

“ One of the duties of the State is that of caring for those of its citizens who find themselves the victims of such adverse circumstances as make them unable to obtain even the necessities of mere existence without the aid of others. ”

DOWN BUT NOT OUT

REVIVING THE PROMISE OF UNEMPLOYMENT INSURANCE IN NEW YORK

by Andrew Stettner & Rebecca Smith
National Employment Law Project

December 2006

Governor Franklin D. Roosevelt, Message to the State Legislature, 1931

Prepared with the members of OUR NY - Organizing for Unemployment Reform in New York

Asian American Legal Defense and Education Fund • Citizen Action New York • Community Legal Resource Network, CUNY School of Law • Empire Justice Center • Fiscal Policy Institute • American Federation of Musicians Local 802 • Lower East Side Community Labor Coalition • Mason Tenders District Council of Greater New York • National Employment Law Project • New York City Employment and Training Coalition • New York Immigration Coalition • New York Unemployment Project • Northern Manhattan Coalition for Immigrant Rights • Partnership for the Homeless • Public Housing Residents of the Lower East Side • Unemployment Action Center • YKASEC – Empowering the Korean American Community

This report contains but is not limited to OUR NY's key reform agenda items.

DOWN BUT NOT OUT

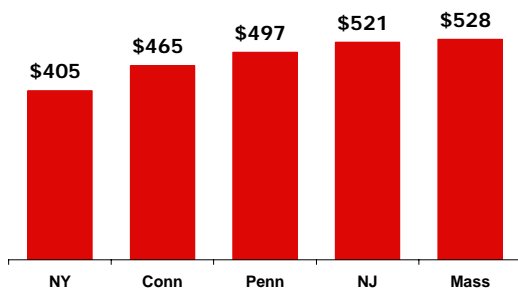
REVIVING THE PROMISE OF UNEMPLOYMENT INSURANCE IN NEW YORK

EXECUTIVE SUMMARY

Unemployment is one of the most daunting threats to families in New York State. Layoffs are a harsh and poignant reality in Western and Central New York, as the region continues to struggle with the loss of its manufacturing base and a slow transition to new growth sectors. Even in growing parts of the state around New York City, globalization and corporate reorganizations make steady jobs vulnerable. The state's growing population of working poor toils in service industries such as restaurants and retail that are characterized by high levels of turnover, temporary work, and periods of unemployment. And the consequences of job loss are severe: the average jobless New Yorker is out of work for just under six months.

Seventy-five years ago, then-Governor Franklin D. Roosevelt called a special session of the legislature to ensure that New Yorkers would not have to face the perils of unemployment alone. Urged on by FDR, the state began a revolution in aid that demonstrated New Yorkers' shared commitment to helping hard-hit families get back on their feet. The system inspired by Governor Roosevelt remains the state's largest response to economic hardship, with workers drawing \$2.3 billion in unemployment insurance (UI) checks in 2005 alone. And there is strong evidence that the program works, enabling families to maintain their income above the poverty level, keep food on the table, pay the rent, and preserve hard-earned savings.

The Governor's office will soon be occupied by an administration that has a strong commitment to developing an economy that provides rising living standards to all of the state's residents. Strengthening the UI program is a vital part of an economic revitalization agenda in Albany. The UI program protects the state's most important resource—its workers—providing the support that jobless workers need as they find ways to redeploy their skills in a constantly changing economy. UI benefits boost communities as well, especially those hardest hit by corporate downsizing or recessions. This impact was felt most recently during the post-9/11 recession, when UI pumped an additional \$6 billion of spending into the state's economy.



**Maximum Weekly UI Benefit,
NY and Neighboring States**
January 2006

But despite the vital place of the UI program in our economy, the level of security provided by the program has declined severely in recent years. Unemployment checks are not sufficient to meet even the basic needs of jobless families; many deserving unemployed New Yorkers fail to collect assistance; and the self-financing mechanism set up to fund benefits is broken.

- **The average UI check is equal to just 28 percent of the average worker's paycheck, a replacement rate that is far lower than in neighboring states.** New York's ranking on this benefit adequacy measure has tumbled over the years, and is currently 48th of the 50 states.
- **Only 41 percent of New York's unemployed receive unemployment benefits.** This is an unacceptably low level that pales in comparison to our neighboring states, which pay UI to 53 percent of their unemployed.
- **New York State's UI trust fund became insolvent in 2002 and did not pay off federal loans until May 2006.** In rankings prepared by the U.S. Department of Labor (DOL), the state's UI trust fund solvency has ranked among the worst states before, during, and after the last recession.

In recent years, the Pataki Administration and the Legislature neglected the UI program to the point where the system needs urgent repair. The law governing unemployment insurance in New York State has been frozen since the late 1990s, and many key provisions date back to the early days of the program. Upgrading the state's UI program will require improvements at multiple levels to the system: administration, benefit laws and rules, and financing.

Provide Adequate Benefits

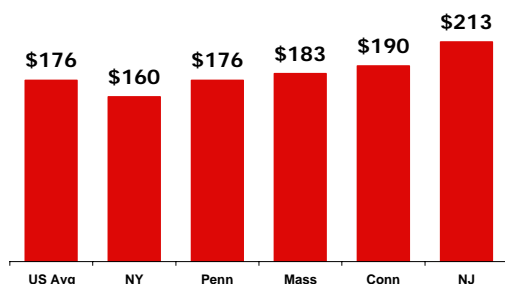
Core cost of living expenses such as rent, food, and transportation have climbed throughout the state, yet UI benefit rates have remained unchanged for the past six years. Thus, UI benefit checks are increasingly unable to help families even tread water while they are temporarily out of work.

Under the current scheme, regardless of how much workers earned before they were laid off, they cannot collect more than \$405, which is the maximum weekly benefit allowed by law. Workers in New York earned an average \$977.33 per week (\$50,000 per year) in 2005. Thus, a UI benefit of \$405 does not come close to replacing even half of an average paycheck in the state. Moreover, the average unemployment

insurance benefit of \$276 per week does not meet the cost of living for a single adult in New York City, Buffalo, or Rochester.

New York should take a comprehensive approach to improving benefits, increasing the adequacy of benefits for middle class and low-wage workers:

- **The maximum weekly benefit amount should be increased from \$405 to \$500 per week.** This level would more realistically meet the expenses of unemployed New Yorkers, and this maximum amount is in line with the other high-cost-of-living states in the Northeast region.
- So that benefits don't consistently fall behind the pace of inflation, the maximum weekly amount should be indexed to increase every year. Thirty-two states (including all of New York's neighbors) tie their maximum weekly benefit to the inflationary growth of wages in the state. New York should adopt this practice, indexing the maximum weekly benefit amount to 55 percent of the state's average annual wage each year.
- The experience of unemployment is particularly acute for low-wage workers, who spend almost all of their paycheck on basic needs (rent, food, housing) and quickly face distress when they lose their job. The UI program in New York does not address the greater needs of such laid off families, leaving low-income families at a greater disadvantage during unemployment than in other states. In New York, a single mother with two dependents laid off from an \$8 per hour job receives a UI check of \$160 per week. An individual unemployed from a job with an identical wage and work schedule in New Jersey qualifies for a UI check of \$213.



**Weekly UI Benefit—
Single Mother, with 2 Children,
Laid Off from an \$8/Hour
Full-Time Job**

New York's UI program determines the UI benefit rate from the total amount of earnings in the worker's most lucrative calendar quarter of earnings (known as the "high quarter"). The normal benefit formula is 1/26th of high quarter wages, while very low-wage workers receive 1/25th.

The UI system rules should be changed to provide more generous income replacement to those workers who earn less than \$9.50 per hour (equivalent to \$5,000 per quarter, or \$20,000 for a full year's work.) **The state should provide low-wage workers with a UI check equal to 1/22nd of their total high quarter wages.** For a minimum wage worker, this would amount to a 14 percent increase in the value of UI checks over the current 1/26th rule.

THE UNEMPLOYED: MARK Opportunity Blocked

Mark was laid off from a building maintenance helper job. Because job security is limited in entry-level janitorial work, Mark sought certification as an air conditioning and repair mechanic. Despite labor market evidence of clear gains in job security and pay that Mark could reap by training for air conditioning repair, his application for a 599 extension of UI benefits to complete a training course was denied. Even after Mark filed an appeal, DOL concluded that Mark should return to his previous occupation (which had numerous poorly-paid openings) instead of entering training. Not only did Mark lose out on support in his quest for upward mobility, New York lost the chance to gain a skilled worker for a demand occupation.

Link UI to retraining opportunities

Many jobless workers look at a layoff as a chance to rethink their career and seek retraining. Such reskilling is a win-win proposition, benefiting the individual and making the state's economy more competitive. Section 599 of New York's UI law allows current UI claimants to enroll in DOL-approved training programs and extend their eligibility for UI for up to an additional six months. While this program is a very attractive option to jobless workers in today's economy, eligibility for benefits is extremely limited. DOL denies 70 percent of applicants for an extension of benefits for training. To expand access:

- **The state should increase funding for 599 beyond the current \$20 million cap to \$38-\$50 million per year** so more workers can access the system and to give DOL more latitude to increase its approval of claims.
- DOL administration should follow the legislative intent of the most recent reforms to 599 that were made to enable workers to enroll "in training to upgrade their skills and find more secure and rewarding jobs," even in those cases where jobless workers would be able to return to their previous substandard occupations without skills development. Moreover, the law should be changed so that 599 clearly applies to individuals who are more likely to find family-sustaining employment with retraining.

While 599 allows workers to continue collecting unemployment benefits while in training, it does not pay for the tuition of training programs. A number of other states have developed compelling models tied to the UI system to generate strategic additional resources for workforce development. The creation of a training fund linked to UI revenue is an interesting policy option for New York to explore.

Increase access to UI benefits to part-time workers

In 2005, 650,000 "partial UI" checks (payments that are less than the full weekly UI benefit amount) were paid to underemployed New Yorkers. Workers who have been cut from full-time to part-time work are eligible for partial UI as are those who can find only part-time work after being laid off. The purpose of partial UI is to make up for some of the lost earnings of part-time workers.

New York uses a peculiar "effective day" system when deciding partial UI eligibility. Reductions in the weekly benefit amount are based on the number of days worked by part-timers and not by the amount that is earned. The rules are so convoluted that some individuals are penalized

for days of uncompensated work. This system serves to exclude or reduce UI benefits for many part-timers, especially low-wage workers.

- **New York should adopt the system used by the rest of the states (and by New York's welfare system) that determines benefit amounts through an earned income disregard.** The disregard allows workers to keep a portion of their part-time earnings and then subtracts out the remainder of the wages from the UI check.
- Pennsylvania law provides a model policy, disregarding an amount equal to 40 percent of the full weekly benefit amount. Compared to New York, such a rule would double the amount of UI benefits provided to a \$10 hour per worker who is cut from a full-time to a half-time schedule.

Make UI More Family Friendly

Urgent personal and family crises can cause workers to lose their job—and working parents are especially at risk. Working New Yorkers look to the UI system for support as they address such issues and search for new employment. Whether they have been laid off or have quit their job due to family issues, workers with families face a greater strain of paying for basic goods while they are out of work. New York's UI program could do a better job addressing these needs.

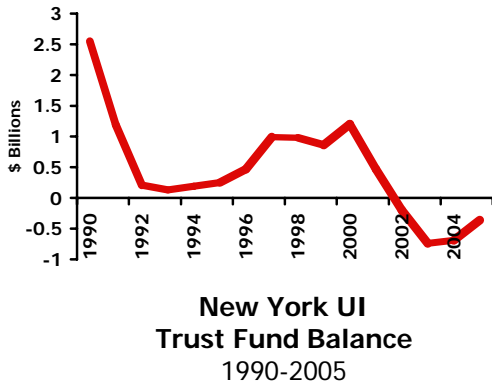
- Workers who apply for UI after they've quit their job due to a personal or family issue can receive support if the Labor Department determines that they had "good cause" to do so. However, New York takes a very restrictive approach in deciding good cause cases. New York should modify its rules and reform its practices to match other states in the areas of unemployment caused by illness or disability, spousal relocation, and child care problems.
- New York is the only one of our neighboring states that does not provide an added allowance for jobless workers who have dependent children. New York should add a modest dependent allowance (\$15-\$25) per week to UI checks.

Return the UI Trust Fund to Solvency

UI benefits are paid out of a dedicated trust fund that is self-financed through employer contributions. UI benefits vary widely depending on economic conditions, with the largest payouts coming when unemployment rises. A solvent UI trust fund has sufficient savings to handle an unexpected increase in unemployment when the business cycle turns south.

THE UNEMPLOYED: JULIA The Limits of Security

Julia worked as a janitor at the World Trade Center on the 101st floor. After losing 20 colleagues on 9/11, Julia was diagnosed for post-traumatic stress disorder and developed a great fear of working on high floors. When her company only offered her new work in another building on the 72nd floor, Julia quit to search for work that was suitable to her condition. Her unemployment insurance claim was denied, and she lost her appeal with the Board agreeing with the Labor Department's decision that she did not quit with good cause.



New York's UI trust fund has failed to achieve solvency over the past decade. The U.S. Department of Labor ranked New York's UI trust fund as one of the least solvent in the country well before the post-9/11 recession. In 2002, the fund became insolvent, meaning that it had to borrow funds (with interest) from the federal government and did not regain solvency until 2006.

Such insolvency should not have occurred. The system is set up to recoup benefit costs by charging higher rates to those firms who lay off the most workers, and by increasing tax rates across the board when the trust fund balance drops. However, these self-correcting mechanisms are not working in New York State because taxes are assessed on only a small fraction of total payrolls.

- UI taxes are only assessed on the first \$8,500 of each worker's wages, the taxable wage base. In 1980, nearly 40 percent of wages were subject to UI taxes, compared to just 19 percent in 2004.
- This low taxable wage base makes it difficult for the trust fund to recover from recessions. Despite being on the highest tax rate schedule provided by the law, New York's UI taxes average 0.74 percent of total wages—just 74 cents for every 100 dollars of wages paid to employees in the state.
- **The taxable wage base needs to be increased to at least \$13,800 and then indexed to inflation.** This would bring the taxable wage base up to the level it was in 1988—the last time that the fund approached solvency.

Administer the UI Law Fairly

The state's administration of the system should be reoriented to provide a more level playing field to jobless workers who are seeking assistance.

In a typical year, as many as 160,000 applicants are denied unemployment benefits. Among those cases contested by the Labor Department, the percentage of workers receiving benefits dropped from 59 percent to 35 percent over the past 20 years. Less than a quarter of these workers—36,000—appeal their denials, and only 9,000 prevail—less than 10 percent of the total number of initially denied claims.

- A critical administrative issue is the treatment of immigrant workers, who now make up 47 percent of New York City's workforce, up from only 16 percent in 1980. **DOL should greatly improve procedures related to limited English proficient (LEP) applicants for unemployment insurance benefits by providing translation of materials in additional languages and guaranteeing appropriate translation at UI hearings.**

- **The state should increase the ability of workers to get a fair hearing when they appeal a denial of UI benefits.** This can be accomplished through public funding for legal service representatives of workers and small businesses in UI cases.
- The long odds of success are made worse by problems with the hearings themselves. One out of five hearings decided by Administrative Law Judges was marred by a violation of due process standards agreed upon in a consent decree stemming from the *MLC v. Sitkin* lawsuit. **The UI Appeal Board should undergo a concerted and forthright effort to root out these violations.**

Conclusion

In recent years, the UI system has spiraled downward, with benefits becoming less adequate and the financing system less solvent. Concerns about “protecting trust fund resources” have dominated the administration of the system and policy discussions.

However, the state’s trust fund has benefited from the upturn in the economy and stood at \$459 million at the end of September 2006, up from a near-zero level of \$168 million a year earlier. This positive position opens a window of opportunity to engage in a more serious discussion of UI policy issues. With leadership from the new Governor, there needs to be an effort to engage all parties with a stake in the future of the UI program—labor unions, low-income communities, business, and the legislature—in UI reform.

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Section I – The Economic Benefits of Unemployment Insurance

The driving force of Unemployment Insurance (UI) policy discussions in recent years has been the cost of UI taxes to the state's businesses. While business taxes are a genuine concern, this policy debate has been one-sided. UI programs are viewed largely as a cost to business, with little discussion of the benefits of the program to the public. This report outlines reforms that will make the state's UI program more accessible and more adequate. There is strong evidence that such improvements are a wise investment, bringing impressive returns in poverty reduction for jobless families and economic stabilization for communities.

The most authoritative recent statement of the intent of the UI program was drafted by the federal Advisory Council on Unemployment Compensation (ACUC) a bipartisan body created by Congress in 1993 to evaluate the adequacy of the nation's UI system. According to the ACUC (1996):

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.

Prevention of hardship

UI stands out among all of the public programs that seek to ameliorate economic hardship. Unlike other public assistance programs (food stamps, welfare, assistance to the homeless) that are only available to those that are already poor enough to qualify, UI benefits serve to prevent poverty. With many working families living paycheck to paycheck, the quick temporary income replacement provided by UI enables families to prevent acute problems like poverty, hunger and homelessness and to preserve hard earned savings. In recent years, research has demonstrated these positive effects.

- **UI helps prevent poverty.** A recent Congressional Budget Office study examined the income of UI recipients in 2001. Before losing their job, just 7 percent of UI recipients had incomes below the poverty level. During a long spell of joblessness, however, UI made the difference in preventing poverty. Several months into their unemployment, 25 percent of UI recipients were poor but poverty rates would have been twice as high (50 percent) if these families had not had this source of income.¹
- **Maintaining the family's housing.** Housing stability is directly threatened by unemployment—a national survey found that 26 percent of jobless workers in the last recession were forced to move after they lost their job.² Other research found that the presence of UI reduces the chances that a worker will be forced to sell the family home by almost one half.³

When workers are disqualified from UI, other public programs are stretched. Many jobless workers not collecting UI have a monthly income of zero, and thus are eligible for Medicaid and welfare. The potential cost to the state of denying workers unemployment can be seen in the

hypothetical case of a single mother with two dependent children who qualifies for the average UI benefit of \$276 per week, and for a minimum wage worker with no children. Not only are welfare benefits potentially more costly, but strapped local and county governments are required to pay a share of the welfare costs.

Table 1 – Benefit Costs Compared⁴

Single Mother with Two Children Getting Average UI Benefits	
<u>Welfare</u>	<u>UI</u>
Welfare Grant: \$691 per month	UI: \$276 per week
Medicaid: \$574 per month	
Total: \$1265 per month	Total: \$1159 per month
Unemployed Minimum Wage Worker with No Children	
Welfare Grant: \$352 per month	UI: \$140 per week
Medicaid: \$268 per month	
Total: \$620 per month	Total: \$590 per month

Source: Community Services Society Public Benefit Resource Center, 2005; Kaiser Commission on Medicaid and the Uninsured, FY 2002; UI Quarterly Data Summary, Fourth Quarter 2005. UI benefits converted to monthly income by multiplying weekly UI by 4.2 weeks per month.

The economic benefits of UI

Governments have a limited ability to counteract the effects of an economic recession. Even if Congress or a State Legislature passes a spending package, it takes time for the funds to be appropriated and spent. By this point economic conditions might have changed. Tax cuts put money back into the hands of citizens but are inefficient because wealthier taxpayers who get the biggest tax breaks are likely to save their money rather than spend it.

In contrast, the UI program is one of the few effective automatic stabilizers that government provides the economy. When the economy turns down and jobs are cuts, UI benefit payouts automatically increase and smooth out the loss of spending power. Workers spend their UI checks quickly on consumer goods and the money ripples positively through communities. A recent analysis by the forecasters at Economy.com compared a number of proposed interventions in the post-9/11 recession and concluded that spending on UI was the most efficient dollar-for-dollar way for government to spark economic growth.⁵

Program statistics reveal the countercyclical impact of the UI program in New York during the post-9/11 recession. As shown in Table 2, the state UI program pumped an additional \$4.12 billion back into local economies over the 3-year period when economic activity slumped after the 9-11 attacks.⁶ This does not include an additional \$1.78 billion of federal extended benefits that came at no cost to the state's UI trust fund. Thus, the state's economy received nearly \$6 billion in stimulus from the UI program, money that went from the pockets of working families into the hands of local business owners.

Table 2 – New York UI Benefit Payments, 2000-2003 (\$Billions)

	State UI Benefits	Additional State Benefits (Over 2000 baseline)	Federal Extended Benefits (TEUC)	Total Additional Benefits
2000	\$1.69			
2001	\$2.72	\$1.03		\$1.03
2002	\$3.34	\$1.65	\$0.96	\$2.61
2003	\$3.12	\$1.44	\$0.82	\$2.26
Total Additional Benefits		\$4.12	\$1.78	\$5.90

Source: U.S. Department of Labor

UI and redevelopment upstate

UI's economic impact is clearest in economies that go through the ups and downs of recession and growth cycle, a curve that has been particularly pronounced in New York City. However, a strong UI program should be seen as positive part of the economic redevelopment of regions of the state that have struggled through long-term stagnation. Economies in Western and Central New York are battling structural declines in the manufacturing work that provide the most reliable base of well-paying jobs in the region. The challenge is to preserve productive manufacturing jobs and generate new employment opportunities in potential growth industries like professional and scientific services, health care, education and finance.

One of the region's best assets in making that transition is its skilled workforce. For example, New York's manufacturing workforce is among the most highly skilled and productive in the country and is concentrated upstate.⁷ Moreover, nearly a third of upstate residents have a college degree.⁸ Adequate unemployment benefits are an incentive for laid off workers to stay in the region while they seek retraining and search for family-sustaining work. With workers in the region less likely to find full-time employment than those in the rest of the country, UI benefits can make sure families can make ends meet in a transitional economy.⁹

In Rochester, for example, Eastman Kodak, Bausch & Lomb and Xerox attracted a skilled production and scientific workforce. As these major companies downsize, the region is counting on its ability to attract new firms based on the presence of a skilled workforce in scientific and technical services. A good UI system is needed to enable workers to stay put while this development occurs. Better linking the workforce and unemployment systems will enhance the region's ability to maintain this competitive edge by providing jobless workers the chance to upgrade their skills to meet the needs of new employers.

Section II – Major Shortcomings of New York’s UI Program

The last major Albany legislation dealing with the UI system was ratified in 1999. For the past seven years, the UI system has been left alone by the Legislature. The results of this neglect can be seen in three key measures of the performance and stability of New York’s UI program:

- **UI benefit adequacy:** Are UI benefits an adequate temporary replacement for lost wages?
- **UI reciprocity:** How often do UI benefits get into the hands of jobless workers and their families?
- **UI financing:** Is the UI trust fund effectively and fairly financed?

Table 3 - Unemployment Insurance Program Indicators: New York & Neighboring States

	Reciprocity Rate	Wage Replacement Rate	Average Weekly Benefit	Average High Cost Multiple
New York	41%	28%	\$276.05	0
Connecticut	45%	30%	\$295.42	0.57
Massachusetts	52%	38%	\$356.04	0.25
New Jersey	59%	37%	\$336.04	0.32
Pennsylvania	55%	40%	\$291.89	0.14
U.S. Average	36%	35%	\$262.64	0.44

U.S. Department of Labor, UI Quarterly Data Summary, 4th Quarter 2005

Table 3 compares New York’s UI program on these key measures. On several of these indicators, New York State is above the national average. However, the national average includes low standard of living states like Mississippi, Louisiana and Alabama that pay UI benefits to as little as 20 percent of their jobless population and whose unemployment benefits top out at a maximum of around \$200 per week.

New York’s political values and economy are far different than these Southern states. A more apt comparison for the Empire State is represented by the four major states that border New York (Connecticut, New Jersey, Pennsylvania and Massachusetts). While each of these states has pockets of poverty and economic distress, they each have economies that have been historically characterized by above average wages and high costs of living. As shown by Table 3, each of these states has responded by providing above average UI benefits that meet the economic realities of workers in these states. New York stands out as having failed to meet these standards.

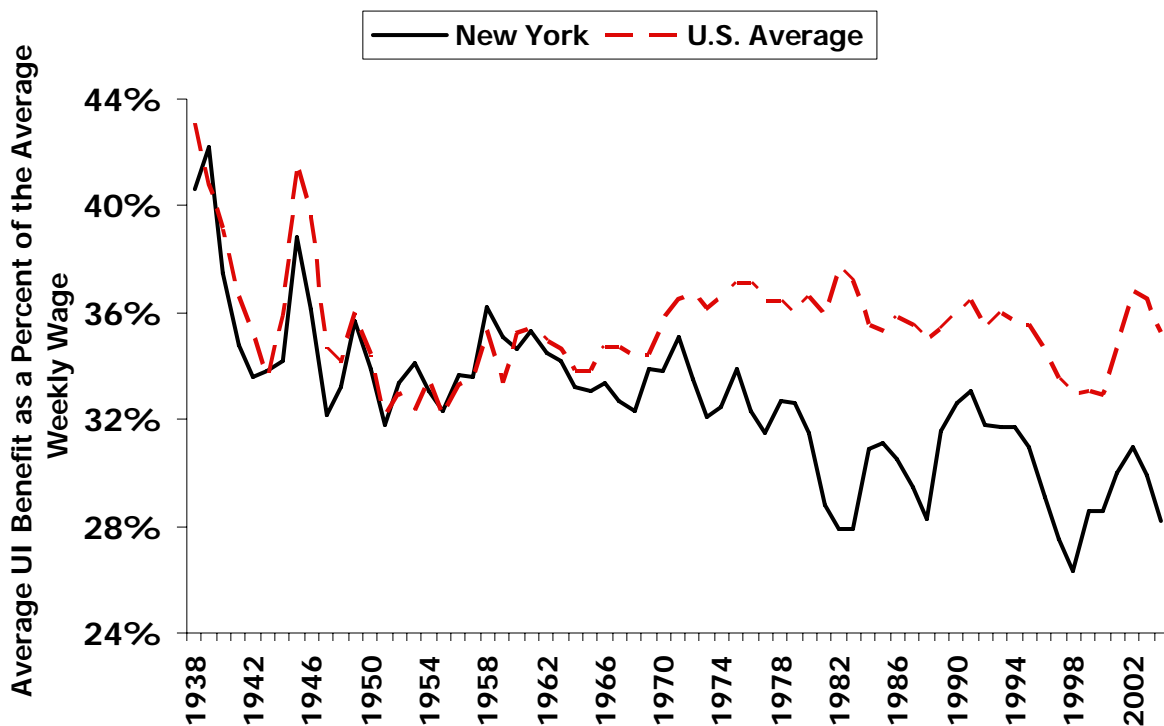
UI Benefit Adequacy: The value of UI checks has steadily eroded

Workers count on UI checks to cushion the blow of job loss on their family budget. The best measure of benefit adequacy is wage replacement. If UI benefits replace too small a portion of worker’s paychecks, they won’t cover essential items in family budgets like food, housing and transportation.

The standard measure of UI benefit adequacy compares the average weekly UI benefit amount received by the unemployed to the average weekly wage of all workers. In 2005, the average weekly UI benefit in New York was \$276 per week, just above the national average of \$263. However, New York has one of the highest costs of living and some of the highest wages in the country, at \$977 per week at the end of 2005. This gives New York a replacement ratio of 28.2 percent, which ranks 49th out of the 53 UI jurisdictions.¹⁰ Other states in the Northeast region also have high wages and a high cost of living, but pay higher average weekly UI benefits.

Figure 1 tracks New York’s UI wage replacement ratio over time as compared to the national average. In the early years of the program, all of the nation’s programs started out with a replacement rate of 40 percent. In the last several decades, New York’s UI wage replacement ratio has consistently dropped, while the national average has remained steady at around 36 percent.

Figure 1 – Wage Replacement Provided by Unemployment Insurance



Source: US Department of Labor ETA Financial Handbook 394

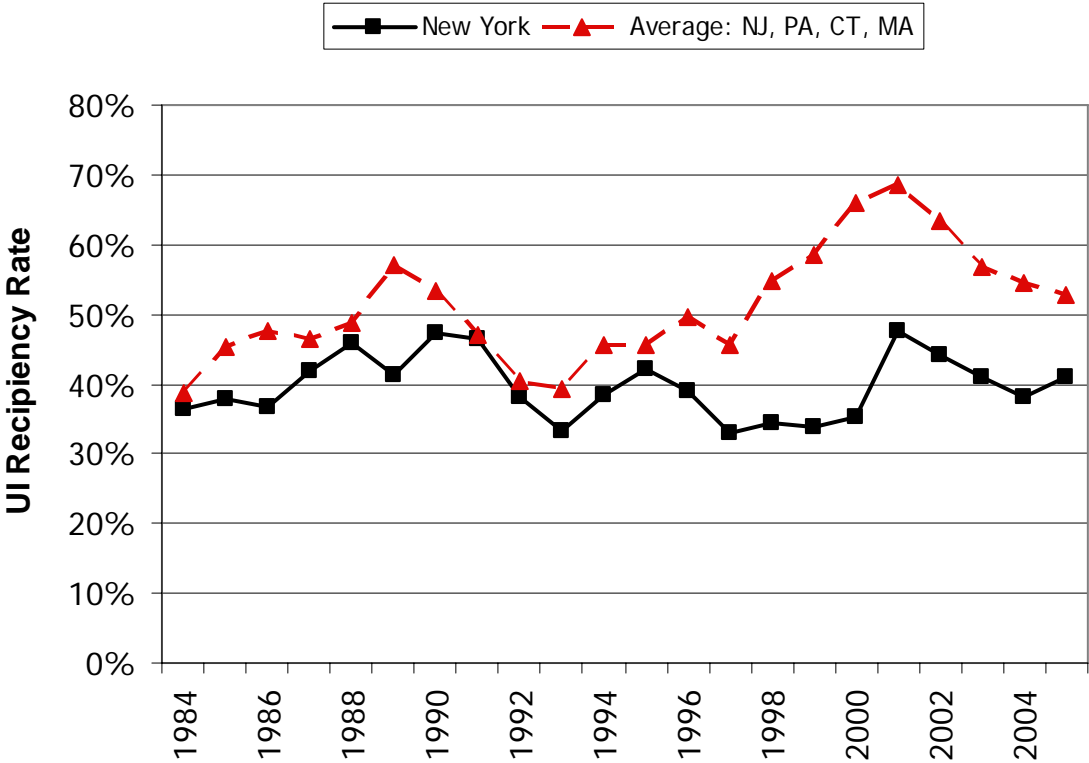
Why are New York’s UI benefits so consistently inadequate? UI benefits are calculated as 1/26th or 1/25th of a worker’s highest quarterly wages, in order to give claimants half of what they were making per week during their best quarter. However, these benefits are capped at just \$405 per week, meaning that most workers don’t get even half of their prior weekly paycheck in UI. In addition, other states provide more generous UI benefits to low-wage workers or unemployed individuals with dependent families.

UI Reciprocity: New York's falling status as an accessible program

The UI reciprocity rate is published by the U.S. Department of Labor. It compares the levels of insured unemployment (jobless workers receiving UI checks) to the level of total unemployment (all jobless workers regardless of UI receipt).¹¹ The reciprocity rate is the best single measure of accessibility of UI benefits to the unemployed. A strong UI program provides a UI check to at least half of all the unemployed. New York has not achieved this standard in any of the past 25 years; 21 states have had reciprocity rates of 50 percent or higher in at least one year over that period.¹²

In 2005, the state's UI reciprocity rate was 41 percent (ranked 13th in the country). This makes New York's UI program the least accessible of any of the states in the region—New York, New Jersey, Pennsylvania, Connecticut and Massachusetts. As shown in Figure 2, New York's UI program used to be on par with other nearby states, as New York's reciprocity rate only trailed these neighbors by a few percentage points each year in the decade between 1984 and 1995. After 1995, the gap grew and has consistently been 10-20 percentage points per year.

Figure 2 – Percent of Jobless Workers Receiving Benefits: New York and Its Neighboring States



Source: U.S. Department of Labor

What has caused this gap to grow in recent years? A state's reciprocity rate turns on numerous factors, including industrial mix, regional differences and, most relevant to this paper, state UI program policy and administration. Unlike New York, these neighboring states have made active

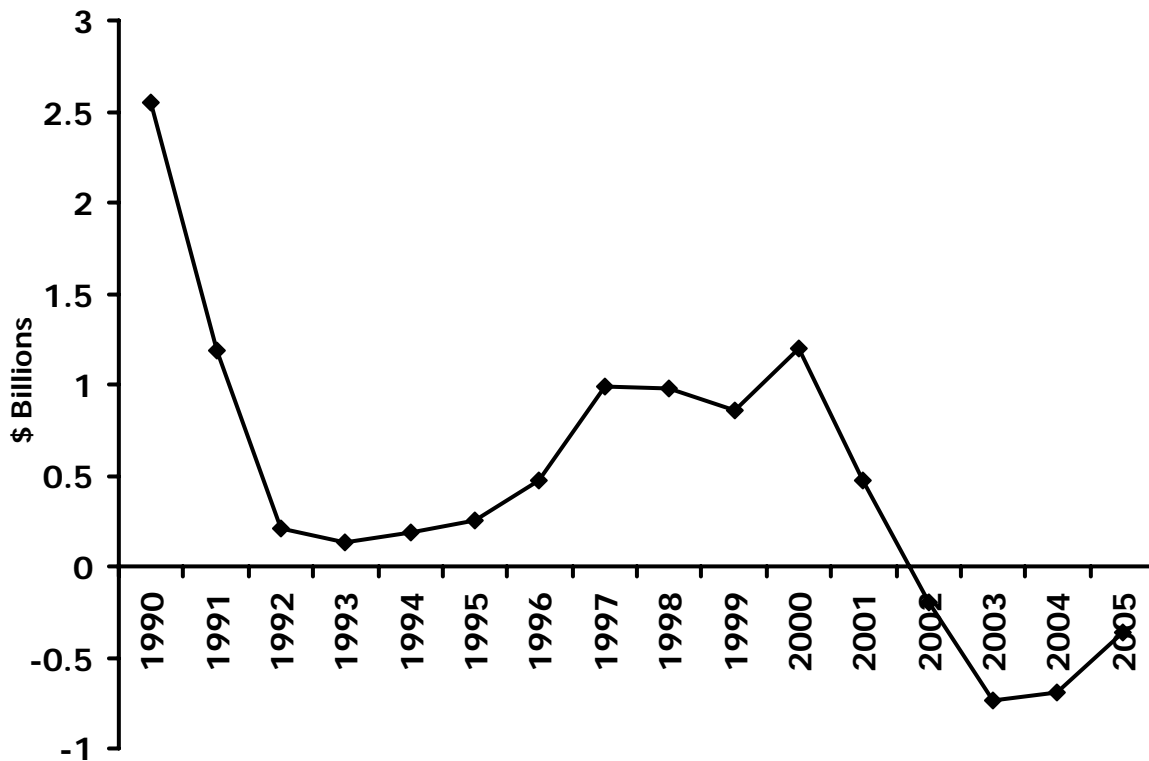
changes to ensure that their state systems evolve along with the changing needs of the workforce.

UI Financing: New York has been unable to maintain trust fund solvency

UI is a self-financing system, with benefits paid for by a dedicated tax that is deposited in the state's UI trust fund (held in the federal treasury). In order to be able to pay out benefits during a recession, each state needs to build up trust fund reserves during good economic times in order to save for a rainy day.

This basic financing principle has been violated by New York State. Over the past 15 years, benefits paid have exceeded taxes by \$4.5 billion, taking the trust fund balance down from \$2.5 billion in 1990 to a deficit of \$0.36 billion by the end of 2005 (the fund has entered the black and is likely to end 2006 with a positive balance). As a result, the state was forced to borrow from the federal government to pay UI benefits starting in 2002 and employers have been subject to federal tax penalties due to the state's failure to pay its loans back. As detailed in the financing section of this paper, New York failed accepted measures of UI trust fund solvency well before the 9/11 attacks—indicating a structural problem in UI finance.

Figure 3 – New York Year-End UI Trust Fund Balance (Billions of Dollars) 1990-2005



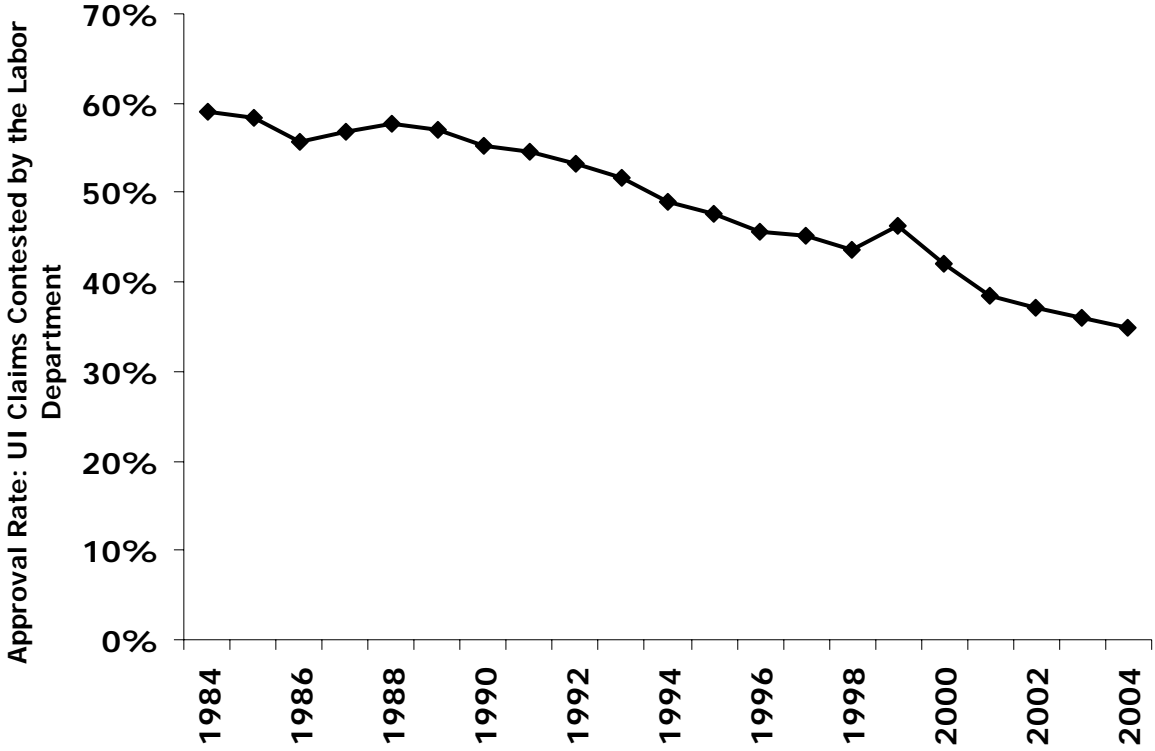
Source: U.S. Department of Labor Employment and Training Administration 394 Handbook

UI Administration: Increasingly unfavorable to workers

In 2004, 160,000 New Yorkers were denied UI benefits.¹³ The main reason that UI claims are contested and denied is the reason for job loss, known as a “separation issue” in UI parlance. Laid off workers pass the separation test. However, a worker dismissed for cause can be denied UI if the state finds that the reason for dismissal rises to the level of misconduct.¹⁴ When a worker quits, the burden is on the UI applicant to show he or she had a compelling reason to do so (good cause).¹⁵ Taken together, 100,000 of the 160,000 denials are due to separation issues.

Figure 4 tracks the approval rate in just those claims contested by DOL for separation issues. Twenty years ago, workers were still likely to claim benefits even if the circumstances surrounding their job separation were questioned, as 59 percent prevailed. Today, the odds are dramatically changed—once a separation issue is raised, claimants are likely to be denied UI. In 2004, just 35 percent of separation issues ended up with the claimant being approved for UI. Employers avidly seek to minimize unemployment charges by contesting the circumstances of job loss and Figure 4 indicates that the pendulum has swung in their favor.

Figure 4 – Approval Rate of UI Claims Contested by the Labor Department, 1984-2005



Note: Limited to Separation issues (dismissal for misconduct and voluntary quits).
Source: U.S. Department of Labor, ETA 218 data¹⁶

Section III – Key Policies to Improve the UI Safety Net

Chapter 1 – Providing Adequate Unemployment Benefits

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. As pointed out above, New York's UI replacement rate is among the lowest in the nation, with the average weekly check equal to just 28 percent of average weekly wages in the state.

In a state where basic expenses like rent and transportation are increasing, temporarily unemployed families cannot realistically live on such a small percentage of their former income. A single adult living in Brooklyn, for example, requires \$1,800 per month just to meet the most basic expenses for housing, food, transportation and health care.¹⁷ The average weekly UI benefit amount of \$276 per week (\$1,152) in New York State does not cover these expenses, or even food and rent, for a single adult in Manhattan. Likewise, the average UI benefit is not sufficient to meet such basic expenses in upstate metropolitan areas like Buffalo and Rochester, where a single adult would need at least \$1,395 or \$1,455 per month, respectively, to get by.¹⁸ Obviously, a family with one or two children has expenses that are hundreds of dollars more per month.

For the program to provide a respectable form of social insurance, benefits must be better aligned with the economic realities of working families. There are a number of steps that the state can take to provide families with the support sufficient to meet basic needs.

Increasing the maximum weekly benefit amount

Regardless of how much a worker earned before being laid off, he or she can collect no more than \$405 in UI benefits, the maximum weekly benefit allowed by law. Workers in New York earned an average \$977.33 per week (\$50,000 per year) in 2005. A UI benefit of \$405 does not come close to replacing even half of an average paycheck in the state.

New York's maximum UI benefit was last increased in 1998 and 2000, from a previous level of \$300 to \$365 in 1998 and then to the current \$405 cap in 2000. The real value of the maximum UI benefits has declined to \$345 per week in 2000 dollars, and this 15 percent decline will only get worse as inflation continues to climb.¹⁹ This decline is felt by families that depend on UI – it means that UI checks cover less of the rent, buy less food and pay for less gas or public transportation needed to look for jobs and so on.

In order to avoid falling further behind in benefit adequacy, New York's maximum weekly benefit will have to be increased significantly in the coming years. Given the increase in cost of living and wages since the last benefit adjustment, the maximum weekly benefit should be at least \$500 per week. Historically, New York has enacted a benefit increase only once every few years. An increase to \$500 accounts for the decline in the purchasing power of UI checks that has already occurred, and would allow unemployment assistance to sustain its value as costs continue to increase in coming years.

Table 4 illustrates that all four of New York's neighboring states pay benefits that are more appropriate to a high wage economy. This table reveals that a maximum UI benefit of \$500 or more would not be out of line. Three of New York's neighboring states already pay (give or take a few dollars) \$500 per week in UI benefits to childless adults, and many states (unlike New York) provide a higher maximum to families with dependents.

Table 4 – Maximum Weekly UI benefits: New York and Its Neighboring States

	Maximum Weekly Benefit: Family with no Dependents (Jan 2006)	Maximum Weekly Benefit with Dependents (Jan 2006)	Benefits Indexed to Increase Yearly
New York	\$405	\$405	NO
Connecticut	\$465	\$540	YES
Massachusetts	\$528	\$778	YES
New Jersey	\$521	\$521	YES
Pennsylvania	\$497	\$505	YES

Source: U.S. Department of Labor, Significant Provisions of State Unemployment Insurance Laws, January 2006

Increasing the UI benefit to \$500 would entail a significant cost to the system but not as large as might first appear. NELP's cost estimate methodology based on data on New York's program provided by the U.S. Department of Labor appears in the Appendix. In short, a 20 percent increase in the maximum weekly benefit amount would lead to a 9 percent or \$211 million dollar increase in benefit payments.

Indexing

The best and fairest way to ensure that UI benefits keep up with the needs of jobless families is to automatically adjust the maximum UI benefit every year. Most states (32) index their maximum weekly benefit amount to a fixed percentage of the state's average annual wage. For example, Pennsylvania sets its maximum weekly benefit amount at 66 and 2/3 percent of the state's average weekly wage. New Jersey and Connecticut use a similar 55 percent formula in setting their benefit amounts. The bipartisan Advisory Council on Unemployment Compensation (1995) recommended that the maximum weekly benefit equal two thirds of the state's average weekly wages.

New York would do well to emulate the policies of New Jersey and Connecticut, both of which use a 55 percent index. Under such an index policy, the maximum UI benefit for calendar year 2006 would have been equal to the 55 percent of the average weekly wage of workers as of June 2005. With the average weekly wage in New York equaling \$973 in 2005, the maximum weekly benefit amount would have been \$498 in 2006. As shown in Table 4, that amount would have been very competitive with neighboring states. Given current wage growth trends,

the maximum weekly benefit amount would increase by about \$20 per year under a 55 percent indexing formula.

New York's UI Benefit Formula Explained

Because employers report their wages on a quarterly basis, UI benefits are based on the total amount earned in the quarter. Like most states, New York's UI program bases its UI benefits on the calendar quarter with the highest earnings in the year (known as the high quarter). The base formula in New York provides UI benefits equal to 1/26th of the high quarter—which is equal to ½ of average weekly wages for workers—up to a maximum of \$405 per week.

Improving wage replacement for unemployed low-wage workers

Low-wage workers spend a greater proportion of their earnings on basic necessities. Moreover, such individuals face greater challenges when they are laid off because they are less likely to have savings. In 2002, according to the Bureau of Labor Statistics, low-income families spent 52 percent of their income on food and housing compared to high income families, who spent just 42 percent. The UI benefit system should recognize this reality by providing UI checks that replace a greater proportion of low-wage paychecks.

New York also lags behind its neighboring states and the rest of the nation in terms of wage replacement for low-wage workers. NELP conducted an original analysis that compared UI benefits in different states for a hypothetical single mother with two dependents who was laid off from a full-time \$8 per hour job. As with the maximum weekly UI benefit, New York trails its neighbors with regard to wage replacement for low-wage workers. Under New Jersey rules, for example, such a family would receive \$213 per week in UI compared to just \$160 in New York. This difference—more than \$200 per month—would make a huge difference in the ability of such a low-income family to maintain its living standards while on UI.

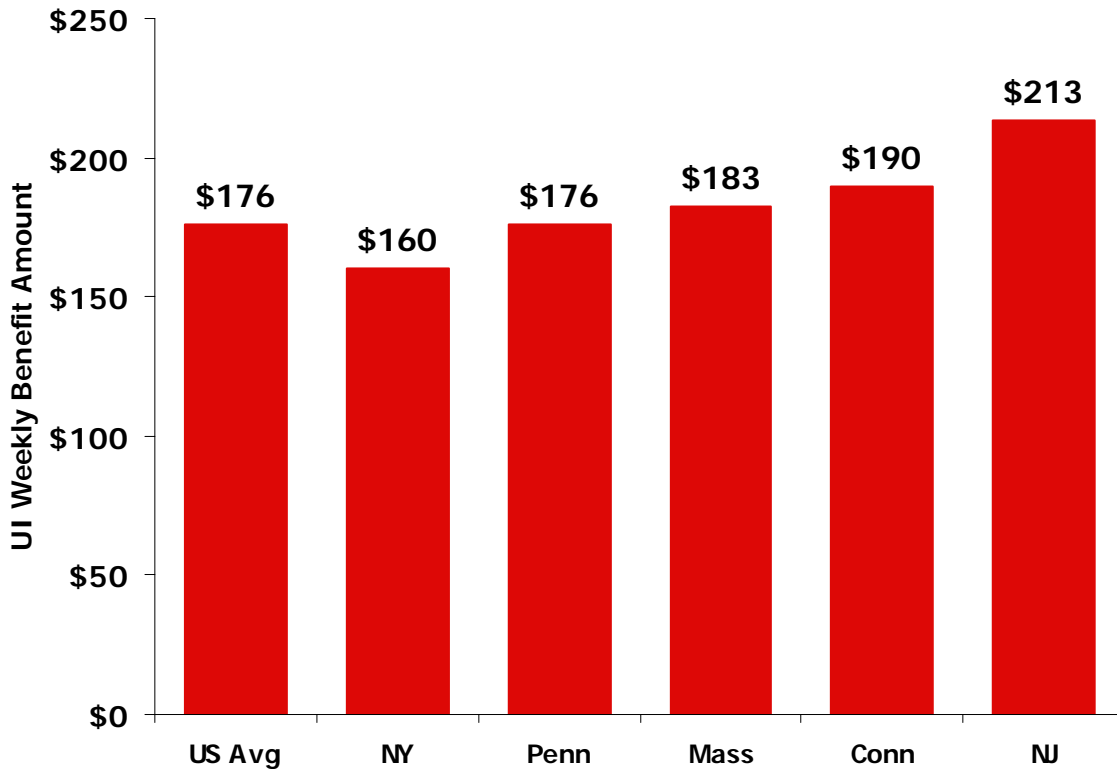
New York did already take a step in the right direction with legislation in 2000 to modestly increase the wage replacement rate for the lowest wage workers. Workers who earn less than \$3,575 in their high quarter qualify for UI benefits that are equivalent to 1/25th of their high quarter wages instead of 1/26th.²⁰ For someone earning the minimum wage and working full time, this policy increases UI benefits by \$6 per week (\$135.00 to \$140.40). While this change embraced the principle that the UI program should respond to the greater needs of low-wage workers and their families, it did not add enough support or reach enough low-wage workers to make a meaningful difference.

- **Apply a more favorable formula to all workers who earn less than \$9.50 per hour.** All workers who earn \$5,000 or less in their highest calendar quarter should benefit from a more favorable formula than the standard 1/26th of high quarter wages. This cut off roughly represents the bottom 25 percent of the state's workforce.
- **Make the formula more generous:** The benefit formula for low-wage workers should be increased to 1/22nd of high quarter wages. This would increase the weekly benefit of a full-time minimum wage worker by \$18 per week.

- **Eight states already provide similarly responsive formulas for low-wage workers:** Colorado, Georgia, Hawaii, Kentucky, Maine, New Jersey, Oregon, Rhode Island all pay benefits that are at least this generous to workers at these wage levels.

This change could be made at a modest cost to the UI trust fund, because these workers' benefits are low. NELP estimates that the change would increase total system benefits by 1.75 percent per year over current expenditures. See the Appendix for methodology.

Figure 5 – Weekly UI Benefit: Single Mother, with 2 Children, Laid Off from an \$8/Hour Full-Time Job



Source: National Employment Law Project

Chapter 2 – Promoting Retraining Opportunities for the Unemployed

The UI program was designed for an industrial economy where much of the unemployment came from temporary layoffs or furloughs when a factory shut down because demand dragged. Because workers were likely to be reemployed in a job that required the same skills as the previous one, retraining was not even on the radar screen of the designers of the UI program and thus has never been a focus of the program.

A greater share of today's unemployed needs to make a break with their past and begin a new path. The UI program should promote access to retraining to help low-wage workers upgrade their place in the labor market and help greater numbers of downsized workers regain their footing in the middle class.

While the state's UI system does not provide funds to pay for a training course, it can address a major problem related to retraining. Numerous jobless workers would relish the chance to go "back to school" but decide not to because they need to take a job—even a substandard one—to make ends meet. By continuing the payment of UI benefits to workers enrolled in training, UI would allow working families to achieve these dreams.

Section 599 of the UI law has the potential to address this need. It allows current UI claimants to enroll in DOL-approved training programs and extend their eligibility for UI benefits beyond the 26 week maximum (for up to six additional months). In addition, DOL waives the normal requirement that UI claimants must look for a new job and take a job offered to them—which allows them to focus on successfully finishing the training program.

Reforming 599

However, it is far too difficult for workers to get support from 599 while they access retraining, due to problems with the set up of the program, its funding and its administration.

By law, to be approved, a course must upgrade an existing skill or train the claimant for an occupation that will lead to more regular long-term employment. Alternatively, claimants can be eligible for 599 if employment opportunities in the claimant's industry are "substantially impaired" and the claimant won't be able to find work without training.²¹ If approved, a worker can receive up to 26 additional weeks of unemployment benefits in order to complete the course.

DOL takes a very narrow view of the scope of 599. In 2005, DOL approved only 29 percent of applications for 599 training. This represents a major decline from a 43 percent approval rate in 2004.²² The experiences of advocates, and a review of case decisions, show that DOL bases its decision primarily on whether an individual's occupational opportunities are impaired (meaning there are few new openings in his or her field) rather than the other criteria. This trend runs counter to the legislature's purpose when it expanded the definitions for approval in 1987 to allow for approvals for workers who did not fit the standard definition of impairment (not being able to find a job in their previous field) but who could obtain more "secure and rewarding employment" after being retrained:

Many UI recipients have occupations where turnover is very high or the level of job security, compensation and satisfaction is very low. Because of current UI laws requirement that a worker take a suitable job when offered, which by definition would include the type of job they previously held, many unemployed workers in these categories of work are often forced to take jobs in the same field....This bill allows them to enroll in training to upgrade their skills and find more secure and rewarding jobs.²³

Current administration of the law misses this legislative intent as illustrated by Mark's case.

BLOCKING ECONOMIC OPPORTUNITY – MARK'S UI EXPERIENCE

Mark was laid off from a building maintenance helper job where he assisted with cleaning, boiler, lights and air conditioning. Because job security is limited in entry level janitorial work, Mark sought certification as an air conditioning repair mechanic.

Official DOL reports show the stark difference between the quality of the two jobs. With respect to building cleaning workers, DOL states that the occupation is characterized by "limited opportunities for advancement, low pay and high incidence of only part-time or temporary work." The outlook for heating, air conditioning and refrigeration mechanics and installers is nearly opposite: "Job prospects are expected to be excellent, particularly for those with training from an accredited technical school," with wages averaging over \$34,860 per year compared to \$18,750 for building cleaners.²⁴ Air conditioning repair job openings in New York City are expected to increase by 17 percent over the next years, a rate of growth that is double that of building cleaners, 9 percent.²⁵

Despite the clear gains that Mark by training for air conditioning repair, his application for 599 was denied. When his lawyer presented the evidence above at a hearing, the judge found that Mark's old occupation "building cleaners" had hundreds of openings. Because his prior application was not impaired (in terms of openings), Mark should simply return to his poor-quality line of work. This interpretation ignored the powerful enhancement in job security (full-time versus part-time work) and quality (pay) that training could bring Mark. Mark was likely to need UI again if the future if he returned to the topsy-turvy building cleaning field, thus denying 599 was short-sighted by DOL. More importantly, this decision was a clear example of how the UI program failed to support a worker's chance at economic security and upward mobility.

DOL has been pushed towards this restrictive view because of the limited funds available—only \$20 million per year can be paid to workers in the form of extended benefits. In 2004, there was an 8 month waiting list for a 599-provided extension. That meant that if a claimant exhausted his or her regular state benefits in September, he or she could only receive an extension if still involuntarily unemployed and enrolled in a training program in July. In order to give DOL the latitude to approve a reasonable share of 599 applicants, funding needs to be at least \$38 million a year. These dollars come from the general account, so do not affect a specific firm's experience rating.²⁶

Cases like Mark's could most clearly be avoided if the law was amended to specifically support the approval of training in cases where workers want to increase their wages rather than accept a job that pays the same or less than their last position. Because of the narrow approach taken

by DOL, the law should be specifically changed to allow “wage preservation” or “wage growth towards a family sustaining wage” as rationale for a 599 approval.

Additional 599 issues

Even those workers who receive a 599 approval are not guaranteed a full 26 week extension for training. Instead, the number of weeks of extended benefits is determined by doubling the remaining benefit entitlement at the date of approval (up to 26 weeks). Thus, a worker approved in the 13th week of their regular UI benefits or earlier can get a 26 week extension, but a worker who is not approved until their 24th week would only get 4 weeks of benefits. This system is confusing and arbitrary. A preferable method would be to guarantee the full 26 weeks of extended benefits to all claimants who inquire about training by their 16th week of receiving UI benefits.

In addition, the training approval process should be streamlined. Currently, a worker might be approved to receive a training voucher paid by Workforce Investment Act funds (administered by DOL) but denied a 599 extension of their unemployment benefits (also administered by DOL). If DOL (or Education Department or other public agency) considers a worker worthy of receiving limited funds for retraining tuition, the worker should be approved for the unemployment benefits he or she needs to support himself or herself through the completion of the course. Such a policy for streamlining approval of training has been adopted by other states.

Finally, notice of 599 is far too limited—as it is buried in the claimant handbook. Notice of 599 should be included in the phone script for workers applying for UI, and information about 599 should be disseminated through the one-stop career centers in the state.

Using the UI Trust Fund to Generate Revenues for Training

599 allows workers to get income support while they study a new field, but does not pay the cost of the training itself. Federal funding for training has decreased in recent years, making it difficult to serve all of the workers that could benefit from a vocational program. To make up for the shortfall, nearly half the states use employer taxes to generate revenue for employment and training beyond limited federal funding. In 2002, 23 states had programs that produced \$280 million for employment and training services. State funds are frequently used for gaps in the federal training funds such as incumbent worker training and also for specific sectors hard hit by job loss or suffering skill shortages.²⁷ These programs fall into 3 categories.

- ◆ **UI tax offsets (12 states)**. A UI tax offset describes a law in which UI payroll taxes are decreased and a new equal tax is imposed to fund training. Thus, each employer’s total tax bill remains the same. Some of these programs are contingent on UI trust fund solvency, only allowing for a UI offset when funds are clearly sufficient to pay benefits.
- ◆ **Separate employment taxes (8 states)** are included on top of the regular UI bill to generate dedicated resources for employment and training. These taxes are often justified on the basis of the added value that employers get from a more skilled workforce.

◆ **Penalty and interest funds** (4 states) use money from penalties paid by employers who pay their taxes late and from interest on state UI funds to pay for UI training.

New York already uses these strategies to a limited extent. Revenue from the reemployment services fund account (\$35 million) supports staff at DOL's Division of Employment Services who help workers search for appropriate employment. New York also uses its penalty and interest funds to support apprenticeship training (\$4 million) in the state.²⁸

In light of the workforce development needs of companies and workers in the state, New York may look to a UI-connected funding stream to provide additional resources for training. For example, manufacturing firms in Western and Central New York must maintain their productivity edge if they are going to hold onto jobs in the 21st century economy. Providing incumbent worker training grants to such firms would help to prevent unemployment and increase tax revenues as wages increase. The overall UI trust fund will need to improve before New York can afford a major tax offset or new separate employment tax. However, a modest offset program (on the scale of \$10-\$15 million per year) could be used to start a demonstration program that could pave the way for a more expansive system later.

Chapter 3 – Making UI Family Friendly

Working parents are particularly vulnerable to job loss. Families need additional support when a breadwinner loses his or her job. In addition, they should be able to turn to the UI system if a major personal or family crisis causes the breadwinner to have an interruption in his or her career. By augmenting weekly UI checks with a dependent benefit and by bringing quit with good cause rules up to the best practices of other states, New York's UI program would be a more meaningful safety net for families.

Improving voluntary quit for good cause rules

In addition to layoffs, workers become involuntarily unemployed when family and personal crises make it impossible for them to continue working at their current job. Workers can benefit from UI during a search for a job that is more suitable to their personal situation. In other cases, family breadwinners need UI to support their job search after they have resolved their personal crises but still need a period of time to find a job once they are back in the labor market. Women workers are far more likely than men to face unemployment because of work and family conflicts. Because women still take on more family responsibilities, including child and elder care, than men, they are more likely to leave jobs due to these conflicts.²⁹

In sixteen states, including New York, state law allows workers to receive UI if they have "good cause" for leaving a job. New York law does not restrict good cause to an employer's action and permits compelling personal reasons as good cause. Many state laws indicate that "good cause" is supplied for certain categories of compelling personal reasons, including illness, child and elder care, or the transfer of a spouse or partner.

In some of the states that provide coverage generally for "compelling personal reasons," state courts have liberally construed this provision and allowed benefits for job separations caused by illness, pregnancy, childcare conflicts and other reasons. In other states, including New York, administrative interpretations have not been so generous, and UI benefits are only provided in a limited set of situations.

New York's restrictive interpretation of quit with good cause has been driven by court decisions limiting the definition of compelling personal issues. For example, the court, in interpreting the law with respect to voluntary quits based on illness, has found that a claimant voluntarily quit her job without good cause when she relocated due to her mother's illness, because the mother did not require constant care.³⁰ The Board has also held that a worker must first notify his or her employer of the illness, supply medical evidence deemed sufficient, request a (presumably unpaid) leave of absence and an accommodation to his or her condition before quitting a job to care for a sick relative.³¹ Similarly, the Appellate Board decisions on childcare establish that a person may not leave work unless her care is "necessary," and unless she pursues alternatives, including a leave of absence, offered by the employer.³²

New York's decision-making on issues related to "good cause" could be improved by development of rules specifying the circumstances under which "good cause" can be found. Small legislative changes are also in order. These administrative and legislative changes could both codify administrative policies or case law rules, and offer guidance that would expand access to UI benefits for workers, especially women and families.

1. Define necessary separations.

At least half of the states have provisions in their law that cover illness and disability that prevents a claimant from performing his or her present work but would not prevent him or her from doing other kinds of work. In New York, in most cases of job separation due to illness or disability, claimants are required to provide evidence that a medical doctor directed them to quit their job because of their condition. This is an unreasonably high bar. Most medical professionals are hesitant to give such directive advice because they don't have detailed knowledge of the work site conditions. It is DOL's responsibility to evaluate both the medical evidence and information from the employment to determine whether the situation was urgent enough to merit a job separation. Take the following case:

LIMITED SECURITY – JULIA'S UI EXPERIENCE

Julia worked at the World Trade Center as a janitor for over 20 years. On September 11, Julia left the 101st floor of the WTC at about 1 am. The next day she learned that the offices she cleaned for over 20 years on the 101st floor had disappeared and 20 of her colleagues had perished as well. After 9/11, Julia was diagnosed with post-traumatic stress disorder and was afraid to work on high floors. Her employer offered her work after 9/11 cleaning the offices at the Chrysler building on the 72nd floor, but she quit because of her condition to look for more suitable work.

Julia applied for and was denied UI because DOL of Labor decided she had no good cause to quit her job. They made this determination because the doctor's note did not indicate that she needed to quit her job for 9/11 medical related reasons. Although represented by Legal Services, Julia lost her appeal at both the ALJ and UI Appeal Board level.

By ruling against workers in such illness-related cases, DOL has equated "good cause" with "medical necessity," a standard that is nowhere to be found in the statute. A better process would simply allow a separation where medically reasonable, when the claimant notifies his or her employer of the reason, and allow the Department to request documentation of the condition, if it deems that necessary.

2. Define "reasonable precautions" that a claimant must take to avoid job separation.

The requirement that an individual be ready to accept an unpaid leave of absence as a prerequisite to UI eligibility creates an undue burden on families where a family member must leave work due to disability, injury or childcare duties. Such an approach requires families to be willing to accept a perhaps lengthy unpaid leave of absence as an alternative to job separation. A better approach would require only that an individual notify the employer of the family situation and accept an accommodation reasonable to the family's circumstances. In some situations, a short leave of absence—for example, to locate childcare—may be appropriate. In others, a lengthy unpaid leave—for example, to care for an ill family member—is entirely inappropriate.

3. Improving voluntary quit determinations through legislative proposals.

New York law should be amended to delete § 593(1) (b), which disqualifies claimants who voluntarily leave employment “due to claimant’s marriage.” Only four states have such disqualifications, and the inclusion of this section contradicts state law on job separations that allow for family reunification, leading one Appellate Board decision to state that claimants who leave their jobs to follow their spouse or partner must demonstrate that they have good cause, aside from maintaining the marital relationship, to do so.³³ Maintaining a family relationship should be adequate cause for a worker to move with a spouse or partner.

While the balance of the changes outlined here may be made as administrative rules, this document will also outline recommendations that make these changes in New York legislation. The recommended changes are in the Appendix.

Provide additional unemployment benefit support to families with dependents

Some states provide a supplemental UI benefit to recognize the financial hardships that families with children face when a wage-earner is unemployed. UI benefits too often are insufficient to provide for the needs of the children in low-income families with children that struggle to make ends meet even in good times. The added basic expenses faced by families are numerous – including spending on food, clothing, health care and education.

Thirteen states, plus the District of Columbia, address these special hardships by augmenting the UI checks of such workers with a dependent allowance. Dependent benefits are generally a modest increment to weekly UI benefits. The allowances typically range from \$8-\$25 per dependent, per week. New Mexico was the latest state to add a dependent benefit to their system, passing a \$15 per dependent allowance in 2003.

The idea of calculating unemployment benefits based on the number of dependents may seem to run counter to the core idea that UI benefits are a work-based benefit based on earnings and not a social welfare system based on need. In reality, tax and welfare policy have already blurred these lines. For example, the Earned Income Tax Credit is determined on the basis of both the amount of earnings and the number of dependents in a family. Standard payroll tax deductions are based on the number of children, so net pay differs depending on the number of dependents that a worker supports.

UI should follow a similar logic. With rising costs for basic expenses, families bear the greatest burden of insufficient wage replacement. Dependent allowances would be a way for the state’s unemployment system to protect children from the vagaries of the economy. Additionally, they would reward the work effort of low-income families with a more meaningful safety net.

A dependent benefit policy could be structured in a way that ensures that UI benefits “do not become too much like welfare” and limit the trust fund’s exposure. For example, Massachusetts limits the total amount of dependent benefits to ½ of each worker’s weekly benefit amount. And Iowa and Maine, states that pay dependent allowance, only provide it to families in which neither spouse is fully employed.

Chapter 4 – Increasing Part-time Worker Eligibility for UI

Many workers are underemployed—working less than full time even though they desire full-time work. The UI program recognizes two forms of underemployment as partial unemployment. Partial unemployment occurs when an employer cuts down the hours of a worker from full- to part-time because of lack of work (in other words, a partial layoff). It also occurs when a worker is separated from a full-time job and is only able to find part-time employment even though they desire full-time employment. Particularly in distressed parts of the state, underemployment is common as laid off workers are unable to find suitable replacement employment. 650,000 partial UI checks were paid out to these New Yorkers in 2005.

New York handles partial unemployment in a peculiar way, unique among all of the states. In New York, partial or total unemployment is calculated using a concept known as “effective days” of unemployment. Once a worker works for any portion of one day of the week, that worker is considered to be “not totally unemployed.” Other states base their definition on partial unemployment on earnings, rather than days of work.³⁴ New York’s policy has perverse effects. For example, a laid off worker who has a sideline business will be disqualified from receiving UI because he or she is not totally unemployed—even if the worker receives no income and is looking for a new full-time job.³⁵ Even unemployed workers who happen to be unpaid members of nonprofit boards of directors have faced disqualifications under this rule.³⁶

Table 5 demonstrates how the partial unemployment rule works. A worker who has no work for any of the seven days of the week is considered to have 4 effective days of unemployment in a week. If a worker works for any part of one day of the week, that worker is counted as having only 3 effective days of unemployment and his or her weekly benefit amount is reduced by 25 percent. Once a worker works on any portion of 4 days of the week, his or her UI benefit is reduced to zero.

Table 5 – New York’s Partial Unemployment Law³⁷

Days of Unemployment in a Week	Effective Days	Days Worked in the Week	Portion of Weekly Benefit Amount Received
7	4	0	full
6	3	1	3/4
5	2	2	1/2
4	1	3	1/4
3	0	4	0

Source: N.Y. LABOR LAW § 590.3 and § 523

The system has many built-in inequities, especially for low-wage workers. A well paid worker who works a single day at \$20 per hour and earns \$160 in a day would still have 3 effective days and keep $\frac{3}{4}$ of his or her weekly benefit amount. On the other hand, a low-wage worker who finds 20 hours of work over 4 days earning \$8 per hour (also earning \$160) would be classified as having zero effective days and receive no UI benefits.

In other states, partially unemployed workers are allowed to earn up to a defined earning cap and still collect UI. In determining the partial UI benefit amount, workers are allowed to keep a minimum amount of their wage earnings through an earned income disregard. The more prevalent scheme is likely to be unfamiliar to those who are only experienced with New York's UI system, and can best be explained by example.

Pennsylvania provides partial unemployment benefits to workers who earn less than 140 percent of their weekly benefit amount and allows for an earned income disregard of 40 percent of the weekly benefit amount. Comparing the treatment of New Yorkers and Pennsylvanians for a hypothetical worker who earns \$10 per hour and is cut from full-time to half-time work (\$200 for 20 hours over 3 days), we find:

- **Pennsylvania:** The earned income disregard is equal to \$84 (40 percent of \$210). Thus the unemployment benefits are reduced from the full \$210 possible by the amount earned per week minus the disregard of \$84. With the disregard in effect, benefits are only reduced by \$116, the \$200 earned minus \$84. In this case, the worker would receive a \$94 partial UI check plus the \$200 he or she had earned during the week.
- **New York:** A claimant working 3 days would only have 1 effective day of unemployment and thus would only qualify for 25 percent of his or her weekly benefit amount of \$200, or \$50 per week. This is only about half as much as the same worker in Pennsylvania would receive.

The difference between the states would be most extreme for those workers who are partially employed over 4 days, who receive \$0 in unemployment benefits based on New York's formula.

The best choice for New York would be to scrap the outmoded effective day system, switch the definition of partial unemployment to one based on earnings and calculate partial unemployment benefits based on an income disregard.

End unfair disqualifications of educational part-time workers from UI

One group of part-time—or, more accurately, part-year—workers is especially heavily hit by restrictive state eligibility policies. These are workers affected by New York State Labor Law § 590.11, which disqualifies school employees between two school terms from receiving UI benefits for the time that they are laid off.

The provision affects not only professors and researchers, but cafeteria workers, school bus drivers and other low-wage workers who are left to fend for themselves when their labor is not needed over the long academic vacation periods. For example, only the most senior dining hall employees at Cornell University have work between mid-May and mid-August of each year. Yet New York law denies them unemployment benefits as long as they have “reasonable assurance” that they will again be employed in the fall. Since these workers expect to be employed after the three-month layoff, but are absolutely without income during that time, they face a Herculean annual task of ferreting out employers and employment that will allow them to maintain their families, but terminate after three months.

A related problem is professional employees, such as adjunct professors, who routinely receive illusory job offers. The offers to these individuals often say that they may have a job after a term is up, depending on enrollment, funding and program changes. In reality, this is no offer at all, but it is sufficient to disqualify them from UI benefits.

Amendments to the Federal Unemployment Tax Act (FUTA) passed in 1991 give the states the option of providing unemployment benefits to nonprofessional school employees between academic terms. New York could restore UI eligibility to these low-wage workers by repealing Section 590.11. For adjunct professors, the federal law allows for a slightly different law change. For them, a stricter definition of "reasonable assurance," including that a person is presumed not to have "reasonable assurance" under an offer that is conditioned on enrollment, funding, or program changes, would allow for eligibility in more realistic situations than they now face.

Section IV – Fair Administration of the UI Program

Chapter 1 – Key Administrative Changes

Many workers eligible for UI benefits lose out on assistance because of problems accessing benefits or because they are not aware they are eligible. This section outlines some of the key steps that could be taken to facilitate applications for UI benefits and ensure that eligible workers are not unfairly denied assistance.

Greater access for limited English proficient speakers

According to census data, there are approximately 1.6 million working age people in New York classified as limited English proficient (LEP), and half of these speak languages other than Spanish.³⁸ Workers should be able to speak their primary language when interacting with DOL regarding their UI claims and to receive written information from DOL in their main languages. Most specifically, Title VI of the federal Civil Rights Act expresses a national policy in favor of providing access to UI benefits to limited English proficient (LEP) individuals.

The immigrant community has been engaged in extensive advocacy to ensure that DOL abides by this principle. As a result, DOL has made several important changes to serve speakers of languages other than Spanish or English:³⁹

- Most initial UI applications are now made by phone. Claimants are now greeted with prompts in English, Spanish, Cantonese, Mandarin, Haitian-Creole and Russian. If claimants do not press any button, the system is set to move them to a third-party interpretation service that can handle additional languages.
- Claimant handbooks have now been translated into Russian, Haitian-Creole and Chinese (in addition to Spanish). Claimants that are flagged as speaking these languages are sent copies of these handbooks. In addition, DOL has translated key written notices into these languages that will be in circulation by the end of 2006.
- Telephonic interpretation is now provided at appeals hearings.

Each of the changes described above represent a genuine improvement from the practices used by DOL five years ago. However, DOL must still address several important issues before it can say that it provides equal access to UI to workers regardless of their native languages:

- DOL should translate documents into additional languages

First, DOL and the Appeal Board should make materials available in more than just four languages beyond (Spanish, Haitian-Creole, Russian and Chinese). These languages only represent a slice of the linguistic diversity in New York. DOL should develop a translation policy that recognizes the range of languages spoken by workers now served by the UI program.

There are numerous models on which New York can base a fair process to choose which languages should receive priority service. For example, in Massachusetts, UI notices are

translated into 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 percent of all residents of the commonwealth.⁴⁰ Census 2000 data computed on a statewide basis in New York show that English, Spanish, Chinese, Italian, Russian, French, French-Creole, Yiddish, Polish, Korean, German and Hindi-Urdu are the primary language for 0.5 percent of the state's residents. New York City Council Local Law 73 provides another model. The law, which applies only to the city's Human Resources Administration, requires all social service documents to be translated into Arabic, Chinese, Haitian-Creole, Korean, Russian or Spanish.

A final part of a full translation policy is to insert "tag lines" for other languages that fall short of the penetration requiring full translation of document. Tag lines are short sentences written in a native language that direct claimants to translation services that can help them apply for UI benefits in their own language. Such tag lines should be inserted into every document.

- The Appeal Board must follow through on its commitment to provide in-person translation at Appeal Board hearings

The Appeal Board has adopted an official policy to provide interpretation at hearings. The policy directs Administrative Law Judges to provide an in-person translator to claimants who request one in advance, and telephone interpretation to any claimant who appears at a hearing needing interpretation. However, most claimant representatives who request an in-person translation in a language other than Spanish or Chinese find that no translator is present at their hearing. Such claimants have to settle for inferior telephonic interpretation or a hearing conducted in English even when they do not understand the proceedings.

Claimants with translation issues are forced to appeal the case up the chain to the UI Appeal Board, a circuitous step normally reserved for issues of law. Thus problems with translation frequently lead to a delay in the receipt of benefits for up to an additional 6 months after the hearing.

- Good cause for failure to certify because of language problems

Once UI claimants have qualified for UI benefits, they must certify that they are unemployed and looking for work each week in order to continue receiving UI checks. If a claimant does not certify for a week of unemployment, his or her claim is frozen and they have to restart their claim. The call-in line for this function only greets callers in English and Spanish and only provides instructions in these two languages. LEP claimants are frequently confused by the touch-tone instructions on these menus. Until this is fixed, workers who experience language difficulties in certifying should be paid UI for any weeks of unemployment they missed.

Fund legal service providers for UI claimants and small businesses

Many UI claimants who are declared ineligible for UI could qualify if accurate details about the reasons behind their unemployment were explained. One reason that workers are unable to tell their story effectively is that an attorney or advocate rarely represents them.

While private attorneys have virtually no economic incentive to take on UI cases, some claimants do secure representation through free programs. Anecdotal information from these programs indicates that they can make a big difference in the success of workers at UI appeal board hearings. Providers indicate that represented claimants win more than half of their cases, as compared to just a quarter of claimants in general cases. This coincides with systematic research conducted in other states that shows an increase in the success rate of claimants when they are represented—for example a unique study of Ohio cases found that 45 percent of represented claimants won their appeals compared to 34 percent of unrepresented claimants. Representation had no effect in employer cases, which were won 67 percent of the time.⁴¹ Thus, representation serves to level the playing field and achieve fairer administration of the UI law.

Several states have set up programs to provide free legal representation. Michigan's Advocacy Program enlists 100 independent contractors who take cases for both jobless workers and small employers. 7,500 workers and 4,500 small businesses were assisted by the program in 2005, with services including information, consultation and representation.⁴² Illinois' Legal Services Program contracts with legal service providers to assist claimants and small employers, defining such employers as those with fewer than 20 employees.

Public funding for UI representation in New York has recently begun. In 2005, the New York City Council allocated \$1.25 million to the Legal Aid Society and Legal Services of New York to represent workers in UI hearings. The Council was persuaded by the argument that getting workers onto UI benefits could prevent the descent of families into poverty—thus saving the city money that would have spent on Medicaid, welfare and even emergency food programs and emergency shelter.

While the city council funding represents a positive first step, a state wide program would be the best way to increase representation in UI hearings. The state could follow the models established in Illinois and Michigan, providing assistance to both claimants and small employers who are unable to afford representation on their own. Not only would such a program make the entire UI system fairer, it would make economic sense. When more deserving workers receive UI, communities reap the benefits of increased spending and more serious and potentially expensive problems like homelessness can be prevented. Ensuring representation for small business (who are the least likely to be able to afford an unfair increase in their UI costs) would make the program intriguing to a diverse body of legislators.

Chapter 2 – Reforming The UI Appeal Board

The UI Appeal Board is an independent body whose members are appointed by the Governor. Through two levels of appeals (Administrative Law Judges and the Board), the UI Appeal Board is responsible for deciding contested cases when either the worker or the employer appeals an administrative decision made by DOL.

With few changes in UI law, it is the Appeal Board's rulings that set the contours of UI eligibility rules in New York State. While the Appeal Board only comes into play in cases where a party contests a decision, Appeal Board rulings are used to create the guidelines for DOL adjudicators who make the day-to-day decisions on the eligibility of UI claims decided on their merits.

Appeal Board Trends

Either claimants or employers can appeal a decision made by DOL. In 2005, claimants were three times more likely than employers to file an appeal of their benefits to the first level, which is known as the ALJ level since Administrative Law Judges decide the cases. The total figures indicate that ALJs denied 24,000 workers benefits because of adverse decisions on their appeals compared to only 15,800 cases where ALJs ruled against employers.⁴³

Those who are unsatisfied with an ALJ's decision can appeal up to the appointed members of the UI Appeal Board. The most troubling statistics appear at this "higher authority" level. These UI Appeal Board decisions have the most precedent setting power. As Appeal Board members are appointed by the governor, this Higher Authority decisions most directly reflect the impact on the current administration.

As shown in Figure 6, there has been a dramatic shift in the impact of the UI Appeal Board. Employers are now 4 times more likely than claimants to be successful when they bring a second level appeal. The failure of claimants to win at the higher level indicates a consistent trend towards a more restrictive interpretation of the law. Moreover, claimants are 3.5 times more likely to file an appeal with the Appeal Board. Thus, the overall volume of higher-level UI Appeal Board decisions is moving the interpretation of the UI law in ways that are more restrictive towards workers. As outlined in section one, the success rate of claimants in such contested cases decided by adjudicators has plummeted from 59 percent in 1984 to just 35 percent in 2005. The actions of the Appeal Board are helping to drive a trend that impacts tens of thousands of UI claims each year.

Fair hearing problems and the MLC v. Sitkin consent decree

An administrative hearing is the only recourse available to workers who are unsatisfied with DOL's decision on their UI case. Workers face a structural disadvantage at hearings. Not only are employers more likely to be represented by an attorney or HR specialist, but they possess an inherent credibility advantage over workers. In the face of such odds, claimants depend on the Appeal Board to provide a fair review during UI appeals. The Board has fallen short of this mandate.

Figure 6 – UI Appeal Board – Higher Authority Success Rates, 1984-2005



Source: US Department of Labor, ETA 5130 report

In 1983, the Appeal Board entered into a consent decree to end lawsuits contending that the Board had not complied with the fair hearing requirements set out by federal law governing UI.⁴⁴ The consent decree settled four lawsuits (*Barcia v. Sitkin*, *Municipal Labor Committee v. Sitkin*, *Espinosa v. Sitkin*, and *New York State United Teachers, AFL-CIO v. Sitkin*). The decree identified a set of standards needed to ensure a fair hearing by the Appeal Board, and required DOL and the Appeal Board to implement those fair hearing procedures⁴⁵

The consent decree also requires the Appeal Board to use a checklist itemizing the procedures to be used by ALJs and the Appeal Board during UI hearings. Known as the “E” checklist, this inventory includes 32 detailed standards for fair hearings. As part of the agreement, the Appeal Board agreed to use the checklist to review cases decided by ALJs.⁴⁶ This data was to be used by the Board to implement an amelioration plan to reduce the rate of violations by ALJs to a level where the fair hearing rights of jobless workers were guaranteed.

What is a violation?

The violations spelled out in the “E” checklist all relate to fair hearing and appeal procedures that ensure that claimants have a fair hearing, and are not wrongly denied benefits. For example, Checklist item 4 establishes procedures for the ALJ to change the basis of a determination in a UI hearing. Very often, the employer indicates to DOL that they are challenging a UI claim for a specific reason (dismissal for absenteeism) and then comes to the hearing with a new reason (refusal to accept a new work assignment).

In a criminal court, this behavior is tantamount to the police arresting someone on burglary and then the judge trying them for assault. Where the employer raises a new issue, the ALJ are supposed to decide if there is a compelling good cause reason for making a switch in the key issue at hand; and the fact that the employer filed the appeal for the wrong reason does not suffice. And parties must be offered an adjournment to prepare for a case based on a completely different part of the law and that require different forms of evidence than they had previously prepared for. Unprepared, many claimants lose these “issue switching” cases. Too often, ALJs put due process aside and simply adjudicate the case based on the new reason provided by the employer at hearing. This is a violation of the proper role of ALJs—to conduct an impartial hearing—and the Appeal Board is, all too often, failing to correct those fair hearing violations.

Violation rates

The data from the tracking of violations indicate that the Appeal Board has fallen short in meeting these basic standards. Based on the Appeal Board’s own statistics, about 20 percent, or one out of every five cases brought is marred by a violation of agreed-upon fair hearing procedures.⁴⁷ The average violation rate for the bottom third of all ALJs in due process performance is 30.8 percent. These violation rates are too high to satisfy the test laid out by Federal judges in the Second Circuit, who required that the Board “provide full and fair hearings to all claimants.” These violation rates come from a sample of cases. If the rates hold steady 51,000 hearings held in the system in 2005, about 10,500 claimants would have been subject to fair hearing violations.⁴⁸

In addition, the judge in charge of enforcing the consent decree ordered the Appeal Board to change its procedures for tracking violations because their coding procedures may have served to depress the violation rate. One expert determined that the violation rate could be as much as 21.8 percentage points higher than what the Board reports. In other words, the actual fair hearing violation rate could be twice what the Appeal Board is reporting.⁴⁹

Amelioration plans

The Appeal Board must take a high standards approach to ensuring that these rights are protected. While there are likely to be many approaches to the problem, the plaintiffs’ amelioration plan is one solution. Their plan would exempt the top performing ALJs (those who perform within the average rate of the top third of ALJs) from remediation—but implement a practice of continuous training and improvement for the rest of ALJs. This plan reflects the kind of high standard to which ALJs should be held.

Section V – Prudent UI Financing

UI benefits are paid out of a dedicated UI trust fund that is meant to be self-financing. Each employer earns their UI tax rate based on its experience using the system—with employers who lay off the most workers get charged the highest rate—a system known as experience rating. Tax rates are increased across the board on every employer when the overall trust fund declines. Both of these features are supposed to enable the system to recover the benefits paid out of it. The experience rating rules ensure that each employer pays their fair share and the trust fund variations enable each employer to contribute fairly to protect against the overall risk of unemployment.

UI benefits vary widely depending on economic conditions, with the largest payouts coming when unemployment rises. Thus the financing must be in place to build up reserves, so the system can afford to pay its claims when the business cycle turns south. A solvent UI trust fund has sufficient savings to handle an unexpected increase in unemployment without borrowing from the federal government or rapidly increasing taxes. The U.S. Department of Labor publishes two key measures of UI solvency, which judge the preparedness of the UI fund to meet the unemployment needs of the state's economy.

- The **Reserve Ratio or Trust Fund as Percent of Total Wages** is a state's trust fund balance as a percent of total wages paid to taxable employers for the past 12 month period. Reserve ratios are useful solvency measures because they reflect the size of the state's economy.
- The **Average High Cost Multiple (AHCM)** compares the relative size of the UI trust fund to the rate of benefits paid out during the three most recent high cost calendar years (measured over the last three recessions or at least a 20 year history). The AHCM is measured in the number years of such "peak" benefits that could be paid out of the most recent end of year trust fund balance. The Advisory Council on Unemployment Compensation, a federal advisory panel, recommended in 1995 that states maintain a pre-recession AHCM of 1.0.⁵⁰

A review of these statistics shows a consistent picture of poor UI trust fund solvency in New York State. Even after a record-setting economic expansion through the end of the year 2000, New York's UI trust fund was among the least solvent UI programs in the nation. The fund was unable to withstand the increase in UI payouts caused by the post-9/11 recession and has remained at severely depleted levels through the most recent annual measures of UI solvency (2005).

- At the end of 2000, the state's AHCM was just 0.3—meaning the fund only had enough in it to pay four months of recession-level benefits. Only Texas and North Dakota had lower solvency ratings at that point. At the end of 2005, the State's UI trust fund was still in debt to the federal government—leaving New York tied for worst with two other states that were also still borrowing to pay UI benefits (North Carolina and Missouri).
- At the end of 2000, the trust fund was equivalent to just 0.4 percent of total wages in the state. This was the second worst level of savings among states in the country. At the end of 2005, New York ranked dead last among all the states with a trust fund reserve ratio of 0.0 percent.

New York's UI trust fund does finally appear to be crawling back into the black this year. At the end of September 2006, the trust fund balance was at \$459 million, a level that is likely to leave the fund in black at the end of the year.⁵¹ Yet serious reforms are still needed to assure that there will be sufficient reserves for the next recession, given the performance of the fund in recent years. As Albany seeks to more responsibly address a variety of issues related to sound fiscal management, so too must the state take a hard look at the financing of its UI system.

Clearly, the self-financing aspect of the system has not functioned. The insolvency of the fund moved the state's employers onto the highest tax schedule allowed by law. However, the real tax rate charged to employers hardly budged. The effective UI tax rate in 2006 was 0.74 percent, which was virtually unchanged from the rate of 0.71 percent in 2002.⁵² The purpose of this automatic tax increase was to bring the fund towards solvency before the next recession—and this has clearly not occurred.

Increasing the taxable wage base is a key step towards solvency

The fact that the state still has low effective UI tax rates even when the fund is in desperate need of refilling can be traced to the low taxable wage base. The wage base is the maximum amount of wages per worker that can be taxed by the UI system. The taxable wage is set by law and has been level at \$8,500 since 1999. New York's taxable wage base is ranked 31st in the country, even though its average wages are ranked 3rd. Thus, the static taxable wage base has served as a form of stealth tax relief for employers in the UI system. In 1980, nearly 40 percent of wages were subject to UI taxes, compared to just 19 percent in 2004.

The impact of the low taxable wage base can be seen in the post-recession trends in effective UI tax rates. There was a huge surge in UI benefits in 2002-2004. If the system were effectively experience rated, we would see tax rates increase in 2005-2006 to "pay back" those costs. But with the taxable wage base is so low, the statutory tax increases made little overall impact on the fund. Because taxes are only charged on a fifth of the average employer's payroll, the system cannot adequately recover its costs even by increasing tax rates on those employers who lay off the most workers. Part of the difference is passed along to the rest of the employers in the state. Over the past two years, a federal tax penalty related to insolvency has been equally assessed to each employer across the state regardless of its experience tapping into the UI system.

New York's experience stands in contrast to the other similar major states facing financing crises (Massachusetts, Illinois and Pennsylvania). These states are now charging UI tax rates on total wages that are as much as double their levels in 2002.¹ Despite having one of the least solvent trust funds in the nation, New York's UI taxes in 2006 were just 0.74 percent which was actually lower than the national average of 0.78 percent.⁵³

A low taxable wage base is also unfair to lower wage employers and employees. For example, an employer of an average wage worker (\$50,000 per year) would only face taxes on less than a quarter of each employee's salary. However, an employer of a full-time minimum wage worker—\$12,000 per year—is charged taxes on 2/3 of their total wages. Such an employer

¹ Massachusetts' UI tax rate was 0.67% of total wages in 2002 and was 1.3% in 2006; Illinois' UI tax rate was 0.57% in 2002 and is now 1.3%; Pennsylvania's UI tax rate was 0.9% in 2002 compared to 1.3% in 2006.

faces a much higher effective tax rate, even though their employees would qualify for far less in unemployment benefits.

How high should New York's taxable wage base be?

New York's taxable wage base was increased to \$8,500 in 1999, up from the minimum allowed by federal law, \$7,000. But this change did nothing to alter the long-term solvency of the UI system.

Once has to look back to 1988 to find the last time that the state's trust fund was at the federally recommended solvency level of 1.0, a full year of recession-level savings. At that time, the state's taxable wage base was \$7,000, an amount equal to 26 percent of the state's average annual wage of \$26,000 per year. In order to base UI taxes on the same proportion of UI taxes today, the taxable wage base would have to be increased to \$13,800. A taxable wage base at this level would better equip the fund to build back towards solvency and rebound after a recession increases claims.

The best state laws index their taxable wage base, setting it to a fixed percentage of the state's average annual wage (between 50 and 100 percent.) In these 18 states, the taxable wage base increases by a few hundred dollars each year. These states have had the most success maintaining UI trust fund solvency.

Other financing issues

While the taxable wage base is the central issue involved in UI financing in New York State, it is not the only one. New York UI taxes were reduced several times in the late 1990s. These reductions came even though the state ranked very low in the national solvency rankings and fell short of recommended pre-recessionary UI trust fund savings. The tax reductions that have been enacted have mainly served to reduce UI tax rates on those firms that have few layoffs charged against their accounts. These are known as positive-balance firms, because they have paid more in taxes over the life of their firms than their employees have claimed against the system. However, UI remains a mixed system of experience rating and social insurance, where risk is pooled across the economy. If positive-balance rates are reduced too far, the overall solvency of the fund is threatened.

Conclusion

The problems of the New York UI program are inextricably linked. In recent years, the system has spiraled downward with benefits becoming less adequate and the financing system less solvent. The twin problems of providing adequate benefits to unemployed families and paying them through a more solvent trust fund must be solved together.

Now is the time to solve these problems. Benefiting from the upturn in the economy, the state's trust fund is beginning to finally recover. The state's trust fund balance stood at \$459 million at the end of September 2006, up from near-zero level of \$168 million a year earlier. This positive position opens up a window of opportunity to engage in a more serious discussion of UI policy issues.

In recent years, Albany's own processes have not produced a productive policy debate of the serious challenges brought up by the program's performance in recent years. Unfortunately, the state disbanded its Unemployment Insurance Advisory Council, a labor-business group that provided a forum for debating these very concerns. Hopefully, leadership from a new Governor will jump start a process to engage all the parties with a stake in the future of the UI program: labor unions, low-income communities, business and the legislature. Despite the obstacles to success, the state must commit to making this investment in economic security.

About the Authors

Andrew Stettner, Deputy Director for Policy, produces research on public policy and labor market trends for the National Employment Law Project. He has published numerous reports on long-term unemployment, federal employment policy and state unemployment insurance programs, and has been frequently quoted in the media about work issues. Mr. Stettner specializes in unemployment insurance and has analyzed unemployment insurance benefits and financing in states across the country. He is a graduate of Georgetown University's Public Policy Institute. Before joining NELP, he worked with community-based organizations on local and state-based economic justice campaigns. He can be reached at astettner@nelp.org or 212-285-3025 x 303.

Rebecca Smith, Staff Attorney, has litigated, testified and written extensively on behalf of immigrant and low-wage workers for more than twenty years. Her primary areas of expertise include immigrant workers' employment rights, wage and hour and the unemployment insurance system. Ms. Smith is a graduate of the University of Washington Law School. She can be reached at rsmith@nelp.org or 360-534-9160.

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About National Employment Law Project

The National Employment Law Project (NELP) is a non-profit research and advocacy organization whose mission is to secure the promise of economic opportunity for today's working families. For 35 years, NELP has advocated on behalf of low-wage workers and the unemployed and other groups that face significant barriers to employment and government systems of support. Working in collaboration with advocates and policy makers at the federal, state and local levels, NELP is dedicated to enforcing existing employment laws and expanding their reach to meet the needs of a changing workforce.



National Employment Law Project
80 Maiden Lane, 5th Floor
New York, NY 10038
212-285-3025
www.nelp.org

Produced by members of UAW local 2320

Appendix I

Table I.1 The Cost of Increasing Benefits:

Reform	Cost	Percent Increase
Maximum Benefit to \$500	\$211 Million	9.0%
Increase benefits for low-wage workers	\$41 Million	1.75%
Increase access to extended benefits for retraining through section 599 of the law	\$18-\$30 million	1.3%

Maximum Benefit Amount

An increase in the maximum benefit amount would only increase UI costs on those workers who are currently receiving the maximum. According to figures tabulated by the U.S. Department of Labor 36.6 percent of all UI checks in FY 2005 (Oct 2004-Sep 2005) were paid at the maximum weekly amount. That means 3.25 million weekly UI checks were cut at this rate in FY 2005—and would have benefited from an increase.

Table I.2 – Workers Currently Receiving the Maximum – FY 2005

Number of Weeks of UI Paid	8,891,121
Percent of Workers Receiving the MBA	36.6%
Number of Weeks	3,254,150

Source: U.S. Department of Labor, Benefit Accuracy Management Data, FY 2005

Increasing the maximum UI benefit to \$500 per week would not increase costs of UI by \$95 for each of these workers' checks, however. UI checks are equal to 1/26th of each worker's total high quarter earnings (equivalent to half of the average weekly wage in that quarter). So, if the maximum was increased to \$500 per week, a worker earning \$880 per week (\$22 per hour for full-time work) would qualify for \$440 instead of \$405 under the current law.

Based on DOL data displayed in Table 3, just 53 percent of those receiving the maximum UI benefits earn more than \$25 per hour and would qualify for a new maximum weekly benefit amount of \$500 per week (\$1000 per week divided by 2). Twenty-two percent of these earn \$21-\$25. Taking the midpoint as an estimate, such workers would qualify for \$460 per week on average, which is equivalent to a \$55 increase. Finally, 25 percent of workers qualifying for the maximum currently earn less than \$21 per hour and these workers would only get a \$10 per week increase after a maximum benefit hike. Cost estimates are calculated by multiplying the number of weeks affected by the per week increase.

Table I.3 – Increasing the Maximum UI Benefit Amount to \$500 – FY 2005 Data

Workers Currently Qualifying for the Maximum UI Benefit	Percent Earning This Amount	Number of Weeks	New Average UI Benefit	Per Week Increase	Total Payout
Earning more than \$25 Per Hour	52.9%	1,721,446	\$500	\$95	\$163,537,323
Earning \$21- \$25 Per Hour	22.3%	725,676	\$460	\$55	\$39,912,153
Earning less than \$21 Per Hour	24.8%	807,029	\$415	\$10	\$8,070,293
Total Increase					\$211,519,769
Current Benefits					\$2,353,449,000
% Increase					9.0%

Source: US Department of Labor, Benefit Accuracy Management NY Figures, FY 2005

Based on these figures, an increase in the maximum UI benefit to \$500 would generate \$211 million per year in additional assistance to working people. In percentage terms, this represents a 9 percent increase in total annual benefit payouts. That is less than might appear given that it is nearly a 20 percent increase in the maximum weekly benefit amount. This increase would go to 180,000 individuals based on the current average duration of unemployment benefits.

Increasing benefits for low-wage workers

We propose giving workers who earn less than \$5,000 in their highest quarter, a UI benefit check worth 1/22nd of high quarter wages instead of 1/25th. Those who earn \$5,000 in their high quarter and thus currently qualify for less than \$190 per week in UI benefits represent one-quarter of all weeks of unemployment benefits paid out in FY 2005. However, since these workers qualify for such low benefit amounts, payments to these worker represents 12.5 percent of all benefit payouts made through the year. The 14 percent increase proposed above would amount to a \$41.2 million overall increase in total UI benefits which is just a 1.75 percent increase to the total UI benefits paid in the state.

599 Program

In 2005, New York State DOL approved 4,173 claimants for a section 599.2 extension of benefits without leaving a waiting list. In order to serve the 6,769 claimants approved for training in 2004, the state would have needed \$32 million available for 599 benefits (1.6 * 20). If the law remains unchanged, DOL should have sufficient funds to provide it latitude to approve at least half of 599 claimants in a mid-demand year like 2004. DOL would have needed \$38 million in 2004 to meet this standard. The reforms to the law that we propose would likely increase the number of 599-approved claimants and the amount of weeks received by each claimant, creating a need for an additional pool of \$10 million.

Appendix II – Recommendations for New Voluntary Quit Statute

The trends in denials make it clear that DOL is defining good cause in ways that are increasingly narrow. In order to fairly provide UI in cases where reasonable New Yorkers decide to quit their job to deal with urgent family needs, the quit with good cause statute should be amended to more clearly address these urgent needs. Moreover, the Department should promulgate regulations to address major personal and family issues that impact job security. Model legislation is displayed below.

Sec. 593 1. (a) No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from his employment until he or she has subsequently worked in employment and earned remuneration at least equal to five times his or her weekly benefit rate.

(b) Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:⁵⁴

(i) ~~In addition to other circumstances that may be found to constitute good cause, voluntary separation from employment shall not in itself disqualify a claimant if~~ **where** circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision two of this section or

(ii) ~~or if the claimant~~ **where the claimant**, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

(iii) ~~A voluntary separation may also be deemed for good cause if it occurred~~ **where the separation occurred** as a consequence of circumstances directly resulting from the claimant being a victim of domestic violence;

(iii) ~~A disqualification as provided in this subdivision shall also apply after a claimant's voluntary separation from employment if such voluntary separation was due to claimant's marriage~~ **where a claimant 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;**⁵⁵

(iv) ~~where the separation occurred as a result of a claimant's inability to obtain childcare during that shift for a minor child who is in the legally recognized custody of the individual;~~⁵⁶

(v) ~~where the separation was caused by the illness or disability of the claimant or an immediate family member such that would cause a reasonably prudent person to leave her job. In such cases:~~

(a) ~~the claimant must promptly notify the employer of the reason for the absence:~~

(b) ~~the claimant must take all reasonable steps to preserve the employment relationship; however, claimants shall not be required to accept an unpaid leave of absence in lieu of a job separation;~~

(c) ~~the illness or disability of the claimant or family member may be medically diagnosed or shown by other competent means. The department shall request medical documentation of the illness or injury it deems necessary from the claimant's provider, and~~

(vi) ~~where equity and good conscience demand a finding of good cause.~~

Endnotes

¹ Ralph Smith, "Family Income of Unemployment Insurance Recipients" (Congressional Budget Office, March 2004)

² Peter Hart Research, "Unemployed in America," National Employment Law Project, <http://www.nelp.org/ui/initiatives/unemployed/survey050703.cfm>

³ Jonathan Gruber, "Unemployment Insurance, Consumption Smoothing, and Private Insurance: Evidence from the PSID and CEX," *Advisory Council on Unemployment Insurance Background Papers, Volume 1*, (Washington, DC: U.S. Department of Labor, 1995)

⁴ This cost comparison is an oversimplification. On the side of welfare, a grant might not prove sufficient to cover a family's rent and the state might have to provide supplemental Jiggets assistance in order to prevent homelessness. Federal dollars cover part of the welfare costs and some UI recipients have incomes low enough to qualify for public health insurance programs other than Medicaid.

⁵ Economy.com, "The Need for Federal Government Aid to State Government" (June 2003)

⁶ In 2001, for example, \$2.72 billion in UI benefits were paid out to families across the state, which is a \$1.03 billion increase over the 2000 baseline level—a difference shown in the table as additional state benefits.

⁷ Fiscal Policy Institute, *State of Working New York 2006* (September 2006) <http://www.fiscalpolicy.org/SOWNY2006.stm>

⁸ Rolf Pendall, *Transition and Renewal: The Emergence of a Diverse Upstate Economy*, (Washington, DC: Brookings Institution, January 2004)

⁹ Rolf Pendall and Susan Christopherson, *Losing Ground: Income & Poverty in Upstate New York, 1980-2000*, (Washington, DC: Brookings Institution, September 2004)

¹⁰ U.S. Department of Labor, *UI Quarterly Data Summary, 3rd Quarter 2005* (November 2005) Skeptics would note that this replacement ratio is not ideal because it compares UI benefits to the average wages of *all* workers not just those who lost their job and are now collecting UI. Estimates of an actual replacement ratio have been made available in recent years by the U.S. Department of Labor. By this measure, UI benefits in New York are equal to 46 percent of the prior wages of the unemployed. But New York still fairs poorly, ranking 35th among the states and Washington, DC.

¹¹ Insured unemployment data comes for the UI system. The number of total unemployed comes from the official statistics compiled by the U.S. Department of Labor.

¹² NELP analysis of U.S. Department of Labor data provided to the author

¹³ U.S. Department of Labor, emailed to author, including ETA 5130 report, ETA 218 report and ETA 204 report, November 17, 2005.

¹⁴ N.Y. LABOR LAW § 593.3.

¹⁵ N.Y. LABOR LAW § 593.2

¹⁶ The rate shown here is 1 – (Separation Denials / Separation Determinations). Separation determination is the term of art in the UI program for those claims in which the labor department investigates the reason for job loss to see whether the claims is eligible under UI rules.

¹⁷ Diana Pearce, *The Self-Sufficiency Standard for the City of New York, 2004* (Women's Center for Education and Career Advancement, January 2005)

¹⁸ Diana Pearce and Jennifer Brooks, *The Self-Sufficiency Standard for New York* (SENSES, September 2000) published by the New York State Self-Sufficiency Steering Committee, updated using US Department of Housing and Urban Development, *Fair Market Rents for 2005*, <http://www.huduser.org/datasets/fmr.html> and U.S. Department of Agriculture, *May 2006 USDA Low Cost Food Plan For A Single Male*, <http://www.usda.gov/cnpp/FoodPlans/Updates/foodmay06.pdf>. To find the cost of health care for an individual we look at the lowest premium for Health NY for the county New York State Department of Insurance, *Healthy NY Rates by County 2005*, <http://www.ins.state.ny.us/website2/hny/english/hnyr.htm> .

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- ¹⁹ Inflation adjustments using the CPI-U for Northeastern Cities.
- ²⁰ N.Y. LABOR LAW § 590.5
- ²¹ N.Y. LABOR LAW § 599
- ²² Jerome Tracy, New York State Department of Labor, letter to Tosh Anderson, May 26, 2006
- ²³ *Budget Report*, New York State Assembly Bill 6763, 1987.
- ²⁴ U.S. Department of Labor, "Heating, Air Conditioning, and Refrigeration Mechanics and Installers," *Occupational Outlook Handbook, 2006-2007 Edition*, www.bls.gov/oco/print/ocos192.htm
- ²⁵ New York State Department of Labor, "New York City Workforce and Industry Data, Occupational Outlook 2002-2012," <http://www.labor.state.ny.us/workforceindustrydata/apps.asp?reg=nyc&app=projections>.
- ²⁶ Regular benefits paid to claimants approved for training during the first 26 weeks of entitlement are chargeable. Extended benefits are not.
- ²⁷ U.S. General Accounting Office, *Workforce Training: Almost Half Of State Fund Employment Placement And Training Through Employer Taxes*. (February 2004)
- ²⁸ Maggie Moree, New York State Department of Labor, email message to author, October 24, 2006
- ²⁹ After a recent change in the law in Washington State, the denial rate for voluntary quits rose from 61 percent to 73 percent, and sixty one percent of voluntary quit denials were issued to women: under the old law, 52 percent of denials were to women and 48 percent to men.
- ³⁰ *In re Claim of Porter*, 381 N.Y.S.2d 537 (3d Dept. 1976).
- ³¹ App. Bd. 217, 531.
- ³² App. Bd.. 414,684, A-750-2057 (1993).
- ³³ App. Bd.. 3,494, A-750-2009 (1989).
- ³⁴ Johnson v. Administrator, Unemployment Compensation Act, 487 A.2d 565 (1985), Connecticut and PA. STAT. ANN. tit. 43 § 753
- ³⁵ App. Bd., 105,725
- ³⁶ ALJ Case No. 005-13992.
- ³⁷ N.Y. LABOR LAW § 590.3 and § 523
- ³⁸ U.S. Census Bureau, "Table P19, Age By Language Spoken At Home By Ability To Speak English For The Population 5 Years And Over," *Census 2000 Summary File 3*, <http://www.census.gov/Press-Release/www/2002/sumfile3.html>.
- ³⁹ As a result of prior efforts, most materials at DOL and key forms have been translated into Spanish.
- ⁴⁰ MASS. GEN. LAWS ANN. Ch. 151A, § 62
- ⁴¹ Maurice Emsellem and Monica Halas, "Representation of Claimants at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions," *University of Michigan Journal of Law Reform*, Fall 1995 and Winter 1996.
- ⁴² Michigan Department of Labor & Economic Growth, *Advocacy Program Annual Report 2005*.
- ⁴³ U.S. Department of Labor data emailed to author, including ETA 5130 report, June 3, 2005. The data indicate that ALJs denied 24,000 workers benefits because of adverse decisions on their appeals. In addition, when employers win appeals, workers lost. Thus, as many as another 2,400 workers lost out on cases won by employers (since some employer appeals relate to tax issues, not all of these victories are taken out of claimants). That's compared to only 15,800 cases where the ALJ ruled against employers (7,900 cases won by claimants and 7,800 cases brought and lost by employers). Even though the rates of success at the Lower Authority appeals level are roughly equal, the overall impact of ALJ decisions has been to restrict benefit access.
- ⁴⁵ 1983 WL 44294 (S.D.N.Y.), 79 Civ. 5899, 79 Civ. CIV. 5899.
- ⁴⁶ The Appeal Board only applies the checklist to a subset of cases decided by the ALJs. They review those cases that are appealed from a first level hearing (ALJ) to a second level hearing (UI Appeal Board). While the checklist contains a few items that deal with Appeal Board procedures, its primary focus is on ALJ conduct during the course of the first-level hearing.
- ⁴⁷ "Defendants Memorandum of Law In Support of Their Motion of Reconsideration and for An Order Modifying the Consent Decree," 79 Civ. 5831 and 79. Civ. 5899, February 3, 2006, p. 33

⁴⁸ Richard Faust, "Expert's Report of Plaintiff Expert Richard Faust," 79 Civ. 5831 and 79. Civ. 5899, April 19, 2006, p. 18.

⁴⁹ *Ibid.*, p. 16

⁵⁰ Advisory Council on Unemployment Compensation, *Unemployment Insurance in the United States: Benefits, Financing, Coverage* (U.S. Department of Labor, Washington, D.C., 1995), p. 9. *See also* See also U.S. Department of Labor, Employment and Training Administration, "Reserve Adequacy," *Unemployment Insurance Program Letter No. 44-81* (October 13, 1981).

⁵¹ U.S. Treasury, Bureau of the Public Debt, *Unemployment Trust Fund Report*, <http://www.publicdebt.treas.gov/dfi/dfiutprep.htm>.

⁵² U.S. Department of Labor, *Average Employer Contribution Rates by State CY 2004-2006*, <http://www.workforcesecurity.doleta.gov/unemploy/content/aetr2006-2004.xls>.

⁵³ The current tax rates from 0.9 to 8.9 percent on taxable wages, the amount paid to employees up to the taxable wage base.

⁵⁴ Based on Nebraska law, NE L.B. 739 §7 (2005).

⁵⁵ Based on California law, CAL. UNEMP. INS. CODE § 1256.

⁵⁶ Based on North Carolina law, N.C. GEN. STAT. §96-8 (10a)