during 2001-2003 recession, only one in three jobless workers received unemployment benefits in 15 states. In another 13 states, only two in five jobless workers received unemployment benefits during this period.

Percent of Jobless Workers Receiving State UI Benefits, 2001-2003 Average



The movement to modernize unemployment policies faces several challenges. Perhaps most significantly, pressure by much of the business community to keep unemployment insurance taxes at their lowest possible levels makes efforts to expand eligibility difficult. Those seeking improved policies will need to stress the broader view, emphasizing the returns a strong unemployment insurance program offers to the community, to the overall economy and to employers. In many cases, the reforms outlined here have modest costs when compared to the advantages offered to jobless workers, their families, and their communities.

A Roadmap for Change

Unemployment insurance policy is primarily the domain of the states. State legislatures and governors set the policies and state agency officials operate the program on a daily basis. This publication was designed as a resource for state policymakers and advocates. Each chapter contains a series of short policy proposals grouped around a theme. Each proposal features a brief explanation, major arguments for and against, state examples, and model legislation. The following topics are covered:

Expanding Access for Low-wage Women and Nonstandard Workers (Chapters 1-3):

To qualify for unemployment benefits, states have rules that determine if an individual has sufficient prior earnings (monetary eligibility). In addition, state laws require jobless workers to look for available work and disqualify those who are out of work for reasons amounting to voluntary unemployment. Chapter 1 presents policies that modify arcane monetary eligibility rules that disqualify many low-wage workers. Chapters 2 and 3 describe state policies that help women, part-time and temporary workers by changing restrictive “voluntary quit” and work-search rules.

Building Income Security (Chapter 4): Every state has rules that set a jobless worker's benefit amount and the number of weeks that he or she will draw benefits. Chapter 4 describes best practices among states to ensure adequate weekly unemployment benefit levels and provide sufficient weeks of benefits, especially during recessions.

Maximizing Training Opportunities (Chapter 5): With increased permanent layoffs and structural economic change, many jobless workers could benefit from retraining necessary to move into new fields of work. Chapter 5 features state initiatives designed to help today's workers access job training and transition to quality jobs with the help of unemployment insurance.

Responsible Financing (Chapter 6): Unemployment insurance is a self-financing system, funded by a payroll tax assessed against a portion of each worker's wages. The tax increases or decreases depending on each employer's layoff history. When states fail to maintain adequate trust fund reserves, options to expand access to unemployment benefits become more limited. Chapter 6 features model financing reforms necessary to maintain long-term solvency of the unemployment system. It also addresses program integrity and agency policies aimed at ensuring that employers pay their fair share of unemployment taxes.

Effective State Administration (Chapter 7): Accessible and accountable administration of state unemployment programs is critical to jobless workers. Chapters 7 focuses on administrative issues that ensure access to the program, for example translation services necessary for immigrant workers.

Every state has an opportunity to update its unemployment insurance policies to ensure that the original goals of the program are still fulfilled in today's changing workforce and changing economy. The chapters that follow provide policy and technical assistance as state policymakers rise to this opportunity.

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Low-wage Worker Access

Introduction

A hallmark of unemployment insurance is that benefits only are available to unemployed workers, that is, persons with sufficient past connection to the workforce to be covered by the UI system. States set their own tests of how much past workforce connection is required, as well as how to measure past work experience; these are called monetary eligibility tests. This chapter discusses the two central monetary eligibility policies that can penalize low-wage workers and exclude them from receiving UI and how states can improve their policies.

- **Earnings requirements.** How much past work is required and how to measure it? Does the state look at amount of wages earned or number of hours worked, or both? Does the state look for a distribution of earnings or hours over several quarters during the year?
- **Base period.** What is the past time period to look at in measuring whether the worker has sufficient work history? Do a worker's more recent earnings get considered in determining whether the earnings requirement is met?

Most states measure past workforce attachment in ways that disadvantage low-wage workers and those with recent connections to the workforce or atypical work histories. For example, if a state measures a worker's total earnings rather than total hours of work, a low-wage worker who has worked substantial hours could fail the monetary eligibility test simply because of low wages. In contrast, a more highly paid worker could qualify for UI based on the same amount of past work. If a state looks only to a base period that excludes the most recent three to six months of earnings, as most states do, those workers who have more recently entered the workforce, such as families leaving welfare, may be denied UI because their most recent earnings are not counted.

A growing number of states have updated their monetary eligibility policies to reflect today's workforce and our nation's responsibility to bolster the incomes of low-income Americans who demonstrate their commitment to work. Low-wage and contingent workers are a significant part of the workforce and their employers have paid into UI for their work. States should ensure that the most vulnerable sectors of the workforce should be able to fully participate in the social insurance system when they are out of work.

Use an Alternative Base Period to Count Recent Earnings



What is it?

In measuring whether a worker has sufficient recent attachment to the workforce to qualify for UI, states look at a worker's earnings during a past four-quarter "base period." A majority of states do not count a worker's most recent earnings towards unemployment insurance eligibility. Many low-wage workers and others with uneven labor market earnings are thus denied benefits even though they actually have earned enough to qualify. The alternative base period (ABP) allows workers who fail the typical base period test to count more recent earnings on their claim for benefits. Adopted in 20 states, the ABP substantially helps low-wage workers receive UI benefits at the time they need them most – when they become unemployed – at a modest cost to states.



Key arguments in favor

The traditional base period year limits access to UI by not considering all recent work experience. A base period is typically four calendar quarters. Most states define their base periods as the first four of the last five completed calendar quarters. In other words, workers filing UI claims cannot use wages earned in the current quarter (the "filing quarter") or the most recently completed quarter (the "lag quarter").

The traditional base year is one reason why low-wage workers receive state benefits at half the rate of higher wage workers. The exclusion of recent earnings makes it difficult for low-wage workers to have sufficient earnings on their application to meet the minimum required to qualify. This is especially true for those who have sporadic earnings or have recently entered (or re-entered) the workforce, such as former welfare recipients or workers in the retail or tourism industries. High and moderate wage workers (like construction workers) with uneven earnings are also disqualified when the traditional base period is the only qualification option.

ABP simply shifts the timing of the base period year. Some workers don't have sufficient earnings in their traditional base period to qualify. The alternative base period year allows those workers who miss the regular earnings requirements to use wages from their lag quarter (and in some states the filing quarter). The ABP simply allows workers to use earnings from a more recent period to be considered so they can get benefits sooner – when they become unemployed. These workers have sufficient earnings to qualify for UI, but might need to wait for up to six months before the earnings can be counted. Denying UI to employed workers under the traditional base period test undermines the goal of unemployment insurance which is to provide temporary income support to workers when they lose their jobs. In states with the ABP, six to eight percent of all UI claimants

become eligible under the ABP, a meaningful increase in the percentage of workers receiving benefits in a timely fashion.

In many states, the most important way to increase low-wage worker access to unemployment benefits is to pass the ABP. Measuring earnings using an ABP expands UI coverage to low-wage or part-time workers—especially people of color and new entrants to the labor market such as former welfare recipients. In Georgia, more than half of ABP recipients earned less than \$9.00/hour in their prior jobs. In its first year of implementation, 53 percent of all ABP recipients in Virginia were African-American, even though they made up only 38 percent of the state’s total unemployed population. Seasonal workers, such as those in the building trades, also benefit from ABPs, because these workers often earn wages in concentrated periods.

How an Alternative Base Period Helps Low-wage Workers Receive Unemployment Insurance

Here is how Alternative Base Periods can provide UI benefits to workers who have sufficient earnings to qualify only if more recent earnings are considered.

Consider a worker who loses a job and files for UI in April. Under a traditional base period approach, only earnings from January through December of the prior year are considered and the five months of earnings in the current calendar year (from January through April) are not counted at this time. If the worker remains unemployed and some months pass, eventually the more recent earnings would be considered and the worker could receive UI based on these earnings, but benefits are denied at the time the worker needs them most.

Under an Alternative Base Period, if a worker cannot qualify under the traditional measure, the more recent earnings can be considered. Typically, the last completed quarter (lag quarter) is considered although some states also consider earnings from the current quarter (filing quarter). When the earnings from January, February and March (lag quarter in this example) are considered, a worker who has sufficient earnings to qualify can receive benefits right away.

Traditional Base Period

First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Completed Lag Quarter	Time of Layoff - Filing Quarter

Lag Quarter Alternative Base Period

First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Completed Lag Quarter	Time of Layoff - Filing Quarter

Filing Quarter Alternative Base Period

First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Completed Lag Quarter	Time of Layoff - Filing Quarter



Key arguments against and responses to them

Opponents say: Adopting the ABP would deplete our state's trust fund.

Response: On average, the benefits paid out of UI trust funds have increased by four to six percent in states with ABPs. Low-wage workers qualifying for the ABP get relatively small UI checks. In addition, the cost estimates do not take into account that a fair proportion of newly-included recipients would have remained unemployed and filed valid UI claims at a later date (up to 40 percent according to one state's study).

Opponents say: ABPs are too expensive and difficult to administer.

Response: ABP implementation requires one-time changes to computer systems and training of personnel, but those costs can be minimized by using internal staff for the modest changes needed. Programming costs have been as low as \$64,000. Only half of lag quarter ABP claims require wage data beyond the state's regular records. To keep costs low, most states only allow wages from the completed lag quarter, with annual costs running at only half a million dollars per year. Employers frequently raise concerns about the additional paperwork required for ABP administration. While such paperwork is sometimes required, the burden presented by the volume of ABP claims is not substantial. Moreover, families that can receive UI through ABP may be able stay off of welfare rolls. California estimated that two-thirds of the new benefits that would be associated with ABP would be paid to families that otherwise would have qualified for Temporary Assistance for Needy Families (welfare).

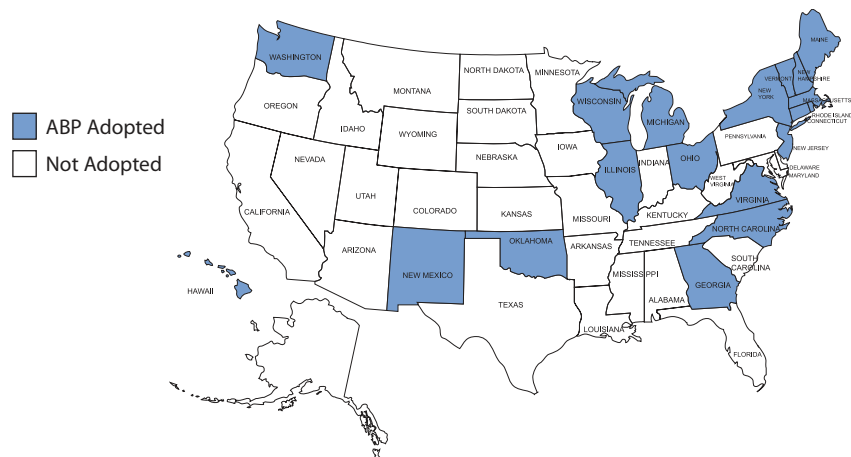
Opponents say: ABP claimants are not sufficiently attached to the labor market.

Response: ABP claimants must meet the same earnings requirements used to establish labor force attachment (such as the requirement of having total base period earnings that are 1.5 times the high quarter) as other claimants. ABP does not lessen the amount of work history required; it just changes the period that is examined for work history. ABP allows those workers with sufficient labor force attachment to receive UI benefits to support their families at the time they need the help the most.



What states do it?

Nineteen states now use an Alternate Base Period, with Illinois set to implement the ABP in 2008. Most of the states have adopted the ABP in the last five years, with the proportion of claims covered by the ABP doubling. Three states allow workers to use wages from the filing quarter; the rest of the states only allow wages from the lag quarter.



Model legislation

Washington

Base year – Alternative base year

"Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. The department shall promptly contact employers to request assistance in obtaining wage information for the last completed calendar quarter if it has not been reported at the time of initial application.

WASH. REV. CODE § 50.04.020

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Use Fair Monetary Eligibility Tests



What is it?

All states require an unemployed worker to have a minimum level of prior work experience to qualify for unemployment insurance. Most states translate this monetary eligibility requirement into a minimum dollar amount based on a worker's past earnings. Most states require workers to achieve a set amount in a single quarter of earnings. The result of such dollar earnings tests is that a low-wage worker needs to have worked more hours than a high-wage worker in order to qualify for UI. Almost all states also use a test that ensures that the earnings are not all based on a short period of employment. However, some of these state measures can penalize workers with uneven earnings by disqualifying them from UI because of earnings fluctuations.

States should use fairer tests of work history to ensure workers are not penalized for low wages, or for a period of higher wages. States should allow workers who have worked a sufficient number of hours to receive UI. States should not penalize workers with fluctuating earnings.



Key arguments in favor

Low-wage workers should not be required to work more hours to meet UI eligibility tests. Almost all states require workers to earn a specific dollar amount to qualify for UI. In addition, most states require workers to earn a specific amount in their high quarter. For example, New York requires that a worker have at least \$1,600 of earnings in one quarter plus at least \$800 of earnings in other quarters for a minimum of \$2,400 total earnings overall in the base period (1.5 X \$1,600). A minimum wage New Yorker would have to work 311 hours (25 per week) to satisfy the \$1,600 requirement in the high quarter but a \$10/hour worker would only have to work 160 hours (12 per week).

The high-quarter element of many state eligibility formulas often creates barriers to UI receipt for low-wage workers. Imagine if New York required workers to earn the \$2,400 over two quarters but did not require a specific high-quarter multiple. In that scenario, someone who had worked 20 hours per week at the minimum wage (\$1,300 per quarter and \$2,600 total) would qualify for UI.

The most common eligibility formula is also biased against workers with uneven earnings. A worker who has a successful quarter with full-time work and overtime wages can have a wage record with one quarter of earnings far higher than other quarters. Thus, someone who has worked many hours in one quarter but far fewer hours in other quarters might be disqualified simply because the high-earnings quarter sets a high bar. Continuing the example of New York's one and one-half times high-quarter earnings requirement, a worker working continually, and sometimes overtime, during the high quarter might

earn over \$6,000 for that quarter but not reach \$3,000 in other quarters before being laid off. A worker could be laid off after 20-30 weeks of work yet be disqualified from UI solely due to the requirement that additional earnings equal at least half of the high-quarter earnings and even though he or she had otherwise sufficient total dollar earnings to qualify. In effect, the worker is penalized for having worked more hours in the high quarter.

Some 42 states use either a “high-quarter” or a “multiple of weekly benefit amount” formula to measure whether a worker has a sufficient work history to qualify for UI. When a state uses a high-quarter system to determine weekly benefit amount, and then uses a multiple of the weekly benefit amount to set the monetary eligibility earnings requirement, the state system contains the same unfairness inherent in high-quarter earnings formulas.

Measuring total hours of work ensures fairer treatment for low-wage workers. A few states allow workers to prove their labor force attachment if they have worked a minimum amount of hours – regardless of the wage rate. The “hours of work” test is superior in that it does not discriminate on the basis of wages, nor does it lead to capricious disqualification based on distribution of earnings.

Flat earnings tests avoid the distortions of high quarter requirements. Similarly, states that use a flat annual total earnings requirement prevent distortions described above that can occur in a high-quarter or multiple of weekly benefit amount system. All flat earnings amount states require earnings in two separate quarters to demonstrate significant labor force attachment. While not necessarily fairer to low-wage workers in terms of hours required to work, flat earnings rules do give low-wage workers more time to accumulate the necessary earnings.

States can use hours of work or flat earnings requirements as their main monetary eligibility formula or as a supplemental option for those workers that fail the primary test. For example, an Oregon worker who fails to qualify under the state’s primary high-quarter formula can still qualify if he or she has worked a total of 500 hours during their entire base period year. Oklahoma use a 1.5 times high quarter rule but has an alternative flat-amount requirement of \$10,500.



Key arguments against and responses to them

Opponents say: Earnings requirements are already too low.

Response: The Congressionally-appointed Advisory Council on Unemployment Compensation recommended that states set their high-quarter earnings standards at no more than 200 times the minimum wage (which would require an average of 15 hours of work per week in a quarter). Twenty-two of the 40 states with a high-quarter based requirement require that earnings be at or above this level. Thus, workers cannot qualify for UI without significant workforce attachment. Moreover, because UI benefit amounts are based on prior earnings, workers with few earnings or hours get a very limited amount of unemployment benefits. These small amounts of benefits are neither costly nor a deterrent to re-employment.

State Choices

3 states use an hours test

Oregon
Washington
New Jersey

10 states use a flat earnings test

Alaska
Illinois
Indiana
Maine
Michigan
Missouri
Nebraska
New Hampshire
Oklahoma
West Virginia



Which states do it?

Three states use an hours of work requirement as part or all of their monetary eligibility test so that low-wage workers are not penalized. At least 10 states use a flat earnings requirement as part or all of their monetary eligibility test so that workers with uneven earnings are not penalized.



Model legislation using hours of work

Oregon

(2)(a) To qualify for benefits an individual must have: (A) Worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year; (2)(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

OR. REV. STAT. § 657.150



Model legislation using flat earnings requirement

Alaska

(a) An individual who is paid at least \$1,000 in wages during the individual's base period for employment covered by this chapter is eligible to receive benefits under this chapter if those wages were paid in at least two of the calendar quarters of the individual's base period.

ALASKA STAT. § 23.20.350



Watch Out For: 20-weeks Requirement

In recent years, a number of states have debated a proposal to introduce an additional “20-weeks” requirement. Such a law requires that a worker have earnings in at least 20 weeks to qualify. Proponents claim that a 20-week requirement reflects national UI standards. Here are some arguments against proposals to limit UI eligibility in this way:

- 20 weeks is not the current national standard and represents an added requirement that would exclude some jobless workers from UI. Neither the 1.5 times the high-quarter formula, nor the 40 times the weekly benefit amount formula directly translates into a 20-weeks standard. Under these common

current rules, a worker who worked 10 weeks in their highest quarter and then five in a subsequent quarter could qualify for UI in many states. Under a 20-weeks requirement, the same worker could not receive UI.

- Several states have proposed increasing their requirement to 40 times the weekly benefit amount as an alternate way to reach a requirement akin to a 20-weeks standard. Under a 40 times WBA standard, however, a worker with an exceptionally high quarter of earnings could easily work for more than 20 weeks and still not qualify. This problem is most likely to occur for low-wage workers who qualify for less than the state maximum.
- Others advocate for a strict standard of 20 documented weeks of work. Counting the number of weeks actually worked adds an extra burden of administration, and is more strict than what is currently in practice. Neither federal commission studying UI benefits has recommended a 20-weeks standard. The National Commission on Unemployment Compensation agreed that “to be eligible for the maximum duration of benefits, the minimum requirement should not be less than 14 weeks.”



Watch out for: Seasonality Restrictions

Twelve states arbitrarily limit the eligibility of some or all seasonal workers for unemployment insurance by providing that the wage credits earned in seasonal employment can be used for payment of benefits only during the operating period of the employer or industry in which the worker was employed. For example, a food processing worker employed from May through September may only use the base year credits he or she has earned if unemployed during the following May through September. The result is that unemployment insurance is not available to a worker when he or she may need it the most.

Seasonality restrictions in UI penalize workers because of the nature of the work they do; that is, work that varies with the seasons. These jobs are seasonal because of the nature of the employer’s business. Even without restrictive UI seasonality policies, workers who are laid off at the end of a season can only collect UI if they have sufficient work history and earnings (monetary eligibility) and if they search for work during the off season. Moreover, even if they qualify for UI, the workers collect only a percentage of their wages in UI benefits. UI programs should not further discriminate or limit their eligibility for benefits.

References

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION, FINAL REPORT at 38 (July 1980).

Access for Women and Working Families

Introduction

Times have changed since Congress created the unemployment insurance system in 1935 and states set their basic UI policies. Unemployment insurance programs were originally based on a “male breadwinner” model that has little relevance to today’s workforce, where three-fourths of mothers with children – some twenty-six million mothers – are in the workplace. Fifty-nine percent of married couples have two wage-earners in the family. Women’s increased participation in the workforce has transformed our society, both in the workplace and in family life.

In two wage-earner households, one worker (often the woman) may need to leave a job to care for an ill family member or to follow a transferred spouse to a new location. While women now participate in the workforce in huge numbers, they also carry the greater burden of family responsibilities. In addition, many family budgets now count on two wage earners and the loss of one worker’s earnings can cause significant hardship; women are not working for “pin money” but to provide for basic family needs.

State unemployment insurance policies have not kept pace with this transformation. In order to fulfill UI’s original goals – providing temporary income to replace lost earnings when a worker is unemployed through no fault of his or her own – states need to update their policies to match the needs of today’s workforce. Many states are rising to this challenge and have enacted new laws that recognize the importance to our society of caretaking responsibilities and the varied reasons that today’s workers may need to leave a job. These new laws do not disqualify workers from UI if they need to leave a job to move with a spouse, for family emergencies or to escape domestic violence.

This chapter discusses five policy initiatives that states have adopted to make unemployment insurance more available to today’s workers, particularly women and their families.

Provide UI Benefits for Workers Who Must Leave Jobs Due to Family Hardship



What is it?

All states provide UI benefits to some workers who must leave a job for good cause, but many states require that the reason for leaving be caused by an employer's action. The result in most states is that workers, disproportionately women workers, who must leave their jobs because of urgent family needs are ineligible for unemployment insurance benefits. States can help strengthen families by allowing workers who had to leave their last job for family or personal reasons to receive unemployment insurance while they are looking for new work.



Key arguments in favor

Providing benefits to those who must leave work due to family responsibility closes the gender gap. There is a significant gender gap in receipt of UI benefits: in 41 states, unemployed male workers are more likely to receive benefits than are unemployed female workers. While women are in the workforce in huge numbers, they also bear the brunt of family responsibilities. State policies restricting what counts as good cause for leaving a job are a major reason that women often are ineligible for unemployment benefits. Providing benefits to workers who must leave jobs due to family responsibilities can narrow this gap.

Women are more likely to leave work for family reasons, but less likely to receive UI. According to a Texas study, women are three times as likely as men to become unemployed because of family responsibilities. Nationally, 23 percent of unemployed women left their last job because of pregnancy, childbirth or other family or personal reasons, while only six percent of unemployed men gave those reasons for their job loss. At the same time, adult women who leave their jobs, (as opposed to being fired or laid off), are one-third less likely to receive UI benefits than are men who leave their jobs.

Providing benefits to those who must leave work due to family responsibility is consistent with the history and goals of the UI system. Unemployment compensation benefits are paid to those workers who are involuntarily unemployed, in order to compensate them for short term job loss and to help them remain attached to the labor force. Workers who must adjust work schedules or locations to accommodate family needs – such as illness, child and elder care, or the transfer of a spouse or partner – are forced to leave jobs for reasons beyond their effective control. In the early days of the UI system, personal reasons were considered good cause for a worker's job separation, but state laws have become more restrictive since then. In the 1940's, 41 of 48 states allowed workers to leave their jobs for valid personal reasons; in 2004, only 15 states do so.

Examples of when a worker is available for work under family hardship provisions

Even in states that recognize family hardship as good cause for leaving work, a worker cannot receive UI unless she or he is able and available to work. Sometimes a worker might be immediately available for other work while, at other times, the worker is only available after the family emergency is resolved or normalized.

Example 1. A worker who must leave her day-shift nursing job due to lack of child care plans to work nights so that she and her spouse can alternately provide complete child care coverage. This worker must remain available for night work, but since she had good cause for leaving her job, she can receive UI while looking for night work in an industry with night work available.

Example 2. A worker leaves a full-time job to care for her mother who is dying of cancer. Because of the caregiving demands, she is not able and available for employment and cannot receive UI. Three months later, after her mother has died, the worker is available for and looking for work. Now she is able and available for employment and can receive UI during her job search.

Persons who leave work due to compelling family reasons must still search for work in order to receive UI. A working mother or father who leaves work due to family reasons is not exempted from looking for, and accepting, available jobs. An individual cannot receive UI for any time when he or she cannot to work at all due to a family emergency. Nor can an individual qualify for UI if she or he is not available for suitable work. The job search and suitability provisions of the law ensure that families cannot take themselves out of the labor force completely, or unreasonably limit their availability to work.



Key arguments against and responses to them

Opponents say: Providing benefits to workers who have to leave work due to family conflicts is too costly.

Response: In most states, benefits are not charged to an individual employer's account, but spread out evenly among all of the employers in the state.

Opponents say: Providing benefits to workers who have to leave work due to family conflicts rewards those who are not working.

Response: Those states that provide unemployment benefits to workers who leave their jobs to take care of a compelling family situation still require workers to be actively looking for work and to accept a suitable position that reasonably accommodates family responsibilities. These states remain focused on getting workers back to work, while taking into account their family needs.



Which states do it?

Fifteen states have general provisions that allow workers to separate from jobs for good cause and qualify for UI, either because personal emergencies such as family responsibilities are specifically included in the definition of good cause or because the definition of good cause is not restricted to exclude family hardships.

State Choices

7 states use unrestricted good cause

Alaska
Hawaii
Nevada
New York
Oregon
Rhode Island
Virginia

8 states allow personal emergencies including family responsibilities as good cause

Arizona
Arkansas
California
Kansas
Maryland
Massachusetts
Pennsylvania
Utah



In addition to these general good cause provisions, many states have enacted specific provisions allowing a worker to qualify for UI when job separation is due to a specified family or personal reason: illness or disability (including pregnancy), relocation of a spouse or domestic partner, domestic violence, child care or elder care conflicts, or sexual harassment. (Model legislation for some of these provisions is addressed in this chapter; for others, see, *Between a Rock and a Hard Place*, National Employment Law Project.)

Model legislation

California

(b) Good Cause. A claimant leaves the most recent work with good cause if the claimant left work due to circumstances relating to the health, care, or welfare of the claimant's family of such a compelling nature as to require the claimant's presence, and the claimant has taken reasonable steps to preserve the employment relationship. CAL. CODE REGS. tit.22 § 1256-10

North Carolina has adopted a more incremental approach to some of the family hardship issues, by enacting a state law that covers persons who leave work because of a disability or health condition of the worker or a family member:

(1) Where an individual leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty-five percent (85%) of the individual's regular wage, whichever is greater; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

N.C. GEN. STAT. § 96-14

References

Katherine Allen, Maurice Emsellem & Lois Shaw, *The Texas Unemployment Insurance System: Barriers to Access for Low-Wage, Part-Time and Women Workers*, National Employment Law Project, Institute for Women's Policy Research (1999).

Rick McHugh, Nancy Segal, Rebecca Smith & Andrew Stettner, *Between a Rock and a Hard Place: Confronting the Failure of State Unemployment Insurance Systems to Serve Women and Working Families*, NATIONAL EMPLOYMENT LAW PROJECT, (July 2003), available at <http://www.nelp.org>.

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT, VOLUNTARY QUIT QUESTIONS AND ANSWERS, (2003).

Ensure that Domestic Violence Survivors Access Benefits



What is it?

Domestic violence follows its victims to work and can have an enormous impact on their ability to retain a job. Survivors of domestic violence who must leave their jobs because of the violence in their lives may be disqualified from receiving unemployment benefits if domestic violence is not considered good cause for leaving a job. Responding to this situation, some twenty-six states have enacted specific provisions in their UI laws in the past decade that provide benefits to those who must leave a job due to domestic violence or stalking.



Key arguments in favor

Nearly all employed domestic violence survivors experience work-related problems as a result of their abuse. Ninety-six percent report some type of work-related problem due to the violence they suffer in their personal relationships. For example, a perpetrator may stalk a victim at her workplace—making harassing phone calls, waiting outside, or coming into the workplace and verbally or physically assaulting her. According to a series of studies, between 24 and 52 percent of domestic violence victims report that they lost a job due, at least in part, to domestic violence.

Unemployment insurance (UI) is needed to help domestic violence survivors maintain safety from their abusers. State UI laws can help battered women find and maintain safety for themselves and their children by requiring that job search requirements accommodate the safety concerns of domestic violence survivors.



Key arguments against and responses to them

Opponents say: Providing UI to domestic violence or stalking victims is costly. **Response:** There is considerable evidence demonstrating that the cost of providing unemployment insurance to victims of domestic violence has been insignificant (and much lower than opponents have frequently claimed). UI benefits are only available if domestic violence is the reason the victim had to leave a job. In Minnesota, for the twelve months from March 1, 2003 through February 19, 2004, there were 31 cases covered by its domestic violence unemployment law for a total cost of \$77,000. In New Hampshire in 2002, there were 13 domestic violence claimants who received about \$20,000 in UI benefits. North Carolina had 63 claims in 2002 (as of June, 2002), for a yearly cost of \$101,088. South Dakota just enacted its law in 2003. From July to December of that year, South Dakota paid four claims, totaling \$5400. In most states, benefits are not charged to an individual employer's account, but spread out among all of the employers in the state.

State Choices

26 States Provide UI to DV Victims

Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Illinois
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
Wyoming



Opponents say: It is inappropriate to use the UI fund for this purpose.
Response: The unemployment compensation system was designed in 1935 for workers who are attached to the labor force and who are unemployed through no fault of their own. Domestic violence victims who must leave work due to the violence fall within this purpose. Increased participation of women in the workforce as well as society's increased awareness and responsiveness to domestic violence requires that states update their good cause provisions to ensure that the purpose of UI can be fulfilled for domestic violence victims.

Which states do it?

Twenty-six states and the District of Columbia explicitly provide UI benefits to women who lose their jobs as a result of domestic violence. The strongest provisions include stalking and sex offenses, provide flexible means by which individuals can prove violence, and "suitable work" rules that accommodate the specific needs of domestic violence victims. Washington State and Massachusetts provide good model laws for states to consider.

Model legislation

(A) DEFINITIONS — In this section:

1. "Domestic violence" means abuse committed against an employee or an employee's dependent child by:
 - a. A current or former spouse of the employee.
 - b. A person with whom the employee shares parentage of a child in common.
 - c. A person who is cohabitating with, or has cohabitated with, the employee.
 - d. A person who is related by blood or marriage.
 - e. A person with whom the employee has or had a dating or engagement relationship.

2. "Abuse" means:

- a. Causing, or attempting to cause, physical harm.
- b. Placing another person in fear of imminent serious physical harm.
- c. Causing another person to engage involuntarily in sexual relations by force, threat or duress, or threatening to do so.
- d. Engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror.
- e. Depriving another person of medical care, housing, food or other necessities of life.
- f. Restraining the liberty of another.

(B) ELIGIBILITY FOR UNEMPLOYMENT INSURANCE

1. An individual shall not be disqualified from receiving unemployment insurance benefits if the individual establishes to the satisfaction of the [director] that the reason the individual left work was

due to domestic violence, including stalking or a sex offense:

- a. The individual's reasonable fear of future violence at or en route to or from the individual's place of employment.
- b. The individual's need to relocate to another geographic area in order to avoid future violence.
- c. The individual's need to address the physical, psychological and legal impacts of violence.
- d. The individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of violence.
- e. Any other situation in which violence causes the individual to reasonably believe that termination of employment is necessary for the future safety of the individual or the individual's family.

2. An individual may demonstrate the existence of domestic violence, stalking or other sex offense by providing one of the following:

- a. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
- b. A police record documenting the abuse;
- c. Documentation that the abuser has been convicted of one or more of the offenses enumerated in [cite appropriate criminal law section];
- d. Medical documentation of the abuse;
- e. A statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted the individual in addressing the effects of the abuse on the individual or the individual's family; or
- f. A sworn statement from the individual attesting to the abuse.

3. No evidence of violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the [State agency] unless consent for disclosure is given by the individual.

(C) WORK SEARCH

Except for individuals who qualify for unemployment compensation benefits under [cite to section on violence victims and "good cause"], who shall register for work but who otherwise will not be required to actively seek work on a weekly basis.

For individuals who qualify for unemployment compensation benefits under [cite to section on 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, stalking or other sex offense.

Based on Massachusetts and Washington State laws.

References

U.S. GENERAL ACCOUNTING OFFICE, DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS 19 (1998).
Richard W. McHugh, Robin R. Runge, Rebecca Smith, Employment Law Center & Legal Aid Society, UNEMPLOYMENT INSURANCE AND DOMESTIC VIOLENCE: LEARNING FROM OUR EXPERIENCES, NATIONAL EMPLOYMENT LAW PROJECT (2002).

Violence against Women State Law Fact Sheet – Unemployment Insurance, LEGAL MOMENTUM, available at <http://www.legalmomentum.org/issues/vio/laws-ui.shtml>.

Supply UI Benefits to Workers Who Must Leave Their Jobs to Move with Their Spouse or Partner



What is it?

In our highly mobile society, almost one in four families moves every year, and about one-third of these are across county lines. Military families move even more frequently; almost 39 percent each year. When a family member is transferred by his or her employer across county or state lines, the “trailing spouse” or partner must often quit a job in order to move with the family. She will frequently be considered to have quit work voluntarily and may be disqualified from UI. Thirty-three states deny unemployment benefits to trailing spouses who are forced to leave their jobs as a result of a family move.



Key arguments in favor

The UI system must adapt to the mobility of families in America and the large number of two-worker families. One in twelve of all civilian families moves across county lines every year. In the vast majority of family moves, it is the woman who follows her spouse or partner to a new job. Often, the trailing spouse must leave a job to move with the family, as both partners work in nearly 60 percent of married-couple families. The UI “gender gap” is due in part to the failure of UI systems to compensate individuals (mostly women) who must leave their work due to mandatory job transfers of their spouse or partner.

States should recognize the contributions of women to the workplace, especially military families. Most military spouses work (over two-thirds), and military families are three times as likely as civilian families to have an out-of-county move in a year. According to a study by the Rand Corporation, the unemployment rate among military spouses is about four times higher than the civilian unemployment rate, yet often these spouses cannot qualify for UI due to restrictive state policies.



Key arguments against and responses to them

Opponents say: When a spouse leaves a job in order to follow her spouse, the job separation is voluntary, and not the responsibility of the employer.

Response: Millions of American families have two working spouses, trying to balance work and family responsibilities. State UI systems are intended to disqualify from benefits those who leave work voluntarily. Spouses who sacrifice their jobs, uproot their families, and adapt to a new place in order to keep the family together are not voluntarily quitting work.



Which states do it?

About one-third of states generally recognize personal and family reasons as valid reasons to leave a job and, in most of these states, a trailing spouse should qualify for UI. An additional five states broadly cover family transfers. Three states only allow trailing spouses in the military to receive benefits. Finally, six states explicitly deny benefits to workers who must relocate with their families. California's state law is by far the best model provision for trailing spouses, covering both domestic partners and spouses, and covering those who are intending to marry.



Model legislation

California

An individual may be deemed to have left his or her most recent work involuntarily and 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. UNEMP. INS. CODE § 1256

References

Beth Asch, C. Christine Fair, James Hosek, Craig Martin & Michael Mattock, *Married to the Military: The Employment and Earnings of Military Wives Compared with Those of Civilian Wives* (Mar. 2002), available at <http://www.rand.org>.

Unemployment Compensation: A State-by-State Guide to the Laws as they Affect Military Spouses' Eligibility for Benefits Upon PCS-Related Job Loss, MILITARY SPOUSES CAREER NETWORK (Dec. 2000), available at <http://www.mscn.org>.

Rick McHugh, Nancy Segal, Rebecca Smith & Andrew Stettner, *Between a Rock and a Hard Place: Confronting the Failure of State Unemployment Insurance Systems to Serve Women and Working Families*, NATIONAL EMPLOYMENT LAW PROJECT (July 2003), available at <http://www.nelp.org>.

State Choices

10 states cover trailing spouse as personal or family reasons

Alaska
Arizona
California
Hawaii
Kansas
Nevada
New York
Oregon
Pennsylvania
Rhode Island

5 states allow UI specifically for family transfers

Indiana
Kentucky
Maine
Oklahoma
Texas

3 states allow UI only for military trailing spouses

Florida
North Carolina
Washington

6 states explicitly deny UI for family relocation

Colorado
Maryland
Massachusetts
Ohio
Utah
Virginia

Add a Children's Allowance



What is it?

Some states provide a supplemental UI benefit to recognize the financial hardships that families with children face when a wage-earner is unemployed. Unemployment insurance benefits too often are insufficient to provide for the needs of the children in low-income families that struggle to make ends meet even in good times. 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 or children's allowance as part of a UI check.



Key arguments in favor

Families living on unemployment endure special hardships. Unemployment places financial stress on families. When parents lose jobs, the family income drops; UI benefits only replace a portion of the lost wages. A recent nationwide poll of unemployed workers found that 84 percent of women with children, and 77 percent of men, reported increases in family stress as a result of their unemployment. Two-thirds of the women polled said they cut spending on their children, food and medical care while unemployed.

Dependents' benefits help low-wage working families survive. The UI system is intended to partially replace lost wages for unemployed workers. Low-wage families often are stretched so thin financially that any reduction of income cuts into the ability to meet basic needs. The Advisory Council on Unemployment found in 1995 that families earning less than \$15,000 a year spend 65 percent of their income on necessities. In nine of the states that provide dependent benefits as part of the UI benefit, the benefit replaced 65 percent or more of previous income – enough to meet necessary spending for average low-income families.



Key arguments against and responses to them

Opponents say: Unemployment insurance is not welfare; dependents' benefits make it look like welfare.

Response: Unlike welfare, receipt of UI benefits is not based on poverty and the presence of children in a family, but on attachment to the workforce and the amount of wages earned in prior work.

Opponents say: Providing dependent benefits is costly.

Response: The additional children's portion, while very important to the family budget, is generally small (\$15 or \$25 per child) and capped at a maximum number of children. Moreover, a common restriction on dependents' benefits is that they cannot exceed one-half of a worker's weekly benefit amount.

Opponents say: Workers do not get a higher wage rate just because they have children, so why should they get a higher UI check?

Response: Actually, workers do get to keep more of their paycheck based on the number of dependents. The amount of take-home pay a worker keeps varies by the number of dependents. The Earned Income Tax Credit amount also is based on the number of dependent children in the household.



Which states do it?

Thirteen states, plus the District of Columbia, address the special hardships of unemployment on families by providing a dependent allowance. In 2003, New Mexico became the newest state to offer dependents' benefits, at \$15.00 per child up to a maximum of four children.



Model legislation

New Mexico

C. An individual otherwise eligible for benefits shall be paid for each week of unemployment, in addition to his or her weekly benefit amount, the sum of fifteen dollars (\$15.00) for each unemancipated child, up to a maximum of four and subject to the maximum benefit amount stated in Section 2 of this section, of the individual who is in fact dependent upon and wholly or mainly supported by the individual and is:

(1) under the age of eighteen...

D. Dependency benefits shall not exceed fifty percent of the individual's weekly benefit rate. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of the benefit year, but this provision does not prevent the transfer of dependents' benefits from one spouse to another in accordance with this subsection. If both the husband and wife receive benefits with respect to a week of unemployment, only one of them is entitled to a dependency allowance with respect to a child. The division shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits. Dependency benefits shall not be paid unless the individual submits documentation satisfactory to the division establishing the existence of the claimed dependent. If the provisions of this subsection are satisfied, an otherwise eligible individual who has been appointed guardian of a dependent child by a court of competent jurisdiction shall be paid dependency benefits.

N.M. STAT. ANN. § 51-1-4

References

ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, UNEMPLOYMENT INSURANCE IN THE UNITED STATES: BENEFITS, FINANCING, COVERAGE (Feb. 1995).

State Choices

13 states provide dependent allowances

Alaska
Connecticut
Illinois
Iowa
Maine
Maryland
Massachusetts
Michigan
New Jersey
New Mexico
Ohio
Pennsylvania
Rhode Island

Providing Paid Family or Temporary Disability Leave



What is it?

Millions of Americans are faced every year with the delicate balance of work responsibilities and their need to take short leaves due to pregnancy, illness or disability of themselves or a family member. Millions take unpaid leave every year because of temporary illness or injury or because they need to care for sick family members. States can enact temporary disability insurance programs (TDI) that provide benefits to workers who are temporarily unable to work because of their own disability, and can, like California, include paid family leave in these TDI programs. While TDI programs are not UI, the programs serve a similar purpose of supporting temporarily unemployed workers and can be administered through the unemployment insurance system.



Key arguments in favor

Balancing work and family. With both partners in most families working, American families are increasingly called upon to balance their family's need for periodic time off against their need to work. Increasingly, they find that they are coming up short because no income support system can assist in replacing lost wages. While the federal Family and Medical Leave Act protects many workers from losing their jobs when they must take leaves due to illness or injury of themselves or family members, the FMLA does not require that employers provide paid leave. Twenty-seven million Americans took or needed to take family leave during an 18 month period from 1999-2000, most of it unpaid.

Temporary disability programs can spread the huge cost of family caregiving. The national economic cost of family caregiving is estimated at \$257 billion a year, much of which working caregivers and their families must shoulder during unpaid family leave. Temporary disability programs, like basic UI, are social insurance programs that reflect society's commitment to supporting families when they are unable to work because of disability or family caregiving.

Many workers, especially low-wage workers, do not have other temporary disability insurance to replace lost wages. In today's workforce, most workers do not receive a benefit package from their employers that includes temporary disability insurance. While disabled workers can qualify for Social Security Disability Insurance if they face a long-term inability to work, there generally is not a system that provides temporary income support to replace lost wages.



Key arguments against and responses to them

Opponents say: Employers can't afford paid disability or family leave.

Response: Employers do not have to shoulder the full cost of TDI programs. State-administered TDI benefits are generally funded through some combination of an employee/employer shared payroll tax. The worker's share is generally one-half of a percent of wages up to a particular maximum dollar amount. The costs of California's new paid family leave provisions are borne entirely by employees.

Opponents say: Even if they don't pay for it, employers need to have workers at work and cannot manage if workers take time off.

Response: A new study in California finds that employers have little difficulty managing employee leaves of absence since relatively few employees go on leave at any one time. The vast majority return to their jobs after the leave. In most cases employers are able to cover the work by assigning it to other employees.

Opponents say: Paid family leave causes unnecessary turnover.

Response: On the contrary, the California study finds that employees are more likely to return to their jobs following a leave when their employers provide family and medical leave benefits that are more extensive than required by (the previous) law. Thus, family leave accommodations can contribute to lower turnover rates.



Which states do it?

Five states and Puerto Rico have Temporary Disability Insurance (TDI) programs. These programs are generally administered through unemployment insurance or workers' compensation systems. They provide up to 26 weeks of partial wage replacement to persons with recent and significant work history, but who, because of mental or physical illness or injury, are currently unable to work.

In 2002, California added a paid family leave provision to its TDI program. Through this provision, most employees can receive 55-60 percent of wages for up to 6 weeks of leave per year to care for a seriously ill family member or a new baby. This new provision costs workers an average of an additional \$27 per year in payroll deductions.

The states of Washington and Massachusetts are among those with ongoing family leave campaigns unrelated to TDI programs.

As noted elsewhere in this chapter, states can also offer more limited relief through their UI systems for caregivers who must leave a job due to family obligations, but who are still "able and available" to work. Fifteen states have "undue family hardship" provisions, and eleven states have provisions covering illness, disability or care of a

State Choices

5 states have TDI programs

California
Hawaii
New York
New Jersey
Rhode Island

family member. While family hardship provisions can allow a worker to receive UI while they are seeking new work, these provisions do not provide any income support during the period that the worker is temporarily unable to work. In contrast, TDI and paid family leave programs offer income support to workers at the time when they are unable to work due to disability or illness. Persons receiving TDI or family leave benefits are not obligated to be able to work or to search for work during this period.



Model legislation on temporary disability insurance

Existing state temporary disability insurance provisions differ in the monetary eligibility, amount of benefits, maximum length of benefits, and employer and employee contributions. For a comparison of the state laws provisions, see U.S. Department of Labor, *Comparison of State Unemployment Insurance Laws 2004*, Chapter 8 (2004). No state has enacted a temporary disability insurance program since 1969.



Model legislation on paid family leave

California's new law amended many different provisions of state law. The most efficient way to read it is by reading the chaptered version of Senate Bill 1661 from the 2002 legislative session, available at <http://www.leginfo.ca.gov>.

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Lissa Bell & Sandra Newman, *Paid Family Leave: Why we need it, how we can get it*, FAMILY CAREGIVER ALLIANCE (2003), available at <http://www.nationalpartnership.org>.

Eileen Applebaum & Ruth Milkman, *Paid Family Leave in California: New Research Findings*, UCLA INSTITUTE OF INDUSTRIAL RELATIONS (2004), available at <http://www.familyleave.ucla.edu>.

Eligibility for Nonstandard Workers

Introduction

The unemployment insurance system, built on a “male breadwinner” model of full-time long-tenured workers, has failed to keep pace with today’s workforce. During the last recession, 5.4 million workers in the United States lost full-time, long-tenure jobs, and many of them have not found equivalent jobs. Our workforce is increasingly made up of part-time, temporary or seasonal workers. One in six workers, most of them women, works part time. The temporary agency industry is burgeoning, having doubled in the last 15 years to 2.5 million workers.

Unemployment insurance is intended to protect workers when they are out of work. Yet many nonstandard workers in our society are excluded from receiving UI benefits, even if they have worked a substantial amount and otherwise meet UI qualifications.

Nonstandard workers represent a significant and increasing portion of the workforce. Just like their full-time counterparts, nonstandard workers are a permanent feature of the labor force and are as likely as full-time workers to be unemployed involuntarily. Because many nonstandard workers are also low-wage workers, they are among those most in need of unemployment insurance.

This chapter addresses how current state policies can be improved upon as well as why states should reject any new attempts to exclude or penalize certain workers.

Establish UI Parity for Part-time Workers



What is it?

Part-time employees, most often women and low-wage workers, are the victims of outdated UI eligibility rules. Many states exclude part-time workers from UI benefits by requiring them to look for full-time work in order to receive UI. The result is that many part-time workers are excluded from UI even though their wages were subject to UI payroll taxes and their earnings prior to layoff meet state monetary eligibility rules. A growing number of states (23 to date) have adopted policies that provide UI benefits to many unemployed part-time workers in their state.



Key arguments in favor

Part-time workers are an important part of the labor force and the economy.

One in six American workers is employed part time. Part-timers work for substantial lengths of time – an average of 36 weeks a year, compared with 48 weeks for full-time workers. The average prime age (25-44) part-time worker works 23 hours per week, the equivalent of three full days. Part-time workers also represent a large share of the unemployed – with roughly one in six of all unemployed workers reporting they are looking for part-time work.

Part-time workers and their employers contribute to the UI system. These workers should be protected when laid off. UI is paid for directly by employers and indirectly by workers, as a tax on some or all of a worker's wages. In almost half the states, even a part-time worker who has contributed to the system for twenty years cannot receive UI unless s/he is willing to switch to full-time work.

Equality in the system. Adult part-time workers are 59 percent less likely to receive UI than full-time workers. Yet seven million women, and 1.8 million men, spend part of their peak earning years working part time. Adopting policies that allow part-time workers to participate in unemployment insurance is an important step towards expanding access to UI benefits for women and low-wage workers.



Key arguments against and responses to them

Opponents say: It is too expensive to pay UI benefits to part-time workers.

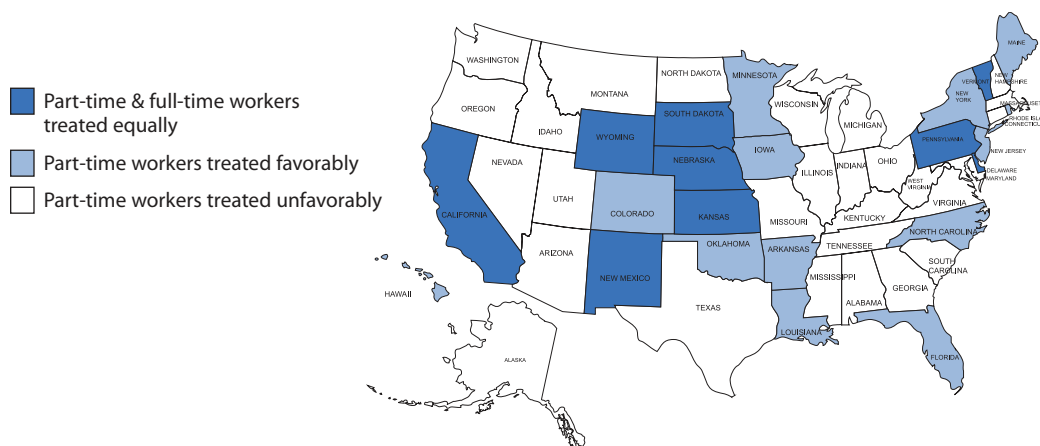
Response: The duration and weekly amount of unemployment insurance benefits a worker can receive are determined by the amount of a worker's past wages. Because part-time workers have worked less and earned less, the cost of extending UI eligibility to these workers is relatively low. For the most part, weekly UI benefits will be lower for unemployed part-time workers than for other workers. In addition, part-time workers tend to remain unemployed for shorter periods of time than full-time workers so the duration of benefits is less than for other workers. Thus, the cost of parity for part-time workers is a tiny portion of overall UI costs. For example, a

recent analysis of Georgia data led to an estimate that expanding UI eligibility for part-time workers in that state would cost less than one-third of one percent of total UI benefits in 2002 (\$2.5 million out of a total of \$780 million).



Which states do it?

Twenty-three states maintain favorable policies toward laid off part-time workers. Of these, nine states pay UI benefits to part-time workers on an essentially equal basis with full-time workers. Another 13 states, and the District of Columbia, provide benefits to part-time workers based on work history or good cause. In four additional states – Illinois, Montana, Washington and Massachusetts – UI eligibility is extremely limited for part-time workers. States that completely deny UI benefits to unemployed part-time workers are in the minority.



Model Legislation

New Mexico

(I) No individual who is otherwise eligible, shall be deemed ineligible for benefits solely for the reason that the individual seeks, applies for or accepts only part-time work, instead of full-time work, if the part time work is for at least twenty hours per week.

N.M. STAT. ANN. § 51-1-42

References

Rick McHugh, Nancy Segal & Jeff 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*, NATIONAL EMPLOYMENT LAW PROJECT, (2002), available at <http://www.nelp.org>.

Part Time Workers and Unemployment Insurance, NATIONAL EMPLOYMENT LAW PROJECT, (March 2004), available at <http://www.nelp.org>.

Use the Broad “ABC” Test to Define Employer-Employee Relationships



What is it?

At least 8.6 million Americans work as independent contractors, not covered by state unemployment insurance protections. State laws contain detailed tests to determine whether a worker is an employee of a business, or whether he or she is an independent contractor not entitled to UI benefits. Twenty-four states use a broad definition of the employer-employee relationship that generally includes workers and protects their rights. This broad definition – called the “ABC” test – excludes workers from UI coverage only if (A) they are free of the employer’s control in the performance of their job; (B) their service is outside the normal course of business of the employer or off of the employer’s premises; and (C) the worker operates his or her own business.



Key arguments in favor

UI is a social insurance program that should broadly cover all workers.

Excluding workers from UI hurts workers and the social insurance system. Workers are left falling between the cracks – ineligible for benefits and unprotected by workplace regulations. Employers who are not obligated to take part in the system have no incentive to retain their workforce, a key purpose of UI. When workers are left without earnings or unemployment insurance, they must turn to other support systems such as welfare.

A broad employee definition guards against misclassification of workers as independent contractors.

Every year, at least 80,000 workers are denied UI because their employers have misclassified them as independent contractors. A broad definition of the employer-employee relationship helps to ensure that unemployment insurance is available to those who are not in business for themselves and perform jobs that are integral to someone else’s business.

Contingent or nonstandard workers are drawn from the most vulnerable sectors of the workforce.

Many of those misclassified as independent contractors are contingent workers. Contingent workers – including independent contractors, part-time and seasonal workers – are unemployed at nearly twice the rate of full-time workers. During periods of unemployment, UI can help keep these workers out of poverty, especially those who are low-income.



Key arguments against and responses to them

Opponents say: Contingent workers know what they are giving up when they accept the terms of employment and willingly exchange flexibility or higher wages for the loss of benefits.

Response: Many low-wage and contingent workers have no choice about the terms of their employment. High-wage independent contractors, who are truly in business for themselves, are legitimately considered independent contractors under state laws which use the ABC formula.

Opponents say: Workers in nonstandard arrangements will take advantage of the system if made eligible for unemployment insurance benefits.

Response: ABC laws are intended to cover low-wage, low-skilled workers who are not in an independent business, but who may be misclassified by their employers as independent contractors. A major study of unemployment insurance and workers in nonstandard work arrangements found that the availability of unemployment insurance benefits did not increase the likelihood that such workers would become unemployed.



Which states do it?

Twenty-three states use the ABC test to determine employer-employee relationship. In addition, Washington State uses an even more exacting measure to determine if workers are truly independent contractors.



Model legislation

Washington

Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

State Choices

23 states use the ABC test

Alaska
Arkansas
Colorado
Connecticut
Delaware
Georgia
Hawaii
Illinois
Indiana
Louisiana
Maine
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
Ohio
Pennsylvania
Utah
Vermont
Virginia
Washington
West Virginia

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

WASH. REV. CODE § 50.04.140

References

BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *Contingent and Alternative Employment Arrangements*, (Feb. 2001), available at <http://www.bls.gov>.

Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, PLANMATICS, INC., Feb. 2000.

U.S. DEP'T OF LABOR, UI INFORMATION BULLETIN No. 05-04 (May 2004) available at <http://workforcesecurity.doleta.gov>.



Watch Out For: Eligibility Rules that Discriminate Against Workers Employed by the Temporary Help Industry

Over the last 30 years, the temporary-services industry has grown tremendously, from 247,000 in 1973 to a peak of 2.7 million employees in 2000, and has increased its share of the total workforce from one-third of one percent to two percent.

A number of states, usually with little or no public scrutiny, have adopted strict eligibility requirements that limit access to UI for persons employed by temp agencies. Under these policies, only those temp workers who can prove that they have repeatedly “reported in” for a new assignment will be eligible for UI; otherwise the workers are considered either to have voluntarily quit their jobs, or refused suitable work. States should avoid this special treatment for employers who are temp agencies; it undermines the purposes of UI, disadvantages temp workers, and interferes with workers’ efforts to seek better, long-term employment.

For most full-time workers, when a job ends, the worker is considered “unemployed.” In order to receive UI, the worker must be available for new work and actively search for employment. Temporary workers should be subject to the same standards. In states that have adopted special temp rules, however, temp workers are subject to different standards and are caught in a “gotcha!” situation. They are forced to continue reapplying for work with the same agency that happened to refer them to their last job, even though they have been laid off and may have no hope of future work with the temp agency. The policies mean that state administrative resources are also spent on determining whether a telephone call was made on a weekly basis to a temporary agency, rather than on substantive issues. These policies serve more to protect the temp industry from fully participating in the cost of unemployment insurance than to connect the temp worker to future employment.

Seventeen states enacted this type of restriction on UI benefits for employees of temp agencies although legislation has been introduced in at least two of these states – Michigan and Rhode Island – to repeal the law. California enacted this type of restriction administratively for a period of time but has since rescinded the policy. Some other states, including Illinois, Maryland, New Jersey, and Ohio, have passed a modified version of the temp agency law.

State Choices

17 states have UI restrictions for temp agency workers

Arkansas
Colorado
Connecticut
Delaware
Florida
Georgia
Idaho
Iowa
Kansas
Michigan
Minnesota
Nebraska
New Mexico
North Dakota
Oklahoma
Rhode Island
Texas

Build Income Security

Introduction

Unemployment insurance was created to provide workers insurance against involuntary job loss by partially replacing lost pay with weekly UI benefits. Since UI benefits typically aim to replace about half of former wages, living on UI is a hardship for any family, and is particularly hard for low-wage workers who may receive smaller weekly UI benefit amounts and have fewer back-up resources. One of the most important steps states can take is to make sure that weekly UI benefit amounts are sufficient to meet their intended purpose, that is, to assist jobless workers to meet basic needs.

This chapter discusses several ways that states can ensure that the UI benefit amounts meet these goals.

- **Indexing:** States can ensure that weekly benefit amounts are sufficient over time by indexing their maximum weekly benefit amount to growth in state wages.
- **Calculation of weekly benefits:** States can ensure that low-wage workers, who often receive less than the maximum weekly benefit amount, receive UI pay that allows them to meet basic needs during the time they are out of a job.
- **Partial UI:** States can adopt policies to allow jobless workers to work part-time while looking for permanent employment and still receive partial UI benefits. In this way, jobless workers can supplement UI benefits with earnings.

Not only must a UI check be sufficient to cover weekly expenses, the timing must be right for UI to effectively bridge a family's income gap between jobs. The unemployment check must arrive soon after a layoff and then last long enough so that most workers can find a new job before they receive their last unemployment check. To ensure timely arrival, states should eliminate the antiquated provision that requires workers to wait an additional week after they've demonstrated their eligibility. To ensure adequate time for job search, states should provide unemployment benefits that last six months during good times, and leverage the maximum federal dollars available for extended benefits when an economic slow down chokes off re-employment opportunities.

Index Weekly Benefit Amounts



What is it?

Maximum state unemployment insurance benefit amounts should be indexed to the growth of wages in the state so that jobless workers have adequate resources to meet their basic expenses. Indexing is accomplished by setting the maximum weekly benefit each year to equal to a set percentage (preferably two-thirds) of the state's average weekly wage.



Key arguments in favor

Indexing the weekly benefit amount is the best way to ensure that unemployment benefits keep pace with current expenses of a state's jobless workers. Average wages increase each year with much of the growth reflecting changes in the cost of living in a state. If weekly unemployment benefit amounts don't increase along with worker pay, laid-off workers will have insufficient resources to meet even basic expenses, especially expenses such as housing that are established based on a prior salary. In states that have indexed maximum benefit amounts, the UI benefits replace a greater share of a jobless worker's lost wages than in states that have not indexed maximum benefit amounts.

Without indexed maximum weekly benefit amounts, UI will replace less than half of prior wages for too many unemployed workers. Since the 1950s, replacing half of prior wages has been recognized as the adequate weekly level of insurance for unexpected unemployment—enough to pay for necessities but not so much as to discourage re-employment. Many states have benefit formulas that generally grant workers half of their prior weekly wage in benefits, but benefits are capped. If the cap, or maximum weekly benefit, is low, the UI benefits will not replace half of prior weekly wages for many workers. For example, in a state with a low maximum weekly benefit amount of \$250, workers earning as little as \$26,000 would receive an unemployment check of less than half of their last paycheck.

Most states using indexing provide a maximum weekly benefit amount equal to 60 percent or greater of the state's average weekly wage. The bipartisan Advisory Council on Unemployment Compensation (1995) recommended that the maximum weekly benefit equal two-thirds of the state's average weekly wage. Instituting this recommendation would assure that all low and moderate-wage workers (making up to 130 percent of the state's average weekly wage) receive fair jobless benefits. The indexing formula adopted by most states using indexing – replacing 60 percent or greater of prior wages – more closely approaches the ACUC recommendation than the 50 or 55 percent formula used in states with less generous indexing policies.



Key arguments against and responses to them

Opponents say: Indexed maximum weekly benefit amounts will be too high and drain the trust fund.

Response: Without adequate jobless benefits, the core function of the unemployment insurance program is compromised. Thus, state UI revenue systems should be designed to ensure that the program's benefits can keep pace with inflation. Sensible policies like having an indexed taxable wage base can ensure that state UI revenues increase in proportion with growth in the economy.

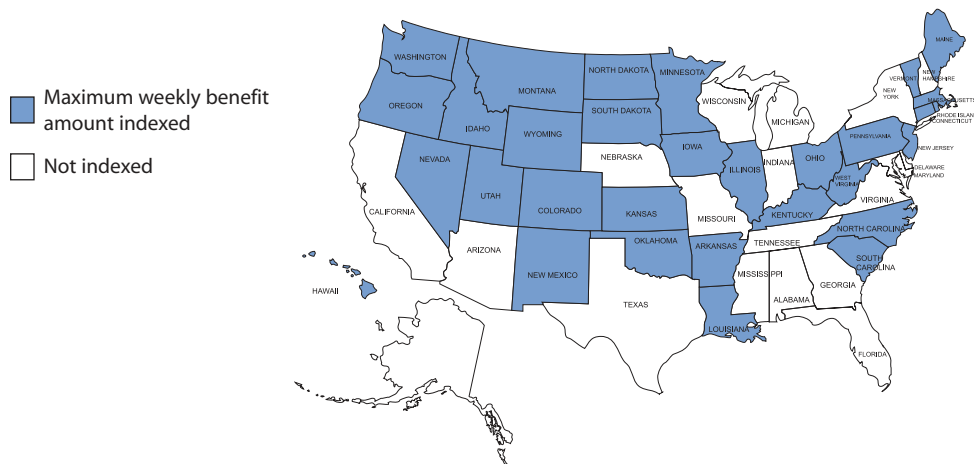
Opponents say: Workers eligible for the maximum have other savings to supplement low UI benefits.

Response: Jobless workers do not have substantial savings. A leading economist found that the average worker only had sufficient financial assets to cover 5.4 weeks of unemployment. Low-wage workers are even less likely to have savings set aside. With little other resources to turn to, adequate UI benefit payments are crucial to helping families avoid serious financial distress during unexpected unemployment.



Which states do it?

Some 32 states index weekly benefit amounts to keep pace with growth in wages, with most of these states using an index of 60 percent or greater of average state wages.





Model legislation

North Carolina

(b)(2) Each August 1st, the Agency shall calculate the maximum weekly benefit amount available to an individual. The maximum weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the average weekly insured wage rounded, if the amount is not a whole dollar, to the next lower whole dollar. The maximum weekly benefit amount set on August 1 of a year applies to an individual whose benefit year begins on or after that date and before August 1 of the following year.

N.C. GEN. STAT. § 96-12

References

Jonathan Gruber, *The Wealth of the Unemployed: Adequacy and Implications for Unemployment Insurance*, NBER Working Paper 7348 (1999).



Watch Out For: Changes to the Way UI Benefit Amounts Are Calculated

A number of states calculate a worker's weekly UI benefit amount based on the wages the worker earns in their highest-earning quarter. Changing the formula to calculate benefit amounts based on wages from two quarters or across the entire base period can amount to a significant cut in the amount of weekly UI benefits an unemployed worker receives.

Here's the difference. Take a worker who earned \$7,500 in his or her highest quarter and \$2,500 in his or her second highest quarter and a total of \$12,500 in his or her entire base period. Under a high-quarter formula used in 33 states, the worker would receive half of their average high-quarter weekly wages in UI benefits, in this case \$288 per week. However, under an alternative two-quarter formula, the same worker would only receive \$192 per week; under a four-quarter formula he or she would only receive \$120 per week.

The workers most affected by this change are those who work for only part of the year or have uneven earnings due to seasonal fluctuations. Such workers frequently count on adequate jobless benefits to provide for their families during periodic unemployment.

Provide Low-wage Workers with a Greater Share of Former Wages



What is it?

Unemployment insurance benefits should be sufficient to cover the basic necessities for workers who lose their jobs. The general concept that UI should replace half of former earnings may not provide adequately for low-wage jobless workers. Low-wage workers spend a greater proportion of their earnings on basic necessities and their UI benefit checks need to represent a more generous share of their prior wages. States can address this issue in several ways, each of which adjusts the formula used to calculate the weekly UI benefit amount. Some approaches adjust the benefit amount for all jobless workers qualifying for less than the maximum weekly UI benefit and other approaches specifically adjust the benefits based on the low past earnings of the worker.



Key arguments in favor

Low-income workers need relatively more help covering basic expenses. When workers become unemployed, they can defer certain expenses (like clothing, retirement savings or personal services), but they must continue to meet on-going expenses like housing and food. Low-wage workers face a particular challenge in meeting basic needs when they are laid off because they are less likely to have savings and spend a greater proportion of their earnings on basic needs. Giving low-wage workers a relatively larger share of their prior wages in UI benefits is a reasonable way of addressing their greater need.

How changing the weekly benefit formula benefits low-wage workers

The general approach to setting weekly benefit amounts that most states use (commonly expressed as 1/26th of total high-quarter earnings) is intended to replace half of prior weekly wages. (One calendar quarter represents 13 weeks and thus one week of earnings is 1/13 of the quarter's earnings. Half of the value of one week's earnings – the replacement goal of UI benefits – would be 1/26 of the quarter's earnings. Most states look to the highest quarter of earnings in applying this type of formula.) Using a larger share of high-quarter wages (for example, by increasing the overall benefit formula from 1/26th to 1/24th of high-quarter wages), augments the benefits of all low and moderate-wage workers.

Here is how varying the benefit formula can make a difference for a low-wage jobless worker. In Arkansas, weekly benefit amounts are set at 1/26th of high-quarter wages up to a maximum of \$345 in 2003. A low-wage worker earning \$3,900 in his or her highest quarter (\$300/week) would qualify for a check of \$150 per week. If the proportion of earnings used in the benefit formula were increased to 1/24th of high-quarter wages, the worker's UI benefits would go up by \$12.50 per week to \$162.50.

Contrast this to a moderate-wage worker earning \$9,750 in his or her high quarter (\$750/week). For this moderate-wage worker, 1/26th of his or her prior wage is \$375, but the UI benefits would be capped at \$345 due to the benefit maximum. Even if the state changes the benefit formula for all workers to 1/24th of high-quarter earnings, the weekly benefits of this worker would not increase because of the cap. Thus, below-average earners are uniquely benefited by changing the benefit calculation formula in this manner.

Examples of what states do

Flexible formulas

California
Indiana
Massachusetts
New Hampshire
New York
Pennsylvania

1/24th formula

Hawaii
Kansas
Maine
Maryland
Oklahoma
Rhode Island

Workers earning below-average wages are uniquely helped by increasing the state's benefit calculation formulas. Weekly UI benefit amounts are capped at modest levels in most states. Depending on the state law, all workers earning average or above-average wages receive the maximum. Workers earning below-average wages are those directly benefited by calculation formulas that set weekly UI amounts differently for those who qualify for less than the maximum.

While there are several different approaches a state can take, changing the weekly benefit formula to one based on 1/24th (or more) of high-quarter wages is the most comprehensive way to augment the benefits for all low-wage workers. (See explanation of this particular approach in the box.) While many states have addressed the issue of the maximum weekly benefits for average and above-average earners, relatively few have changed their benefit calculation formula to assist jobless workers earning below-average wages.

Modestly upgrading the checks of low-wage workers provides additional help without turning UI into a welfare program. All states establish each claimant's weekly benefit amount on the individual's prior wages. One way for states to provide additional assistance is to use an incrementally more favorable formula when calculating benefits for low-wage workers. For example, New Hampshire provides low-wage workers with unemployment compensation up to 59 percent of prior weekly wages, as compared to modest-wage workers (qualifying for less than the maximum) who receive 52 percent of prior wages. Such models insure that unemployment insurance remains an earned benefit while also achieving its social purpose of maintaining living standards.



Which states do it?

A number of states use some type of formula that assists jobless low-wage workers to receive more adequate UI benefits. Some states use flexible benefit formulas that give the lowest-wage workers a greater share of their prior wages. Some states provide 1/24th (4.25 percent) or more of high-quarter wages in UI benefits to all workers qualifying for less than the maximum.



Model legislation

A claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers. However, for claimants whose high calendar quarter remuneration during the base period is three-thousand six hundred dollars or less, the benefit amount shall be one twenty-fourth of the remuneration paid during the highest calendar quarter.

Model language revising N.Y. LAB. LAW § 590.5



Watch Out For: Changes to the Duration of UI Benefits

It is commonly assumed that all jobless workers can receive 26 weeks of state jobless benefits if they remain unemployed. In fact, only 8 states provide a “uniform” duration of UI, meaning all workers who are monetarily eligible and remain unemployed can draw the full 26 weeks of benefits. The rest of the states use variable duration periods with a formula to determine the number of weeks of UI benefits a jobless individual can draw. These state laws set a cap or total benefit

amount based on a share (commonly one-third) of each worker’s base period wages. The duration period is set by dividing a worker’s total benefit amount by his or her weekly benefit amount. In many instances, the result is that the worker receives less than 26 weeks of UI even if still unemployed. In 2002, one-third of the workers who exhausted all of their unemployment benefits, without finding new work, had received less than 26 weeks of benefits.

How a variable duration formula penalizes some workers

Consider the example of a worker who worked part of the year, earning \$12,500 in 25 weeks (\$500 a week). Under a standard formula, this worker would receive a weekly benefit amount of \$250. In a state with a uniform duration period, he or she would be able to draw \$250 a week for a maximum of 26 weeks of documented unemployment for a total of \$6,500 in UI. In a state using a variable duration period that sets a cap based on one-third of base period wages, the total benefit amount for this same worker would be \$4,167. (One-third of the worker’s \$12,500 in base period wages equals \$4,167.) This total benefit amount divided by the weekly benefit amount of \$250 equals 16.7 weeks of UI. So, under the variable duration formula, this same worker would be able to draw benefits only for 16 weeks. In other words, solely due to the variable duration formula, this worker would lose 10 weeks of benefits, or \$2,333.

State variable duration formulas vary considerably in the portion of base year wages that is considered in setting the cap. States that provide for longer duration (although still less than 26 weeks) look at half or sixty percent of base period wages; examples are New Mexico, Virginia, District of Columbia and Delaware. States that provide the shortest duration consider about one-quarter of base period wages; examples are Florida, Tennessee, Texas, and Utah. (Variable duration states also typically set a floor of a minimum number of weeks provided for a valid claim ranging from 24 weeks in Delaware to three in Oregon.)

States should avoid proposals to change duration formulas which can result in a substantial loss for jobless workers. Some proposals might be to shift from a uniform 26-week approach to a variable duration formula. Other proposals might be to change the way the variable duration period is calculated by

considering a smaller share of base year earnings as the total benefit amount. With the length of unemployment increasing, workers need jobless benefits for as long as they are out of work, or at least 26 weeks.



Watch Out For: Common Offsets that Reduce UI Benefits

States should not choose to reduce UI benefits because a jobless worker also receives Social Security retirement, some other contributory pension payments, or severance benefits. These reductions of UI benefits are often referred to as “offsets,” since the other types of income or benefits are offset against UI benefits. State practices vary widely on the specific kinds of non-wage income that is used to offset UI benefits.

Under a 1980 amendment to the Federal Unemployment Tax Act, states are required to subtract from unemployment benefits any pension payments from a “base year” or chargeable employer (essentially employers within the last year and a half of the worker’s employment). However, if a worker has paid into a retirement program, such as with Social Security retirement or a 401(k) plan, federal law allows states to take these employee contributions into account by eliminating or reducing the offset against UI benefits. As a result, states may disregard all, or a percentage, of Social Security retirement benefits. States also are free to ignore IRA rollovers.

Social Security offsets: A significant majority of states (35) have eliminated discrimination against older workers by stopping UI offsets based on Social Security retirement benefits received. Providing UI benefits to otherwise eligible older workers regardless of their receipt of Social Security benefits rewards work and reduces age discrimination.

However, 16 of the 51 UI jurisdictions (the 50 states and the District of Columbia) still offset all or part of Social Security benefits against UI benefits. Of these, only two states (Ohio and West Virginia) currently offset 100 percent of Social Security retirement benefits against UI benefits. Another fourteen states offset 50 percent of Social Security retirement payments. These are Colorado, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia.

There is a definite trend in the states toward repeal of policies offsetting Social Security retirement against UI.

- In 2002-03, Kansas and Wyoming both eliminated their Social Security offsets entirely.
- In 2003, Virginia reduced its 100 percent offset to 50 percent.
- In 2004, four more states eliminated or reduced their offsets.
 - Arizona eliminated its 45 percent offset.
 - Utah reduced its 100 percent offset to 50 percent.
 - Connecticut eliminated its 50 percent offset.
 - District of Columbia eliminated its offset of 100 percent.

Other pension offsets. A number of states have rules offsetting other types of pension benefits against UI that are stricter than required by federal law. For example, Michigan and New York offset IRA rollovers under the doctrine of “constructive receipt,” even if the UI claimant doesn’t touch the money. About a dozen states (including Indiana, North Carolina, Ohio, and Virginia), don’t take employee pension contributions into account, meaning that affected individuals have their UI benefits reduced even though they have paid all or part of the costs for their pension benefits. If the worker had instead set the contribution aside in his or her savings account, there would be no UI offset when the worker withdrew the savings while also receiving UI. Pension offset rules should be examined to ensure that these types of inequitable or unfair policies are eliminated.

Severance pay offsets. Severance pay consists of non-wage payments provided by employers at the time that active employment is terminated. According to the U.S. Department of Labor, 20 percent of all employees in private industry were covered by severance pay arrangements in 2000, with 35 percent of professional, technical, and related employees eligible for severance pay.

Severance is paid as a reflection of employees' prior service. During layoffs or workplace closings, severance is sometimes provided voluntarily as partial compensation for loss of employment, fringe benefits, and job security. In other cases, severance is an existing fringe benefit offered to employees. In either case, severance pay is not paid with respect to weeks after employment has ended. For this reason, severance should not be treated as wages and should not be offset against UI benefits. Instead, UI benefits are intended as compensation for involuntary unemployment after a layoff and should not be impacted by the receipt of severance pay.

References

27 AM. JUR. 2D *Employment* § 70 (2002).

BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS IN PRIVATE INDUSTRY, 2000 (Washington, D.C., July 16, 2002), Table 2.

BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, REPORT ON THE AMERICAN WORKFORCE 2001 (Washington, D.C., July 16, 2002), Table 45.

Expand Partial Unemployment Benefits



What is it?

During periods of rising unemployment, instead of being laid off, some workers have their hours (and wages) reduced. Others may find temporary part-time work while looking for a permanent, full-time job. Currently, 4.5 million people are involuntarily working part-time.

All state laws permit workers facing reduced hours of work to draw “partial” or “underemployment” UI benefits while continuing to work part-time, although the specifics vary considerably among states. Jobless workers must meet two requirements to get partial benefits. First, they must meet a definition of partial unemployment or underemployment. Second, they must have earnings below levels set by each state’s UI law. Setting these earnings cutoffs at higher levels has the effect of permitting jobless workers to earn more part time wages while retaining a bigger portion of their UI benefits. This creates an incentive for jobless workers to accept short-term, part-time employment while continuing to get some UI benefits and looking for permanent jobs.

When a worker qualifies for partial UI, the amount of UI benefits the worker receives is reduced by the worker’s ongoing earnings. In considering or budgeting these earnings, a portion of earnings is disregarded. One major problem with partial benefits is that states have not kept up to date on the amount of earnings disregarded before part-time earnings reduce an individual’s weekly UI benefits. To address this shortsighted policy, states should enact substantial earnings disregards in their partial UI benefit formulas.



Key arguments in favor

Partial benefits encourage jobless individuals to accept work. Jobless workers must look for and accept “suitable work,” but remain free to refuse jobs that fall short of their former work in terms of pay, benefits, and other conditions of work. Generous partial benefits encourage jobless workers to accept short-term work that is less than suitable because they can receive a combination of wages and UI benefits while continuing their search for permanent work. Partial benefits can help keep jobless workers participating in the labor market and part-time or short-term work can sometimes lead to permanent, full-time jobs.



Key arguments against and responses to them

Opponents say: Partial benefits keep workers from finding permanent jobs while increasing benefit costs.

Response: No one gets rich on partial UI benefits. All states reduce partial UI benefits by a portion of wages, keeping benefit costs low when compared to the advantages of keeping jobless workers participating in the labor market. There is

little evidence that partial benefits significantly impact UI program costs or reduce job finding among UI claimants. There is evidence that partial benefits keep UI recipients involved in the labor market with only modest costs associated with the program.



Which states do it?

All states have partial benefits. Among the most generous definitions of partial unemployment are found in Connecticut, Idaho, and Puerto Rico, where any individual earning less than 150 percent of their UI weekly benefits at less than full-time work is considered partially unemployed. Montana considers anyone making less than twice his or her weekly benefit amount partially unemployed. Anyone working less than three customary full-time days of work in North Carolina is partially unemployed.

The income disregards that states currently use vary broadly. The biggest amounts of wages disregarded range from an amount equal to the weekly benefit amount in Puerto Rico to an amount equal to half the weekly benefit amount in Idaho, Illinois and Nebraska. Pennsylvania disregards 40 percent of the weekly benefit amount, while Connecticut disregards 33 percent of wages.



Model legislation

Pennsylvania

(u) An individual shall be deemed unemployed (a) with respect to any week (i) during which he performs no services for which remuneration is paid or payable to him and (ii) with respect to which no remuneration is paid or payable to him, or (b) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate plus his partial benefit credit.

(m.3) "Partial Benefit Credit" means that part of the remuneration, if any, paid or payable to an individual with respect to a week for which benefits are claimed under the provisions of this act which is not in excess of forty per centum (40 percent) [Note: substitute higher percentage for states with lower replacement rates than Pennsylvania] of the individual's weekly benefit rate, or six dollars [Note: substitute 10-15 times the federal or state minimum wage], whichever is the greater. Such partial benefit credit, if not a multiple of one dollar (\$1), shall be computed to the next higher multiple of one dollar (\$1). PA. STAT. ANN. tit. 43, § 753

(d)(1) Notwithstanding any other provisions of this section each eligible employee who is unemployed with respect to any week ending subsequent to July 1, 1980, shall be paid, with respect to such week, compensation in an amount equal to his weekly benefit rate less the total of (i) the remuneration, if any, paid or payable to him with respect to such week for services performed which is in excess of his partial benefit credit PA. STAT. ANN. tit. 43 § 804

Eliminate Waiting Weeks for Unemployment Insurance



What is it?

The "waiting period" or "waiting week" is a common feature of unemployment insurance laws. It is a period at the start of an unemployment claim during which the individual satisfies all requirements for eligibility but for which no benefits are paid. The effect of a waiting week is to deny a week of benefits to a jobless worker. Only if jobless workers draw their last week of benefits as a result of not finding work are they effectively paid for their first week of unemployment. The majority of UI benefit recipients, however, find work prior to exhausting their benefits. (Claims averaged 16.4 weeks in 2003.) In all states with waiting weeks, any particular individual serves only one waiting week per year, even if he or she experiences more than one spell of unemployment in that year.



Key arguments in favor

Waiting weeks have outlived their intended purposes. Waiting weeks were originally adopted for two purposes. First, states required a delay at the start of a new claim during which agencies processed UI claims manually. Second, there was no prior history available for estimating benefit costs accurately in the early days of UI, and providing a waiting week was justified as a means of providing UI benefits for a longer duration of weeks. Neither of these justifications really has continued vitality. States have wage information available on computers and it is administratively feasible to timely pay UI benefits for the first week of unemployment. And, since the early days of UI, states have increased the maximum duration of UI claims to a standard 26 weeks in nearly all states. Indeed, states with waiting weeks do not provide longer durations than states without waiting weeks, so they are not using the savings to provide added support for jobless workers nearing the end of their claims. Waiting weeks are an antiquated feature of UI programs that should be eliminated.



Key arguments against and responses to them

Opponents say: Newly unemployed individuals can best afford to bear part of the costs of their UI benefits.

Response: While there are significant savings to the UI trust fund that arise from waiting weeks, jobless workers get no waiting week on their mortgages, utility bills, or credit card statements. Jobless individuals relying on UI already lose half or more of their pre-layoff wages. Asking these workers to absorb more of the costs of the UI system is unfair. The purpose of UI is to provide prompt replacement of lost wages, not to drive jobless workers deeper into debt.



Which states do it?

Thirteen states have no waiting week. In addition, Tennessee and Texas pay benefits for the first week of unemployment after three weeks of unemployment pass. All other states have a one-week waiting period.



Model legislation

States with waiting period legislation would simply need to repeal the provision and any attendant references. For example, Mississippi law provides for a waiting period in Title 71, Chapter 5, Article 11, Sec. 71-5-511(d). This provision requires that claimants have been unemployed for one week in their benefit year during which they were eligible in all respects for UI benefits and for which no benefits have been paid before UI benefits are payable. In order to repeal the waiting period in Mississippi, legislation would be required to repeal Sec. 71-5-511(d), along with any other references to "waiting period" in the Mississippi state UI law.

References

WILLIAM HABER & MERRILL G. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY (Homewood, Illinois: Richard D. Irwin, Inc. 1966) at 200.

State Choices

13 states have no UI waiting period

Alabama
Connecticut
Delaware
Georgia
Iowa
Kentucky
Maryland
Michigan
Nevada
New Hampshire
New Jersey
Vermont
Wisconsin

Adopt Better Extended Benefits Triggers



What is it?

Extended Benefits (EB) is a UI program that automatically provides additional weeks of UI during recessions. The costs of EB are shared equally by the state and the federal government. The federal share of extensions is paid from Federal Unemployment Tax Act (FUTA) revenues; the state share is financed by state UI trust funds.

Currently, EB provides up to 13 weeks of additional UI benefits to workers who exhaust their regular UI benefits (typically no more than 26 weeks). EB is paid only when a state's unemployment rate rises to a level sufficient to "trigger" the program and start benefit extensions. Current EB triggers, however, have not kept pace with changes in the labor market. While overall unemployment rates are lower, workers are out of work for longer periods and higher numbers of workers experience long-term joblessness. The inadequacy of the current EB triggers is demonstrated by the fact that only 10 states provided EB to long-term jobless workers in the early 1990s recession and only six states had EB extensions during the 2001 recession and its aftermath.

Federal EB rules set a mandatory EB trigger that states must adopt. Federal EB rules also allow states to adopt either one or both of two optional EB triggers. See box for details of these three triggers. By adopting all three triggers, especially the optional Total Unemployment Rate trigger, a state can maximize its chances of providing EB to its jobless residents during economic downturns. In the long run, federal guidelines defining EB triggers need to be changed to make EB a more effective, timely protection for long-term jobless workers.

The Three Extended Benefit Triggers

EB triggers use two kinds of unemployment rates to decide whether unemployment has reached a level within a state high enough to justify extending benefits. The Insured Unemployment Rate (IUR) is calculated by counting how many individuals out of work are drawing UI benefits. Total Unemployment Rate (TUR) is a survey-based estimate of the number of jobless workers looking for work. Both rates are calculated as an average using a moving 13-week period.

1. Mandatory trigger: The mandatory EB trigger uses a 5 percent Insured Unemployment Rate. To satisfy this mandatory trigger, a state's IUR of 5.0 percent or more must also exceed 120 percent of its IUR for the same 13-week period in each of the two prior years. All state UI laws have this trigger in order to participate in EB.

2. Optional IUR trigger: Under the optional IUR trigger, the state's IUR must equal or exceed 6.0 percent for 13 weeks. The optional IUR trigger does not have the 120 percent threshold requirement found in the mandatory trigger.

3. Optional TUR trigger: States have a third trigger option under federal law using a TUR. Under this option, states must have an average TUR of 6.5 percent or more for any 13-week period and the rate must exceed 110 percent of the TUR for the same period in either of the previous two years. Under federal EB rules, the optional 6.5 percent TUR trigger also includes a second tier of 20 weeks of benefits with a TUR of 8.0 percent and 110 percent of the TUR in either of the prior two years.



Key arguments in favor

Current EB triggers are too high for today's economy. Many economists and public officials recognize that unemployment levels have fallen well below high unemployment rates found during recessions in the 1970s and 1980s. While unemployment rates have fallen, jobless workers are staying unemployed longer and the proportion of jobless workers out of work more than 26 weeks has increased. While no current EB trigger is wholly satisfactory, all six states that triggered Extended Benefits during the 2001 recession and subsequent job slump had adopted the optional TUR trigger.



Key arguments against and responses to them

Opponents say: Insured Unemployment Rates are more accurate because they are based upon administrative counts, rather than surveys used to calculate Total Unemployment Rates.

Response: For over a decade, there has been an ongoing debate about whether or not EB triggers should use IUR or TUR figures. After studying the issue in the early 1990s, the Advisory Council on Unemployment Compensation recommended the use of TUR triggers. The basic argument for TUR triggers is that the IUR has lost its effectiveness, as demonstrated by the fact that the percentage of unemployed workers getting a UI benefit (i.e., the insured unemployed) has declined over the years. This argument was bolstered during the recent downturn when only states with the optional TUR trigger provided EB to their long-term jobless workers.

Opponents say: States should avoid using EB which requires the state to pay half of benefit extension costs; instead, states should rely upon the federal government to provide wholly federally-financed extensions.

Response: While it is true that the federal government has provided temporary extensions that it paid for entirely with federal dollars for all recessions since the mid-1970s, these extensions are not always well timed. The Emergency Unemployment Compensation program of the early 1990s was not passed until well after the recession was over, and the Temporary Extended Unemployment Compensation program of 2002 and 2003 was permitted to expire while record numbers of long-term jobless workers were unable to find jobs. This expiration reflected an unprecedented resistance to extensions at the federal level, and it casts doubt on the wisdom of depending totally on the federal government for benefit extensions. For these reasons, states should have their EB program in place to serve as a backstop if Congress fails to act to prolong federal extensions.

State Choices

10 states have adopted 6.5% TUR trigger

Alaska
Connecticut
Kansas
New Hampshire
New Mexico
North Carolina
Oregon
Rhode Island
Vermont
Washington



Which states do it?

Ten states currently provide their long-term jobless workers with the best available protection under EB by having the optional 6.5 percent TUR trigger. All but 12 states have the optional 6.0 percent IUR trigger, but in all but the most serious recessions this trigger is unlikely to actually result in benefit extensions. For this reason, adopting the optional TUR trigger should be a higher priority in states without either of the optional EB triggers.

Model legislation for optional 6.5 percent TUR trigger

Vermont

(2) State "on" indicator.

(B) There is a state "on" indicator for a week beginning after March 6, 1993, if:

(ii) The average rate of total unemployment in this state (seasonally adjusted) for the period consisting of the most recent three months for which data for all states are published before the close of such week:

(I) equaled or exceeded 6.5 percent, and

(II) equaled or exceeded 110 percent of such average rate for either (or both) of the corresponding three-month periods ending in the preceding calendar years.

(4) (B) For purposes of subdivisions (2)(B) and (3)(B) of this section, determinations of the "rate of total unemployment" in this state for any period (and of any seasonal adjustment) shall be made by the Secretary of Labor of the United States. VT. STAT. ANN. tit. 21, § 1421.

References

ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, REPORT AND RECOMMENDATIONS, Chapters 2 & 6 (Feb. 1994).

NATIONAL EMPLOYMENT LAW PROJECT, EXTENDED BENEFITS: RESTORING OUR UNEMPLOYMENT INSURANCE SAFETY NET FOR WORKERS AND COMMUNITIES IMPACTED BY LONG TERM UNEMPLOYMENT, BACKGROUND PAPER (March 2001), available at <http://www.nelp.org>.

Maximize Training Opportunities

Introduction

Job loss is a difficult event for a worker. At the same time, unemployment offers an opportunity for a change, hopefully to better-paying or more stable future employment. A period during which a jobless worker receives unemployment insurance provides a rare opportunity – income support during a period when the worker has time to obtain training. States can use this opportunity more effectively than they do now by supporting jobless workers with UI benefits as they participate in approved training. By using a period of unemployment for training, a worker can permanently improve his or her employment and income prospects and reduce future unemployment insurance claims. Traditionally, most states have been indifferent, if not hostile, to training for those on UI benefits. Rather than requiring that UI recipients drop out of school and immediately seek or accept new work, a number of states have adopted more flexible policies. Some states extend the period of UI benefits so that a jobless worker can complete a training program. Others fund their own training programs.

States can strategically shape the types of training that jobless workers receive. Some states like Washington identify certain industries with declining jobs and focus retraining efforts on these workers. Others target new training in areas of job stability or growth. States can tailor the types of training that the state employment agency approves for use by UI recipients and use state funded training to fit economic development goals. By more effectively using agency-approved training and by developing additional state-funded training, states can turn periods of increased joblessness into opportunities for reshaping and upgrading their workforces.

While loss of a job can offer opportunities for training, these should not be missed or squandered. Only appropriate and quality training will provide the desired outcomes. Therefore, workers need good information in order to know about their training options, an opportunity to meaningfully participate in decisions about training, and guidance in selecting the types of training to pursue. This chapter discusses ways that states can increase jobless workers' use of training activities during periods of unemployment and can ensure that the training results in time and money well spent.

Agency-approved Training: Integrating Training and UI Programs to Better Assist Dislocated Workers



What is it?

Under federal law states must have UI laws protecting individuals whose training has been approved by the unemployment agency from being denied UI benefits due to their participation in the training or their refusal of a job in order to complete training. Agency-approved training offers an opportunity to provide income support to jobless individuals in training, thus overcoming a frequent barrier to participation in training. In most states, however, little has been done to implement this universal feature of UI laws. Meaningful implementation of agency-approved training for UI recipients gives states a good opportunity to address rapid assessment, placement, and retention of dislocated workers, and to get low-wage jobless workers into worthwhile retraining programs.

Expanding the use of agency-approved training provisions requires timely notice to workers of their opportunity to request approved training and state adoption of criteria for the approval of training. By setting fair criteria for approved training and providing jobless workers notice of these rules, states can ensure that training approved for UI recipients will prove substantive and beneficial to both the individuals involved and to the state's economy.



Key arguments in favor

Dislocated workers and low-income jobless workers need income support to participate in training. Since the 1991 recession, there has been a trend toward longer spells of unemployment and a higher proportion of permanent layoffs, even as overall unemployment levels declined. Those dislocated from jobs often suffer serious losses in income, health effects, and other serious consequences. While many point to retraining as a response to these issues, a major barrier to participation in training is lack of income support. For the most part, neither the federal government nor states have included income support in providing retraining to dislocated workers. By making appropriate use of UI benefits for income support, states can facilitate the placement of more dislocated and low-income jobless workers in training programs.

Implementing the agency-approved training feature is a good way for states to reexamine the relationship between their one-stop training centers and UI programs. Since the federal approved-training mandate was adopted more than thirty years ago, many states have not truly activated this feature of their UI laws. With the shift to one-stop career centers authorized by the Workforce Investment Act (WIA), implementing the approved-training feature is a way for states to reexamine the relationship between their one-stop career centers and UI programs. This review should include policies that, in some cases, have limited access to approved-training benefits by denying approval to longer-term training, including training leading to degrees. In addition, some states fail to coordinate their UI

training approvals with their other workforce development programs. The better practice, followed by some states, considers approval of training under WIA as agency-approved training under their UI programs.



Key arguments against and responses to them

Opponents say: Providing UI benefits to individuals in training lengthens unemployment spells and increases benefit costs.

Response: There are many costs associated with having lower-skilled workers cycle in and out of insecure jobs as well. By adopting appropriate criteria, states can ensure that training is approved that will supply skills and increase job security. Providing good training can reduce unemployment in the longer run. It is worth the costs of keeping approved workers in training for an additional time period in order to permit them to complete meaningful training programs. Building a more skilled and competent workforce not only benefits those getting training, but the overall economy as well.

Opponents say: Permitting individuals to draw UI benefits while in approved training should not impact UI tax rates for prior employers.

Response: Most state UI laws provide for “non-charging” of benefits paid to individuals drawing benefits while in approved training. This means that prior employers do not directly have their “experience rating” impacted when their former employees are approved for training. Instead, the costs of UI benefits paid to those in approved training are shared by all employers through the overall UI payroll tax financing mechanism used in each state.



Model legislation

As a condition of federal law, all state UI laws currently have standard language that provides that individuals participating in approved training cannot be denied UI benefits “because of the application . . . of state law provisions relating to availability for work, active search for work, or refusal to accept work” or words to this effect.

26 U.S.C. § 3304(a)(8)

Maine

6. Approved Training. Notwithstanding any other provisions of this chapter, any otherwise eligible claimant in training as approved for the claimant by the commission, under rules adopted by the commission, with the advice and consent of the commissioner, shall not be denied benefits for any week with respect to subsection 3, relating to availability and the work search requirement or the provisions of section 1193, subsection 3. Enrollment in a degree-granting program may not be the sole cause for denial of approved training status for an otherwise eligible claimant. Benefits paid to any eligible claimant while in approved training, for which, except for this subsection, the claimant could be disqualified under

section 1193, subsection 3, shall not be charged against the experience rating record of any employer but shall be charged to the General Fund.

6-C. Prohibition against disqualification of individuals in approved training under section 1196.

Notwithstanding any other provision of this chapter, no otherwise eligible individual may be denied benefits for any week because that individual is in training as approved by the commission, under rules adopted by the commission with the advice and consent of the commissioner, nor may that individual be denied benefits by reason of leaving work to enter that training, provided that the work left is not suitable employment.

For purposes of this subsection, the term "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment.

6-E. Prohibition against disqualification of individuals in approved training under federal Workforce Investment Act.. Notwithstanding any other provision of this chapter, unless inconsistent with federal law, the acceptance of training opportunities available through the federal Workforce Investment Act of 1998, 20 United States Code, Sections 9201 to 9276 (1998) is deemed to be acceptance of training with the approval of the State within the meaning of any other provision of federal or state law relating to unemployment benefits.

ME. REV. STAT. ANN. tit. 26, § 1192

See also, Maine's Rules Governing the Administration of the Employment Security Law, Ch. 24.

References

MANPOWER ADMINISTRATION, U.S. DEP'T OF LABOR, UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 1276, CLAIMANTS IN TRAINING (July 22, 1974).

Ensure Jobless Workers Have Opportunity for Appropriate Training



What is it?

In theory, jobless and dislocated workers should be receiving individualized training services in which workers choose programs and services they want. In practice, many jobless workers get one-size-fits-all treatment with little opportunity for meaningful participation in identifying appropriate training. Information on training options is spotty and sometimes inaccurate. Options are limited by inadequate funding, distance to providers, or poor coordination in the delivery of services. Some one-stop providers offer a majority of customers “work first” style services rather than an opportunity to obtain appropriate training. Even for those jobless workers who get access to training, the service they receive is of poor quality or does not lead to economic self-sufficiency.

Making the most of training and related services’ potential requires effective participation by affected jobless workers. First, workers must know about the options; written notice about the range of options available to jobless individuals regardless of their race, gender, age, religion or national origin is critical. Some state programs – such as those providing for agency approval of training for UI recipients or, in some states, UI benefit extensions for individuals in training – often are not well marketed. In too many cases, individuals find out about these options, if at all, after deadlines for application have passed. As a result, dislocated workers fail to gain access to these programs. Increasingly, states are taking measures to ensure that affected workers get a realistic chance to find out about job training options and sufficient information to participate in making meaningful choices about those options.

In some states, training providers operating under the Workforce Investment Act (WIA) serve as an alternative delivery system to state UI agencies and the Employment Service. Some states prefer decentralized, non-governmental service providers for jobless workers to state agencies staffed with civil servants. In a number of states, UI agencies are not central to dislocated worker services, despite their role in paying UI benefits to those actively seeking work. As a policy matter, disinterested and fair delivery of public services is a vital component of retraining and dislocated worker services. Jobless workers gain from trained and experienced staff providing public services. Meaningful participation for jobless workers is facilitated when one-stops provide in-person contact in settings with sufficient resources to provide individual help and guidance.



Model Legislation

New Jersey is among the states that have tried to set a new direction in providing retraining and re-employment services. New Jersey adopted a comprehensive revision of its job and welfare-to-work training in 2004 addressing many issues

regarding notice to jobless workers and their participation in job training and dislocated worker services. Selected provisions of New Jersey's law are set forth here.

a. Counseling requirement. No individual shall receive employment and training services paid for with federal job training funds unless the individual first receives counseling pursuant to this section. The counseling shall be provided by a job counselor hired and employed by the State pursuant to Title 11A, Civil Service, of the New Jersey Statutes, or hired and employed by a political subdivision of the State, or be provided by a qualified job counselor hired and employed by a non-profit organization which began functioning as the One Stop Career Center operator with the written consent of the chief elected official and the commissioner prior to the effective date of P.L.2004,c.39 (C.34:1A-1.2 et al.), or hired and employed by an approved community-based or faith-based organization to provide counseling which the organization entered into an agreement to provide before the effective date of P.L.2004,c.39 (C.34:1A-1.2 et al.). The purpose of any counseling provided pursuant to this section is to assist each individual in obtaining the employment and training services most likely to enable the individual to obtain employment providing self-sufficiency for the individual and also to provide the individual with the greatest opportunity for long-range career advancement with high levels of productivity and earning power. The counseling shall include:

(4) The timely provision of information to the individual regarding the services and benefits available to the individual, and all actions required of the individual to obtain the services and benefits, under programs supported by federal job training funds or the provisions of P.L.1992, c.47 (C.43:21-57 et al.), and the provision to the individual of a written statement of the individual's rights and responsibilities with respect to programs for which the individual is eligible, which includes a full disclosure to the individual of his right to obtain the services most likely to enable the individual to obtain employment providing self-sufficiency and the individual's right not to be denied employment and training services for any of the reasons indicated in section 5 of P.L.1992, c.48 (C.34:15B-39), including the individual's right not to be denied training services because the individual already has identifiable vocational skills, if those existing skills are for employment with a level of earnings lower than the level of self-sufficiency; and

(5) Discussion with the counselor of the results of the testing and evaluation and, based on those results, the development of a written Employability Development Plan identifying the training and employment services, including any needed remedial education, to be provided to the individual.

b. Federal job training funds shall be used to provide training and employment services to an individual only if the counselor who evaluates the individual pursuant to this section determines that the individual can reasonably be expected to successfully complete the training and education identified in the Employability Development Plan developed pursuant to this section.

N.J. REV. STAT. § 34:15B-38, as amended by P.L. 2004, c. 39 (June 23, 2004)

Provide State-funded Retraining for Workers



What is it?

Nearly half the states use taxes on employers to provide training to jobless workers, supplementing federally-funded training under the Workforce Investment Act (WIA) and other federal programs. States gain greater control and flexibility when funding their own training programs, although most of these programs are coordinated with WIA training as well.

Frequently, state-funded training programs focus on manufacturing and furnish job-specific skills. In other cases, state-funded training supplements federally-funded training programs, permitting states to fund more training than federal funds support. While state funding for training is small when compared to the billions in federal funding, the number of states adopting these programs indicates considerable appeal for states. In particular, the General Accountability Office (formerly the General Accounting Office) found that programs supporting specific industries or occupations and focusing on currently employed workers were the most common forms of state-funded training.



Key arguments in favor

States gain flexibility and control with state-funded training. Federal funds for training have specific governance, planning, and reporting requirements. States that need to support specific industries or occupations have found that state-funded training permits them to respond more directly with programs customized to the needs of specific situations.



Key arguments against and responses to them

Opponents say: If training is worthwhile, states should pay for it instead of taxing employers to do so.

Response: Workforce and economic development efforts are directly related to the functioning of each state's economy and efforts to boost economic growth. Employers have as big a stake in developing a more skilled workforce as anyone. Given the scarcity of state general funds, asking employers to make a minimal contribution, often less than \$20 yearly, is reasonable.

Opponents say: If incumbent workers need retraining, it should be provided by their employers, not by taxing other businesses in the state.

Response: Providing training to currently employed workers is potentially more politically controversial than assisting jobless and dislocated workers. Many states have found, however, that employers are more willing to accept tax-funded training when some employers reap direct benefits from tax revenues through their use for skills

State Choices

10 states use UI tax offsets

Alabama
California
Idaho
Louisiana
New Jersey
New Hampshire
South Dakota
Tennessee
Washington
Wyoming

8 states use separate employer taxes

California
Delaware
Hawaii
Massachusetts
Montana
New York
Nevada
Rhode Island

4 states use penalty and interest funds

Indiana
Kansas
Nebraska
Oregon



upgrading of incumbent workers. Using targeted state-funded training programs for incumbent workers is a common use for state-funded retraining programs.

Which states do it?

In 2002, 23 states spent \$278 million on training funded by state employer taxes. (Since then Texas and Michigan have discontinued state funded training and 21 states currently have state-funded training financed by employer taxes.) State funding for these training programs comes in three main forms. Currently 10 states “offset” a small portion of their existing UI payroll taxes (typically, 0.1 or 0.2 percent) by lowering the UI tax rate that would otherwise be due and imposing an equivalent state training tax. Eight states imposed a small payroll tax for training without any offset of UI taxes. (California uses both of these taxes.) Finally, four states use state UI penalty or interest funds to support their state-funded retraining programs. California’s program has existed since 1982 and spent over \$84 million in 2002.



Model legislation

California

In addition to other contributions required by this division, every employer ...shall pay into the Employment Training Fund contributions at the rate of 0.1 percent of wages specified in Section 930. The contributions shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5.

CAL. UNEMP. INS. CODE § 976.6

There is in the State Treasury a special fund known as the Employment Training Fund. There shall be deposited in or transferred to this fund all contributions collected from employers pursuant to Section 976.6. Costs incurred for the purposes specified in Section 1611 in fiscal year 1982-83 shall be reimbursed, and thereafter shall be annually appropriated by the Legislature from the Employment Training Fund.

CAL. UNEMP. INS. CODE § 1610

References

U.S. GENERAL ACCOUNTING OFFICE, WORKFORCE TRAINING: ALMOST HALF OF STATE FUND EMPLOYMENT PLACEMENT AND TRAINING THROUGH EMPLOYER TAXES (February 2004).

Fund State Benefit Extensions for Workers in Training



What is it?

About half a dozen states extend UI benefits to jobless workers in approved training, with specific requirements differing from state to state. State UI extensions provide these workers with income support beyond the normal duration of state UI benefits. Since these extensions are paid under state laws, states have considerable leeway in targeting specific sectors or occupations for this type of subsidized retraining.

State extensions for retraining – known as “additional benefits” – serve important needs in states that use them. Generally, states require that jobless workers have lost work in a declining industry or occupation in order to qualify. States furnish extensions where retraining is necessary for the claimant to find a full-time job in another sector, one in which there are labor shortages or growing numbers of jobs. Workers who are approved for training are permitted to attend the training rather than searching for new work.



Key arguments in favor

Income support from benefit extensions is vital for workers needing substantial retraining. Most jobless workers cannot attend training full time without some form of income support. Benefit extensions make it possible for jobless individuals to complete training that lasts longer than the normal duration of state UI benefits (typically no more than 26 weeks). Additional benefits give working families essential help in completing meaningful retraining and avoiding future layoffs from declining industries.



Key arguments against and responses to them

Opponents say: State benefit extensions deplete trust funds and raise costs.
Response: There is no question that paying benefit extensions to jobless workers in retraining programs results in higher costs to state UI programs. These costs are offset in part by reductions in future layoffs (and reductions in UI claims) that result from shifting jobless workers into fields with lower unemployment. In addition, effective training raises wages and boosts a state’s economy, and this lowers UI costs.



Which states do it?

The California Training Benefit provides up to 52 added weeks of UI benefits for jobless individuals in approved training. Individuals must be retrained in a “demand occupation” and must apply no later than the sixteenth week of their UI claim. In Maine, the Dislocated Worker Benefit gives up to 26 additional weeks of UI benefits to jobless individuals requiring retraining. Massachusetts provides up to 18

additional weeks of UI benefits for those in approved training that apply for the extension no later than their fifteenth week of jobless benefits. New Jersey, New York, and Washington also have state extensions for workers in retraining.



Model legislation

Washington

(1) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

- (a) Is a dislocated worker as defined in RCW 50.04.075;
- (b) Except as provided under subsection (2) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;
- (c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (9) of this section;
- (d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;
- (e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and
- (f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise . . .

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (9) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the work force training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220 [Workforce Investment Act].

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

(a)(i) For exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year . . .

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

WASH. REV. CODE § 50.22.150

Financing for Long-term Solvency

Introduction

Unemployment insurance is a self-financing system. The unemployment insurance benefits paid to jobless workers come from each state's UI trust fund which can only be used for UI. The trust fund is built up through taxes on employee wages paid by all covered employers. Within some federal parameters, states have a great deal of flexibility in setting the UI taxes that employers pay. States should use this flexibility to adopt UI funding mechanisms that are fair to all employers in the system and that are strong and resilient enough to meet the purpose of UI, that is, to provide insurance against unexpected job loss. If a trust fund is not sufficient to meet high demand for UI during an economic downturn, then a state will face cutting benefits to jobless workers, borrowing from the federal government or raising taxes on employers at the worst time, or all three.

Some state UI funding mechanisms are unfair to some employers in the state. First, some tax schemes do not fully collect from those employers who use the system most heavily. All state UI systems set tax rates that vary based on an employer's usage of the UI system, much like auto insurance companies provide lower premium rates to good drivers with few claims. If a state does not use a wide range of tax rates, the high-use employers are not paying their fair share and other employers must absorb this burden.

To collect sufficient revenue to cover for each insured employee, an ample portion of the state's payroll must be subject to UI taxation. Too many states have left the taxable amount of each worker's paycheck unchanged over time – leaving their UI financing on too shaky of a base.

Moreover, states should prudently use flush economic times to build up the UI trust fund balance for hard times when the demand for UI benefits will increase and when employers can least afford a large tax increase. Methods that are called "forward financing" implement this concept and best prepare the state trust fund for periods of high UI demand in economic downturns.

While most employers play by the rules, preventing UI tax evasion is another crucial component of adequate UI financing. Some employers shirk their UI tax obligations by fraudulently labeling their employees as independent contractors. Others, with the complicity of accountants, create shell companies to evade the UI tax obligations that would follow from the employer's own history of lay-offs. When some employers cheat, tax-compliant employers absorb a greater tax burden.

This chapter discusses several ways that states can design UI funding mechanisms that are fair to all employers in the state, sustain a successful UI program for working families and prevent tax evasion that undermines the integrity of the UI system.

Raise and Index Taxable Wage Bases: Stronger Financing for UI



What is it?

Only a portion of employee wages are subject to UI payroll taxes. That portion is called the “taxable wage base.” Federal law requires that states use an annual taxable wage base of at least \$7,000 per employee. A majority of states have kept their UI taxable wage bases low, at or below \$10,000 of wages per year.

Higher taxable wage bases provide a stronger financing foundation for UI. Raising taxable wage bases gives states the ability to replenish their trust funds more quickly. Indexing – the yearly adjustment of state taxable wage bases – helps state trust funds keep pace with growth in wages. In contrast to the majority of states with fixed wage bases, 16 states have indexed taxable wage bases. As a group, these 16 states have higher taxable wage bases, bigger trust fund reserves, and better-financed unemployment programs than states without indexing. While indexing is the best practice for strong UI financing, no state has adopted indexing for its taxable wage base since 1986. If indexing is not feasible, states with less solvent UI trust funds should consider raising their taxable wage bases as the next best step toward improved UI financing.



Key arguments in favor

Indexing keeps program financing in line with growth in benefits. The risk insured under UI programs is the loss of wages. Wages grow overall each year and, as a result, weekly unemployment benefit amounts grow each year as well. In fact, a majority of states index their weekly maximum benefit amounts to growth in average wages, thus tying growth in benefit levels directly to rising wage levels. A low taxable wage base means that a state must finance higher benefit payments on a narrower portion of its wages; this causes increasing tension between benefit levels and revenue-generating capacity over time.

Higher taxable wage bases provide a stronger financial footing for UI programs. Over time, the ability of a state’s UI financing mechanism to produce sufficient revenue is greatly assisted by subjecting more of its wages to UI taxation. States with higher taxable wage bases can recover from or avoid insolvency better than states with lower taxable wage bases. Indexing has a proven record in raising taxable wage bases. In 2003, all states with taxable wage bases over \$15,000 were states with indexing. None of the 31 states with taxable wage bases at \$10,000 or below used indexing.



Key arguments against and responses to them

Opponents say: Raising taxable wage bases is nothing more than a tax hike.
Response: Employer groups typically oppose either indexing or raising taxable wage bases, arguing that this amounts to a tax increase. Not necessarily, as any

increased revenues resulting from higher wage bases quickly reduce tax rates, depending upon each state's UI financing mechanisms. Moreover, higher taxable wage bases distribute UI taxes more fairly across employers, reducing the disproportionate tax load on lower-wage employers.

Opponents say: Tax bases should be raised by state legislatures only when needed, not automatically indexed each year.

Response: State legislatures have great difficulty adjusting taxable wage bases due to employer resistance. As a result, the majority of states tax a very low proportion of wages under UI and this proportion declines each year. History shows that indexing is the best way for states to ensure an adequate taxable wage base.

References

Phillip B. Levine, *Financing Benefit Payments*, in, *UNEMPLOYMENT INSURANCE IN THE UNITED STATES: ANALYSIS OF POLICY ISSUES*, (Christopher J. O'Leary & Stephen A. Wandner, ed., Upjohn Institute, 1997).

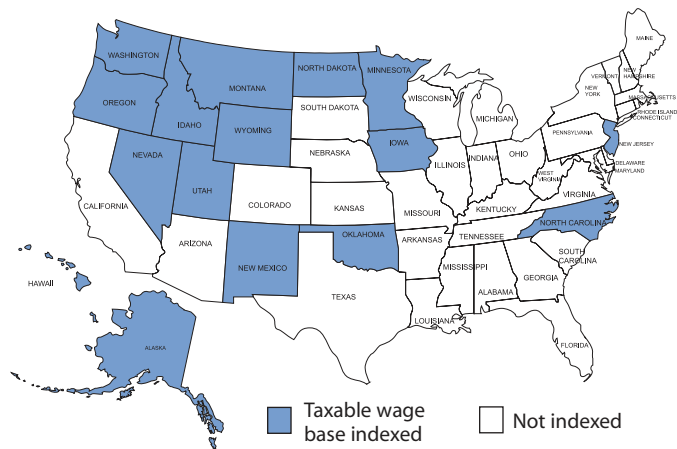
INDEXED STATE TAXABLE WAGE BASES: TAKING A SIGNIFICANT STEP TOWARD BETTER UI FINANCING, NATIONAL EMPLOYMENT LAW PROJECT FACTSHEET (2004), available at www.nelp.org.

Wayne Vroman, *TOPICS IN UNEMPLOYMENT INSURANCE FINANCING*, (Upjohn Institute 1998).



Which states do it?

In 2004, 16 states used indexed taxable wage bases in their UI programs. Of these, Hawaii and Idaho index their wage bases at 100 percent of their state average annual wage, while other states use different indexing formulas ranging downward to 50 percent of average wages (North Carolina and Oklahoma).



Model legislation

Hawaii

(b) [T]he term "wages" does not include remuneration paid with respect to employment to an individual by an employer during any calendar year which exceeds the average annual wage, rounded to the nearest hundred dollars, for the four calendar quarter period ending on June 30 of the preceding year. The average annual wage shall be computed as follows: on or before [pick date depending upon state agency's collection of wage data] of each year the total remuneration paid by employers, as reported on contribution reports on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of such year shall be divided by the average monthly number of individuals performing services in such employment during the same four calendar quarters as reported on such contribution reports and rounded to the nearest hundred dollars.

HAW. REV. STAT. § 383-61

Adopt a Wide Range of UI Tax Rates



What is it?

By federal law, each state must vary the rate of unemployment insurance taxes an employer must pay based on each employer's past experience using the system, that is, the amount of UI benefit payments charged to each employer. Federal law requires that the top (or maximum) tax rate be at least 5.4 percent of taxable wages but states can set higher top tax rates and many states do so. When states set a wide range of tax rates and use higher top tax rates, the tax scheme better reflects employers' usage of the UI program. Such structures ensure that those employers who lay off the greatest proportion of their workforce pay their fair share into the UI trust fund, and vice versa. Moreover, this type of robust experience-rating system allows state trust funds to recover after they have been drained during periods of high layoffs.



Key arguments in favor

Unemployment benefit charges won't be properly distributed among employers if the range of tax rates is narrow and the top rate is too low. UI taxes are experience-rated, meaning that different employers face tax assessments that vary with their use of the UI system. The idea behind experience rating is that employers should have to pay back a proportion of the benefits incurred against their particular accounts. In every state, experience-rated taxes are capped at a top level set by state law. If the maximum rate is too low, there will not be a wide range of tax rates and high-layoff employers will consistently pay less in taxes than their former workers receive in benefits. Other employers and workers will have to make up the difference directly or indirectly – in higher UI tax rates for employers and lower benefits for workers.

Ineffective charges represent a large share of UI benefits. Some categories of employers use the UI system more than others due to periodic lay-offs. When the UI benefits drawn for a category of employers exceeds the amount of UI taxes paid into the system for the same category, this is known as ineffective charging. Ineffective charges represented nearly a quarter of all benefits paid in 2002. A narrow range of tax rates with a low maximum contributes to ineffective charging.

A robust tax schedule facilitates the recovery of state trust funds after recessions. Experience rating is one of the key mechanisms that states use to replenish their state UI trust funds after a recession, as tax rates automatically increase among those employers specifically involved in high unemployment. Adequate maximum tax rates allow the system to naturally recover a large proportion of the upsurge in UI benefits that occurs during a downturn. In states with a narrow range of tax rates and a low maximum tax rates, this

process is cut off because an employer cannot have a tax rate above 5.4 percent, even if their benefit charges have skyrocketed. In such cases, states either leave their trust fund depleted, force the legislature to come up with an ad hoc solution, or assess across the board taxes on all employers, that are not targeted based on the rate of layoffs.



Key arguments against and responses to them

Opponents say: I'm against all tax increases.

Response: Unemployment insurance is a self-financing system, and contributions must keep up with benefits. An experience-rating system with an adequate maximum is a key component to a tax system that fairly distributes these costs among employers. States with low maximum tax rates must find other ways to cover benefit costs.

Opponents say: I pay high enough UI taxes already.

Response: Some employers are not paying their fair share of UI taxes because low maximum tax rates result in ineffective charges. That means that many other employers are paying more than their fair share of UI taxes. Using a wide range of tax rates makes the system fairer to employers and may reduce the taxes of those employers who are not heavy users of the UI system.



Which states do it

All states have multiple tax schedules; the tax schedule in use for any given year depends on how flush the UI trust fund is. Each schedule contains experience-rated tax levels for employers with a maximum tax rate. Half of the states have a maximum tax rate of 5.4 percent under the state's most favorable tax schedule – that is, the one used when the trust fund is flush. Some 33 states have a maximum tax rate above 5.4 percent under the least favorable tax schedule, that is, the one what is used when trust fund balances are low.

References

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM, U.S. DEP'T OF LABOR, UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 26-03 (2003), available at <http://www.ows.doleta.gov>.

Build Trust Funds in Advance to Prepare for Benefit Costs Incurred During a Recession



What is it?

All state UI financing mechanisms set UI tax rates based on a combination of an individual employer's layoff history (experience rating) and the overall condition of the UI trust fund. A critical element of prudent UI financing is whether the funding mechanism used provides for the accumulation of adequate reserves which will be needed in periods of high unemployment. Those systems that are known as forward financing use flush economic times to build up the trust fund for hard times. In contrast, pay-as-you-go financing mechanisms set trust fund balances at a fixed amount or based on recent UI benefit expenses and miss an opportunity to adequately prepare for hard times. States should use a forward financing measure and choose one that is either related to the amount of UI benefits costs that would be paid in an economic downturn or the total wages paid by employers in the UI system.



Which states use various financing models?

Forward financing

Fund Adequacy or High Cost Multiple Method: Iowa, Oregon, Idaho, Hawaii and Vermont are among the states that base their UI taxes on a fund adequacy ratio or high cost multiple method. In Iowa, for example, this ratio compares the reserve ratio (the trust fund balance as a percent of total wages in the economy) to the highest benefit cost ratio (total annual benefits as a percent of total wages) of the past ten years. This measures whether the current trust fund has enough reserves to pay for an unexpected recession that would cause benefits to be paid out at as high a rate as any time in the past 10 years. Critically, the measure adjusts for the economy's size by measuring both reserves and benefits costs as compared to all the wages insured by UI. Iowa provides a series of tax schedules that charges its highest tax rates when the trust fund is low and could only pay four months of peak benefits out of its reserve, and its lowest UI tax rates when the trust fund is flush and reaches 1.3 years worth of reserves. Each tax schedule sets an individual firm's rate according to its experience rating.

The Advisory Council on Unemployment Compensation recommended that states should have trust fund balances sufficient to provide for at least a full year of benefits during a time of recession-level costs; this is known as an average high cost multiple of 1.0. Thus, if a state pays UI benefits averaging two percent of all wages in the state during recessions, it would need to have a trust fund balance equaling two percent of all wages to achieve a high cost multiple of 1.0.

Several other states (like New Jersey) use a reserve ratio alone (trust fund as a percent of wages in the economy) as the trust fund measure to determine which tax schedule is in effect that year. While less preferable to a high cost multiple method, such methods can also promote forward financing when they are allowed to operate as intended.

Examples of State Using Forward Financing

Hawaii
Idaho
Iowa
Oregon
Vermont

Pay-as-you-go methods

- **Fixed dollar amounts:** Some states, such as Minnesota and Illinois, only increase UI taxes when the trust fund falls below a fixed target amount. For example, Minnesota adopted a \$300 million trust fund target in 1987 that was left unchanged through 2002. With wages rapidly growing in the state due to inflation and economic growth, the target amount quickly became insufficient as an indicator of trust fund health and sufficient reserves were not accumulated in the 1990s.
- **Current Benefits:** Pennsylvania aims to have a trust fund balance equal to the most recent three years of UI benefit costs. Thus, when unemployment is low and UI benefit payments dip, trust fund balances are kept down. This approach discourages savings during economic good times.



Key arguments in favor

States using forward financing are able to expand unemployment benefits when they are needed most. Due to prudent savings during the economic boom, Oregon was able to provide for a state extension of unemployment benefits when the state dipped into a long decline in 2001. Similarly, New Jersey was able to increase the length of regular unemployment benefits and extend coverage to part-time workers during 2001-2003.

States that don't build adequate trust fund balances face trust fund insolvency and UI benefit cuts during recessionary periods. With state UI trust funds facing insolvency in 2003 and 2004, jobless workers in states with high unemployment (for example, Pennsylvania and Illinois) saw their weekly UI benefit checks cut during the recession because their state had not saved enough in the trust fund in advance. A number of states (including Minnesota and Illinois) that had previously abandoned forward financing principles were forced to borrow from the federal government to pay regular benefits during the 2001-2003 jobs slump.



Key arguments against and responses to them

Opponents say: Higher trust fund balances take money out of the economy that is better left with employers.

Response: The federal government pays a handsome interest premium to states that accumulate trust fund balances – with the interest differential between higher and lower solvency states often equaling hundreds of millions of dollars. Thus, the money in the trust fund earns more money for the trust fund. More importantly, UI trust fund dollars can only be spent on UI benefits and are never lost to the economy. Because UI

recipients quickly spend all of their benefit checks on basic needs, UI benefits are an automatic shock absorber to local economies when hard times hit.



Model legislation

Iowa

2.d. The department shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period; however, the highest benefit cost ratio shall not be less than .02.

If the current reserve fund ratio, divided by the highest benefit cost rate ratio:

Equals or exceeds in effect is	But is Less than	The contribution rate table
--	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1	5
1	1.15	6
1.15	1.3	7
1.3	--	8

IOWA CODE § 96.7



Watch Out For: Imprudent UI Financing Schemes

A number of states seek to tinker with their core UI financing mechanisms, to lower taxes for certain groups of employers or, during a time when the trust fund appears flush, for all employers. While tax cuts sound popular, these unwise carve-outs undermine the overall self-funding mechanism of the UI system, and

eventually pass along the costs of economic downturns to other employers or workers. There are several schemes that state legislatures should avoid.

Zero minimum taxes: Several states have decided to give employers with a low experience rating (low-layoff employers) a zero tax rate, meaning that only a portion of the state's employers are contributing into the system. These zero tax rates often apply to a majority of employers in the state. This is not good public policy; every employer should make an annual contribution into the UI system. Such a minimal contribution covers the value of providing insurance to their employees in the case of unexpected layoffs or a business failure, and represents the benefit that the entire state gets by having a universal UI program.

Overrides of statutory tax triggers: In good economic times, state legislatures often are inclined to cut taxes. Cutting taxes is especially dangerous policy for UI, given the counter-cyclical nature of UI financing. During good times, the UI trust funds are filled so that the state has adequate rainy day reserves to pay benefits during recessions when demand is greatest. In order to cut UI taxes, legislatures have passed special legislation to override or suspend the actuarial tax schedules that were designed to build up revenues. Fooled by seemingly flush trust fund balances during growth cycles when jobless benefits are low, employers in these states have been gravely disappointed when they had to face large tax increases during recession and recovery periods, when they can least afford it. Once the legislature and constituents agree to a prudent structure, they should stick to it.

Tax holidays: The extreme version of overriding statutory tax triggers is granting tax holidays. Tax holidays give every employer a zero tax rate for the year. Not only does this violate the core principle of experience-rated UI taxes (with employers paying back a proportion of the benefits that their former employers receive), it wastes the precious opportunity to save for future recessions. Tax holidays are most disturbing when they are enacted in states with inadequate UI programs that provide benefits to a small share of the unemployed. If the UI program is not serving jobless workers well, UI taxes should not be so drastically cut.

Prepayment of taxes: Voluntary or pre-payment of unemployment taxes (allowed in 27 states) allows employers to artificially lower their tax rates. Here's how it works. An employer makes a UI tax payment in advance and thus increases the balance in their own account which is a historical ledger of benefits paid out to former employees as compared to the taxes that firm has paid. The flush balance makes it appear that the employer has a more modest experience rating. Because of the artificial appearance of a high UI balance, a lower UI tax rate is then assigned; the tax savings are greater than the amount of the employer's contribution. Employers argue that this is way to pay back those benefits charged against their account. The effect, however, undermines the concept of experience-rating. Experience-rated tax systems were set up to create tax rates that represent individual charges and the needs of the entire UI system. Pre-payment manipulates this system and eventually passes along costs to those who don't take advantage of this loophole. States should prohibit this practice.

Stop Employer Tax Evasion with Laws against “SUTA Dumping”



What is it?

Some employers, following the advice of major accounting firms, have engaged in schemes to dodge their unemployment insurance taxes by “selling” their companies to a new related entity in order to receive a much lower UI tax rate. This practice is called “SUTA dumping” (SUTA stands for State Unemployment Tax Assessment) and it undermines the integrity of the unemployment insurance system.

SUTA dumping involves the transfer of a business in a way that results in lower UI tax rates. For example, a temporary services agency (Company A) may set up a shell company (Company B) that has no employees and therefore a low, or even zero, tax rate. Company A transfers all of its business to Company B in order to get the low tax rate. This scheme could be repeated, so that once Company B’s tax rate rises due to layoffs, the business is once again transferred to a new shell company.



Key arguments in favor

Federal law requires that states enact new law. On August 9, 2004, President Bush signed the SUTA Dumping Prevention Act of 2004 (P.L. 108-295). This new federal law requires states to have laws against SUTA dumping in place by 2006. Federal law also requires states to impose meaningful civil and criminal penalties for violation of the state law provisions on both employers and on tax advisors. Finally, the new federal law requires the Department of Labor to study and report on state implementation of the laws against SUTA dumping.

SUTA dumping denies the unemployment system needed revenue. In a recent GAO survey, 14 states reported that they had identified SUTA dumping schemes that cost state unemployment trust funds at least \$120 million in lost revenue. Moreover, this may only be the tip of the iceberg. For example, California recently estimated that \$100 million in state revenue was lost to SUTA dumping by some 29 companies with payrolls of between \$10 million and \$1.6 billion. Most states reported that their laws do not adequately protect against the problem.

SUTA dumping hurts law-abiding employers. Employers who play by the rules suffer a competitive disadvantage in marketing their services. For example, Kelly Services reports that they could have saved \$5 million a year if they had engaged in SUTA dumping.

SUTA dumping compromises experience rating systems. By insulating employers from the UI tax impact of their lay-offs, SUTA dumping reduces the incentive for employers to keep employees working and to recall claimants to work as soon as possible. If employers successfully can “dump” the higher tax rate, they can lay off workers without seeing their tax rates rise.

States must impose meaningful civil and criminal penalties for SUTA dumping. The Department of Labor recommends that states assign the maximum UI tax rate for four years to offending employers, in some cases with an additional 2 percent penalty, and that states impose criminal penalties.



Key arguments against and responses to them

Opponents say: States shouldn't adopt proposals that are more stringent than federal law mandates.

Response: The Department of Labor's guidance to states on SUTA dumping legislation specifically advises states that they may enact more stringent protections than those outlined in its model language.

Opponents say: The Department of Labor's suggested penalties on tax advisors are too harsh.

Response: In North Carolina, a leading state combating SUTA dumping, the state has collected an average of over \$500,000 per company from nine different companies that engaged in SUTA dumping. The Department of Labor's suggested maximum penalty of \$5,000 for tax advisors who violate the law is a wholly inadequate penalty to deter SUTA dumping. California has recently adopted a law that imposes more stringent penalties on tax advisors.



Which states do it?

Because the federal law was signed in August 2004, only California has passed new state legislation. However, some states, including North Carolina and Washington, had begun to address SUTA dumping prior to enactment of the federal law. In addition, DOL has published a model for states' use, available at http://www.ows.doleta.gov/dmstree/uipl/uipl2k4/uipl_3004a2.htm.

The Department of Labor specifically advises states that they may enact more stringent protections than those outlined in its model. DOL's model can be improved upon in two ways:

- Impose higher penalties for accountants who advise their clients to SUTA dump; the DOL model suggests a maximum of \$5,000.
- Apply penalties broadly to cover other kinds of cheating by employers. Washington State's SUTA dumping law does this by broadly applying penalties to all kinds of underpayments of taxes, including those caused by misclassification of employees as independent contractors.



Model legislation

The following language is modeled on the Department of

Labor sample but includes some changes. When the wording set forth below deviates from DOL model, the gist of the change is explained in brackets.

RULES FOR TRANSFER OF BUSINESS

[Language is added for business transfers to a new employer engaged in the same business as prior employer.]

(A) If an employer transfers its business, or a portion thereof, to another employer, and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred.

(B) Whenever a person is not an employer subject to this title at the time it acquires a business, the unemployment experience of the acquired business shall be transferred to the new employer only where the employer continues operating the same business enterprise as before the transfer. (C) The unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if the State agency finds that the transfer was made for the purpose of obtaining a lower rate of contributions. In determining whether the transfer was for the purpose of obtaining a lower rate of contributions, the State agency shall use objective factors including the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

TAX PREPARERS [Definition of "tax preparer" added in order to make it clearer on the face of the law that they are subject to the new provisions.]

The term "person" under this title has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986. In addition, "person" includes a contribution tax return preparer. As used in this subsection, a 'contribution tax return preparer' is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Title or any claim for refund of tax imposed by this Title. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

SAMPLE CIVIL AND CRIMINAL PENALTIES

Criminal Penalties [States should consider whether their current criminal penalty structure is adequate, and make appropriate changes.]

Knowing Attempt to Evade or Defeat Tax. Any person who knowingly attempts to make or makes a transfer of business for the purpose of obtaining a lower rate of contribution, or any person who aids or abets such person to evade or defeat a contribution or its payment, shall, in addition to other penalties provided by law, be guilty of a felony.

Intentional Failure to Collect, Withhold, or Pay Over Tax. Any person required to collect, withhold, account for, and pay over any contribution who intentionally fails to collect or truthfully account for and pay over the contribution shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

Intentional Failure to File Return, Supply Information, or Pay Contribution. Any person required to pay any contribution, to make a return, to keep any records, or to supply any information, who intentionally fails to pay the contribution, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

Civil Penalties [States should consider higher penalties on tax preparers than provided in DOL model.]

In addition to any other penalties imposed by law, any person who intentionally evades or attempts to evade, including by misrepresentation, in any manner the contribution provisions of this title is subject to the following penalties:

(A) If the person is an employer,
(1) the State agency shall assign the maximum contribution rate provided for by law for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the employer's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be added to the assigned tax rate for such year.

(2) the State agency shall assess an additional penalty of fifty percent of the amount of any contribution underpaid or attempted to be underpaid.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of \$5,000, or fifty percent of the amount of any taxes underpaid or attempted to be underpaid, whichever is greater.

(C) For purposes of this section, "knowingly" means having actual knowledge or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(D) For purposes of this section, "intentional" means consciously and deliberately engaging in the conduct that leads to the violation or attempted of this title.

PROCEDURES TO IDENTIFY UNLAWFUL BUSINESS TRANSFERS [Include procedures for detection of other unlawful tax schemes.] The State agency shall establish procedures to identify unlawful business transfers and other unlawful practices that avoid payment of unemployment insurance contributions. In particular, the State shall establish audit procedures for new employers who change the nature of a business enterprise after acquisition of the business.

References

North Carolina Subpoenas Deloitte in Unemployment Tax Investigation (March 22, 2004), available at <http://www.accountingweb.com>.

Congressional Budget Office Cost Estimate, SUTA Dumping Prevention Act, H.R. 3224, 42 U.S.C. § 503 (2004).

Unemployment Insurance: Survey of State Administrators and Contacts with Companies Promoting Tax Avoidance Practices: Testimony Before the Subcomm. on Oversight & Subcomm. on Human Resources, Comm. on Ways and Means, 2003 Leg. (U.S. House 2003) (Report from the Gen. Accounting Office).

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM, U.S. DEP'T OF LABOR, UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30-02 (August 13, 2004), available at <http://www.ows.doleta.gov>.

Increase tools to collect UI taxes owed from employers who illegally call their workers “independent contractors”



What is it?

Unemployment insurance taxes are paid by employers for the benefit of their “employees.” Some employers misclassify employees as independent contractors in order to avoid many kinds of legal obligations, including the obligation to pay UI taxes for these workers. Misclassification of workers is a major drain on the unemployment compensation system. Some states have taken steps to ensure that they are identifying and penalizing those employers who would cheat the system. These state efforts include interagency task forces, targeted audits, and cross-matching tax and employment data.



Key arguments in favor

Employers frequently call workers independent contractors when they are in fact employees. According to a major Labor Department study, between 10 and 30 percent of all employers were found to misclassify some of their workers as independent contractors. State audits for 2003 found errors due to misclassification of one or more employees in 44 percent of cases audited; nearly all of these errors resulted in underreporting of wages rather than over-reporting. These types of errors represent a tremendous loss of revenue to UI trust funds. The latest state reports indicate \$436 million in wages that went unreported by employers just from the very small percentage (less than 2 percent) of the cases audited.

When employers cheat, workers suffer. When a worker is misclassified as an independent contractor, and no UI earnings are reported for that worker, he or she might be denied UI benefits due to insufficient work history or might receive UI benefits based on other employment, but in a smaller amount. A Department of Labor study estimated that 80,000 workers a year are denied unemployment benefits as a direct result of employer misclassification. In addition, DOL estimates that workers were underpaid \$1.3 billion in 2002 (about 3.2 percent of all UI benefits paid) due to misclassification as independent contractors.



Key arguments against and responses to them

Opponents say: States already go after employers who cheat.

Response: In 2002, nearly half the states reporting (20 states) failed the Labor Department’s standards for quality operation of their UI tax collection systems.

Opponents say: This isn’t a new or increasing problem.

Response: On the contrary, misclassification of workers is a growing problem. State audits report that the number of workers misclassified as independent contractors has increased by 42 percent in the past year.



Which states do it?

Joint agency task forces. California was the first state to create a joint agency task force to focus on misclassification of workers as independent contractors. The California task force collected \$74 million in unpaid wages in 2002 and \$10 million in payroll tax assessments.

Cross-matching with 1099 data. Fourteen states use IRS 1099 data to identify employers for audit purposes and share this data with other states. Other states perform data cross-matching with other agencies within the state.

Targeted audits. Federal law provides for a process for targeting industries with a high volume of misclassified workers. States should develop these processes and devote resources to increased targeted audits. Audit selection criteria should include employers with high turnover, sudden growth, or decrease in employment as well as focus on certain types of industries.



Model legislation

Joint agency task force

California's law creating a task force on the Underground Economy provides a good model and is available through <http://www.leginfo.ca.gov>. CAL. UNEMP. INS. CODE § 329

1099 Cross-Matching

California's law on 1099 cross-matching provides a good model and is available through <http://www.leginfo.ca.gov>. CAL. UNEMP. INS. CODE § 1088.8

Penalties

In addition to any other penalties imposed by law, if any tax deficiency assessment is made is due to an intent to evade the provisions of this law, the department shall assign to the employer, and to any contribution tax preparer found to be promoting the evasion of such provisions, the maximum tax rate provided for by law for the current rate year and the three rate years immediately following. If the employer's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be added to the assigned tax rate for such year.

Based on DOL Model Anti-SUTA dumping legislation.

Washington

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. WASH. REV. CODE § 50.12.220

References

U.S. DEPT OF LABOR, ETA HANDBOOK 407, FIELD AUDIT FUNCTION, Part V, § 3677-3693, Appendix A, available at <http://www.ows.doleta.gov>.

U.S. DEPT OF LABOR, UI INFORMATION BULLETIN NO. 05-04 (May 2004), available at <http://workforsecsecurity.doleta.gov>.

NATIONAL EMPLOYMENT LAW PROJECT, THE WHOLE TRUTH: EMPLOYER FRAUD AND ERROR IN THE UI SYSTEM (Dec. 2003), available at: <http://www.nelp.org>.

Accessibility and Fair Administration

Introduction

In order to fulfill its mission, UI needs to be available to workers when they are out of a job, but many unemployed workers do not receive UI benefits even though they would qualify. Many unemployed workers do not know they would qualify for UI or are unable to navigate the system. In particular, certain groups of workers – such as those that are not in unions and those with limited proficiency in English – may be particularly disadvantaged in accessing UI benefits.

State UI systems should be responsive to their customers and make sure the system reaches those it is intended to serve. Moreover, states should examine aspects of their systems that can be unfair to claimants who play by the rules; for example, some claimants might be hit with an overpayment debt due to an agency error or change of position and through no fault of their own. In particular, there are several areas where states should consider steps that would increase access to UI benefits.

- Tell workers about unemployment insurance
- Make UI accessible to all including those with limited proficiency in English
- Treat customers fairly

This chapter discusses several steps states can take in these areas so that all eligible workers can receive unemployment insurance benefits when they need the help.

Ensure Access for Workers with Limited English Proficiency



What is it?

Just like their native-born counterparts, immigrant workers seek unemployment insurance benefits from state agencies every day. Often these immigrant workers have difficulty in accessing UI benefits because services are provided only in English. Some states have taken the lead in ensuring that more unemployed workers, including those whose English is not perfect, have access to UI by providing translated written materials and interpreters at all levels of the application, continuing claim, and appeal processes.



Key arguments in favor

Federal law requires states to provide access to government benefits for LEP individuals. Title VI of the federal Civil Rights Act expresses a national policy in favor of providing access to benefits to limited-English-proficient (LEP) individuals. This federal law protects against discrimination based on national origin and requires that services for federally-funded programs be made available in languages other than English when necessary.

Immigrant workers contribute to the economy and to the UI system; they should not be impeded in accessing benefits. Between 28 and 30 million immigrants live in the United States. Over the past decade, new immigrants accounted for half of the growth in the workforce; and researchers expect this growth to continue. Employers of immigrant workers pay into the UI system. Unemployed immigrant workers should not be cut out of the UI safety net just because they have limited English ability.



Key arguments against and responses to them

Opponents say: Provision of bilingual forms and services is too expensive.

Response: An Office of Management and Budget (OMB) report on the costs and benefits of language access finds that provision of language-assistance services for particular LEP individuals could substantially improve the health and quality of life of many LEP individuals and their families. In California, the Department of Social Services spent, in 2001, less than \$750,000 of its \$18 billion dollar budget on language services such as translations.



Which states do it?

On their own initiatives, states are addressing language access issues at the state level.

- The California legislature recently amended its Dymally-Alatorre Bilingual Services Act. The new law requires every state agency and state department to establish an effective bilingual services program that develops, implements, coordinates, and monitors a departmental plan, including a procedure for accepting and resolving complaints. The agency's plan must be updated every two years. Many unemployment insurance forms and brochures are printed on the state agency web page in four languages.
- Massachusetts' unemployment insurance law provides that all notices and materials be available in ten specified languages, and any other language that is the primary language of at least 10,000 or .5% of all residents of the commonwealth.

Some states, including Massachusetts and Washington, allow lack of notice in a language that the claimant can understand to excuse late filing of appeals.



Model legislation for comprehensive bilingual state services

California

Dymally-Alatorre Bilingual Services Act. CAL. GOV'T. CODE §§ 7290-7299.8, available at <http://www.leginfo.ca.gov>.

Maryland

Equal Access to Public Services for Individuals with Limited English Proficiency. MD. CODE ANN., STATE GOV'T §§ 10-1101-10-1105, available at <http://mlis.state.md.us>.



Model legislation requiring bilingual notice and providing good cause for late appeals

Massachusetts

(a) The division shall issue all notices and materials explaining the provisions of this section in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the primary language of at least 10,000 or 1/2 of 1% of all residents of the commonwealth. If the division fails to issue a bilingual notice in the claimant's primary language and such omission results in the claimant's failure to meet a deadline or requirement, the division's omission shall constitute good cause for the claimant's failure.

MASS. GEN. LAWS ANN. ch. 151A, § 62

References

Rebecca Smith, Amy Sugimori & Luna Yasui, *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597 (Aug. 2004).

U.S. DEP'T OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 2003, 7-2 (2003).

Wayne Vroman, *Low Benefit Reciprocity in State Unemployment Insurance Programs* (June 2001), available at <http://wdr.doleta.gov>.

Waive nonfraud overpayments when collection would be unfair



What is it?

States are stepping up efforts to recoup UI benefits paid to workers who are later found to be ineligible. A majority of such overpayments are a result of confusion over program rules and not due to willful acts of fraud. States should enact policies that allow for waiver of nonfraud overpayments when the worker was not at fault in causing the overpayment and paying back the benefits would create undue hardship for the worker.



Key arguments in favor

Most overpayments are not due to fraud. Of all the overpayments currently detected, only one in three is classified as fraud, that is, is caused by actively lying or deceiving the state to receive benefits. The Department of Labor estimates that, when undetected overpayments are also considered, only one in four of all possible overpayments are fraudulent.

Nonfraud overpayments often occur because of confusion over program rules. One-third of the nonfraud overpayments established in 2003 were the result of claims initially approved by the state, but later denied due to successful employer appeals or agency reversals. Other reasons for overpayments involve mistakes by agencies in application of rules, or confusion by claimants about requirements for reporting other forms of income. Many of these overpayments are not the fault of the claimant, and forcing workers to repay them is unfair.

States should adopt rules that do not require repayment if it would violate principles of “equity and good conscience.” This standard allows the state to examine the fairness of the repayment. It avoids, for example, “gotcha” situations, where workers have already spent jobless benefits on important needs and don’t have the resources to pay the state back. Several states’ laws allow waivers in cases of financial hardship because recovery would defeat the purpose of UI by pushing the claimant and his family further into poverty. States should examine the family hardship that would be caused by repaying the overpayment, as one — but not the only — criteria under their waiver procedure.



Key arguments against and responses to them

Opponents say: States should recoup as many overpayments as possible to maintain the integrity of the UI system.

Response: The core purpose of the UI system is to ameliorate the difficulties facing jobless families during times of unexpected unemployment by timely delivering income support. Overzealous recovery that unnecessarily hurts families or

discourages workers from seeking UI benefits undermines these goals. Waiving repayment does not affect the charging of benefits to an individual employer's account.



Which states do it?

At least half of the states have provisions for waiving nonfraud overpayments if recovery would violate principles of equity and good conscience.



Model legislation

Maine

5. If, after due notice, any person refuses to repay amounts erroneously paid to that person as unemployment benefits, the amounts due from that person are collectible in the manner provided provided that there is no recovery of payments from any person who, in the judgment of at least 2 commission members, is without fault and where, in the judgment of the commission, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. No recovery may be attempted until the determination of an erroneous payment is final as to law and fact and the individual has been notified of the opportunity for a waiver under this subsection.

ME. REV. STAT. ANN. tit. 26, § 1051.

Model rules on waiver factors

Factors to be considered shall include, but are not limited to the following:

1. The claimant's general health and earning capacity;
2. Whether other individuals depend or rely upon the claimant for support and sustenance;
3. The claimant's employment status at the time of the request;
4. The claimant's current family income and reasonable expenses;
5. The existing long and short-term debts of the claimant and his or her family;
6. Any extraordinary medical or other expenses of the claimant and his for her family;
7. Whether the claimant has received unemployment benefits as a windfall, for example, where a back-pay award is later received;
8. The notice, if any, and the clarity of such notice provided by the bureau to the claimant of the possibility of a later determination of erroneously paid amounts.
9. Change of Position: A claimant will be considered to have detrimentally changed his or her position in reliance upon the receipt of benefits if the claimant has taken any reasonable action or incurred a necessary financial obligation in the conduct of his or her affairs which the claimant would not have taken but for the receipt of the benefits.

Adapted from Maine and California Regulations
CODE ME. R. tit. 12 § 172-26, CAL. CODE REGS. tit. 22, § 1375-1

References

U.S. DEP'T OF LABOR, CALENDAR YEAR 2002
BENEFIT ACCURACY MEASUREMENT DATA
SUMMARY (August 2003), available at
www.ows.doleta.gov.

U.S. DEP'T OF LABOR, ETA 227 REPORT (2003).

Increase Community Education



What is it?

A large proportion of laid-off workers (two out of five in the 1990s) don't apply for UI benefits and may not know that UI is available to them. State agencies can develop outreach programs to encourage potentially eligible workers to apply. Effective outreach programs combine media strategies and partnerships with community-based organizations serving low-wage or immigrant (and often non-unionized) workers, those least likely to access benefits. In addition, state agencies should ensure that employers fulfill their responsibility to notify separated employees about UI.



Key arguments in favor

Many struggling jobless workers do not apply for UI benefits because they think they are ineligible. In the 1990s, two out of five laid-off workers did not apply for benefits. When asked by researchers why they did not apply, workers were most likely to say they thought were ineligible; very few said they did not need the money. Public awareness of UI benefit rules is limited and many workers who don't file a claim would qualify if they applied.

A combined strategy of media and community-based strategies can help increase application rates. At a reasonable price, UI agencies can purchase radio or newspaper ads that encourage jobless workers to apply. UI agencies can also partner with community-based organizations, training their staff in the basics of UI eligibility and applications. CBOs are in the best position to distribute UI informational materials – such as rack-cards and fliers – in the community.

State agencies should ensure that employers fulfill their obligations to notify separated employees about UI. The best opportunity to educate potential consumers about UI applications is at the time of separation. As per federal rules, many states require that employers give workers a form or flier with basic UI information the worker needs to file a claim, including the claim center telephone number and the name and address of their employer. Massachusetts uses an innovative model to encourage compliance with this rule – workers who do not receive the required notices from employers can get back benefits if they apply late.



Key arguments against and responses to them

Opponents say: The state should not engage in UI outreach to bring more workers onto UI benefits when the costs of unemployment benefits are already too high.

Response: Unemployment burdens communities in a myriad of ways – greater social welfare costs, increased family stress, increased burdens on local charities or food banks, and less local spending by unemployed families. Receipt of

unemployment benefits can lessen hardship and poverty among unemployed workers and consequently lower other state and societal costs.

Opponents say: Public education and outreach about unemployment insurance are not necessary.

Response: The decline in the rate of applications for and receipt of UI over the last several decades demonstrates that greater information is needed for UI to fulfill its goals. Moreover, the process of applying for unemployment insurance has become more challenging for some claimants as states have switched to telephone applications. Today's workers are less likely to be part of unions which traditionally have provided information and assistance on UI applications. State agencies routinely provide assistance to employers on a range of UI topics through seminars and newsletters, but they rarely have a parallel process for workers. A public education campaign is an important part of a balanced approach to UI administration.



Which states do it?

Washington State embarked on an outreach campaign to Spanish speaking workers in 1999, as part of its transition from in-person applications to telephone applications. Due in part to this outreach program, unemployment insurance claims among Spanish-speakers rose by 18 percent over the next year (from fourth quarter 1999 to the fourth quarter of 2000).



Model legislation

Massachusetts

(g) Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain the name and mailing address of the employer, the identification number assigned to the employer by said division, instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

MASS. GEN LAWS ch. 151 § 62A

References

Andrew Stettner & Stephen Wandner, Why are many Jobless Workers Not Applying for Benefits? MONTHLY LABOR REVIEW, June 2000, at 21-32.

Quick Reference Table

Chapter	1. Low-wage Worker Access	2. Access for Women and Working Families				3. Eligibility for Nonstandard Workers		4. Build Income Security			6. Financing for Long-term Solvency	State UI Reciprocity Rate: 2001-2003
Model Policy	Alternative Base Period	Undue Family Hardship	UI for Domestic Violence Survivors	Moving to Follow a Spouse	Children's Allowances	Part-time Workers Treated Favorably	Favorable Test for Employer-Employee Relationship	Indexed Weekly Benefit Amount	Better Extended Benefit Triggers (6.5% TUR)	Eliminate the Waiting Week	Indexed Taxable Wage Base	
Alabama										X		0.33
Alaska		X		X	X		X		X		X	0.58
Arizona		X	X	X								0.29
Arkansas		X				X	X	X				0.51
California		X	X	X		X						0.47
Colorado			X			X	X	X				0.30
Connecticut	X		X		X		X	X	X	X		0.62
Delaware			X			X	X			X		0.51
D.C.	X		X		X	X		X				0.36
Florida				X		X						0.28
Georgia	X						X			X		0.35
Hawaii	X	X		X		X	X	X			X	0.43
Idaho								X			X	0.50
Illinois	X		X		X		X	X				0.44
Indiana			X	X			X					0.40
Iowa					X	X		X		X	X	0.48
Kansas		X	X	X		X		X	X			0.39
Kentucky				X				X		X		0.36
Louisiana						X	X	X				0.27
Maine	X		X	X	X	X	X	X				0.41
Maryland		X			X					X		0.37
Massachusetts	X	X	X		X			X				0.64
Michigan	X				X					X		0.47
Minnesota			X			X		X			X	0.46
Mississippi												0.34
Missouri												0.40
Montana			X				X	X			X	0.44

Chapter	1. Low-wage Worker Access	2. Access for Women and Working Families				3. Eligibility for Nonstandard Workers		4. Build Income Security			6. Financing for Long-term Solvency	State UI Reciprocity Rate: 2001-2003
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Nebraska			X			X	X					0.37
Nevada		X		X				X		X	X	0.48
New Hampshire	X		X				X		X	X		0.29
New Jersey	X		X		X	X	X	X		X	X	0.55
New Mexico	X		X		X	X	X	X	X		X	0.29
New York	X	X	X	X		X						0.44
North Carolina	X		X	X		X		X	X		X	0.39
North Dakota								X			X	0.36
Ohio	X				X		X	X				0.41
Oklahoma	X		X	X		X		X			X	0.31
Oregon		X	X	X				X	X		X	0.49
Pennsylvania		X		X	X	X	X	X				0.62
Rhode Island	X	X	X	X	X	X		X	X			0.52
South Carolina								X				0.41
South Dakota			X			X		X				0.25
Tennessee												0.25
Texas			X	X								0.29
Utah		X					X	X			X	0.30
Vermont	X					X	X	X	X	X		0.55
Virginia	X	X					X					0.33
Washington	X		X	X			X	X	X		X	0.48
West Virginia							X	X				0.39
Wisconsin	X		X							X		0.55
Wyoming			X			X		X			X	0.31
Total	20	15	27	18	14	23	23	32	10	13	16	NA

National Employment Law Project's Unemployment Insurance Safety Net Project

About NELP

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.

NELP's Unemployment Insurance Safety Net Project supports 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.

About NELP's UI Safety Net Team

NELP's UI Safety Net Project team includes Maurice Emsellem, NELP's Public Policy Director, policy analyst Andrew Stettner, and attorneys Rick McHugh and Rebecca Smith.

Rick McHugh is a staff attorney and NELP's Midwest Coordinator. He has represented unemployed workers and advised unions on unemployment insurance and dislocated worker issues for 25 years. He works with NELP's Unemployment Insurance Safety Net Project, especially in the Midwestern states. Contact Rick at (734) 426-6773, or rmchugh@nelp.org.

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Andrew Stettner is a policy analyst for NELP. He has a Masters in Public Policy and experience working with government and community organizations on unemployment insurance, welfare, and racial and economic justice issues. Contact Andy at (212) 285-3025 x 110, or astettner@nelp.org.



We have been partners with NELP for many years on unemployment insurance legislation and policy. Just like in *Ghostbusters*, when we have a question about unemployment insurance, we know that our friends at NELP are "who we're gonna call." They are reliable and quick to respond with information and advice.

—Bill Rowe, *General Counsel, North Carolina Justice Center*

For anyone who cares about making state policies responsive to the needs of working families, this book is invaluable. It lays out a menu of options for making the unemployment insurance system more accessible in the modern era of working parents, a service economy, and reduced access to welfare.

—Tamara Lucas Copeland, *President, Voices for America's Children*

In New Mexico, we had one of the "fattest" unemployment insurance funds, not because we charged employers too much, but because we gave the unemployed so little. With NELP's help, we changed our system to help more people in these hard economic times.

—Rep. Mimi Stewart, *New Mexico House of Representatives*

We at the Illinois AFL-CIO have found NELP's advice and assistance most valuable. In the state legislative process, having the facts about unemployment benefits and comparisons with what other states have done with their unemployment insurance programs helps greatly.

—Margaret Blackshere, *President, Illinois AFL-CIO*

NELP's highly skilled staffers consistently provide a balanced overview and practical solutions on unemployment insurance policy for legislators from across the nation at National Conference of State Legislatures events, as well as in the day to day efforts to modernize the unemployment system here in Georgia.

—Rep. Nan Grogan Orrock, *Georgia House Majority Whip, Chair, NCSL Labor and Workforce Development Committee*

NELP has done an exemplary job on this much needed piece of literature that should change the way everyone looks at unemployment insurance.

—Cheryl Hill Lee, *Research Analyst, National Urban League Institute for Opportunity and Equality*

NELP played an integral part in contributing information, insight and experience to unemployment insurance reform here in Arizona.

—Sen. Carolyn S. Allen, *Arizona State Senate*

We at Legal Momentum have greatly valued the expertise of NELP staffers as we've worked together to help ensure that domestic violence victims are able to access unemployment benefits.

—Lisalyn Jacobs, *Vice President for Government Relations, Legal Momentum (the new name of NOW Legal Defense and Education Fund)*



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