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Why Lawmakers Must Remove the Labor Dispute Disqualification from Unemployment Insurance

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Summary

The labor dispute disqualification provision that exists in nearly every state's unemployment insurance (UI) law is confusing, ill-defined, and irrationally broad. The provision excludes workers unemployed due to "labor disputes," which although often undefined in state law, may include strikes, lockouts, and other controversies between employers and workers that result in unemployment.[1] Where a labor dispute is the cause of a worker's unemployment, the muddled language of the provision acts to broadly disqualify workers, often even if the worker had no role in the dispute, no knowledge of the dispute, and no say in the dispute.

This broad and convoluted disqualification of workers is antithetical to the purpose of UI. UI should widely cover workers to provide security for both workers and the economy during periods of unemployment. As the Wisconsin Supreme Court explained, "the [UI] statute is remedial in nature and should be liberally construed to effect unemployment compensation for workers who are economically dependent upon others in respect to their wage-earning status."[2] Yet, in most states, the labor dispute disqualification not only liberally *excludes* workers from UI, but it does so when workers consort to improve the terms of their employment. Workers' lawful engagement in collective bargaining and related protected concerted activities can ensure a good-jobs economy with fair wages and safe working conditions. Yet, the labor dispute disqualification does not merely punish these lawfully sacrificing workers. It goes a step further to render "guilty by association" workers who had no direct role in the dispute.

Key Points

- The unemployment insurance (UI) labor dispute disqualification provision is antithetical to UI and is a barrier to establishing a good-jobs economy, removing needed resources from workers, businesses, and communities.
- The provision prevalent in state law disqualifies not only workers who lawfully engage in collective bargaining, but workers who had no role in or knowledge of the dispute.
- Justifications for the labor dispute disqualification provision are unfounded; it is a nonsensical discretionary provision that should have no place in UI law.

Key Solutions

- Remove the labor dispute disqualification from state law.
- Support federal legislation to bar states from disqualifying workers unemployed due to labor disputes.

Making matters worse, justifications used for the disqualification are unfounded.

- Proponents claim the disqualification preserves UI for only the *involuntary* unemployed. But every state already extends UI to workers who are voluntarily unemployed. Moreover, workers can be disqualified under the labor dispute disqualification provision even if they had no knowledge of or say in the dispute.
- Proponents assert the disqualification provision ensures the state remains neutral in disputes, but policies like disqualifying workers because of their union membership alone could scarcely be deemed neutral.
- Proponents say the disqualification provision is necessary to comply with federal law. But the very architects of the federal law establishing UI could have preempted UI for workers during labor disputes and did not.
- Finally, proponents argue removing the disqualification will burden states. Last year, only 0.17% of the labor force was on strike or locked out.[3] But the labor dispute disqualification is frequently litigated.[4] Its removal could actually *un*burden states.

Given the lack of justification for this overly broad provision that excludes workers and state economies from the benefits of UI, it is no wonder that it has long been contested as "an *exception* to the overall basic purpose of [UI law]."[5] The disqualification is a consistent subject of confusion, consternation, and litigation.[6] This brief reviews how the disqualification came about, what it does, who it harms, how proponents attempt to justify it, and why it must go.

Introduction

Consider if you accept a new job. You report on your first day of work and your employer sends you home. The facility is closed due to a strike by the employee union to bring about changes that could benefit all workers. You apply for UI compensation and are denied. The state considers you to be unemployed due to a labor dispute even though you are not on strike and you are not yet eligible to join the union. This is exactly what happened to a worker in Rhode Island. The Court held, "[the legislature] intended to bar those employees not members of the involved union who nevertheless have a direct interest in the outcome of the dispute."[7]

Rhode Island's approach exemplifies the labor dispute disqualification. The disqualification is an overly broad, ill-defined, and poorly justified provision that widely excludes workers from a social insurance program that best protects workers and the economy when it covers most workers. This brief starts by reviewing how this disqualification came to be, particularly since the provision was born at the same time as the federal-state UI program and modern labor law. Next, the brief reviews the labor dispute disqualification provisions that continue to pervade state law. Then the brief analyzes justifications used for the provision, finding neither authority nor need for the provision. Finally, the brief concludes that the only solution is to remove or bar the labor dispute disqualification.

A Brief History of UI, Labor Law, and the Labor Dispute Disqualification

Unemployment Insurance (UI) and modern labor law were born in the aftermath of the Great Depression. At the time, about one quarter of the labor force was unemployed.[8] The unemployment rate was roughly

twice as high for Black workers.[9] Lack of employment so often left workers houseless that they slept in shantytowns called Hoovervilles.[10] These communities of cardboard and tin shacks were named in condemnation of President Hoover and his push for individualism, even in the face of collective suffering.[11]

Unemployment was not a problem that a purely individualist approach could remedy. In the shift from an agrarian economy to an industrial economy in the half century that preceded the Great Depression,[12] most workers were now dependent on businesses for employment.[13] In turn, businesses relied on workers' labor for revenue. After employers' unfettered push for profits led to low wages and dangerous working hours and conditions, the labor movement grew to demand balance in this interdependent relationship.[14]

This balance was critical to the country, as federal, state, and local governments had interdependent relationships with both workers and businesses.[15] Governments collected taxes from workers' wages and businesses' profits, and in return provided services and protections. In this interdependent economy, unemployment was a problem not merely for workers, but for the business and government sectors too. Thus, in contrast with his predecessor, President Franklin Delano Roosevelt sought a governmental, and to a greater degree, collectivist solution.

On August 14, 1935, President Roosevelt signed the Social Security Act (SSA) into law. The SSA established, among other programs, the federal-state UI system.[16] As he explained in a message to Congress in the prior year: "This seeking for a greater measure of welfare and happiness does not indicate a change in values. It is rather a return to values lost in the course of our economic development and expansion."[17]

Little more than a month before signing the SSA into law, President Roosevelt signed the National Labor Relations Act (NLRA).[18] This marked the birth of modern labor law. The purpose of the act was to:

> "[E]liminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining."[19]

Paradoxically, it was during this near concurrent birth of UI and labor law that the labor dispute disqualification was born.

Origin of the Labor Dispute Disqualification

Title III of the Social Security Act (SSA) establishes the federal-state UI system. States administer the program subject to federal oversight. State laws must conform with requirements set forth in federal law.[20] The SSA does not expressly bar states from providing UI to workers who are unemployed due to labor disputes. The sole reference to disputes is in a provision barring states from denying UI to workers who refuse to accept work "vacant due directly to a strike, lockout, or other labor dispute."[21] Yet while the SSA is silent on whether workers unemployed due to a labor dispute can receive UI, the labor dispute disqualification currently found in state laws has been a part of the UI system from the start.

The SSA's policies were developed by President Roosevelt's Committee on Economic Security (CES) chaired by Secretary of Labor Frances Perkins.[22] CES viewed UI as part of a multipronged approach to respond to the unprecedented unemployment endured by workers during the Great Depression. "In proposing unemployment compensation we recognize that it is but a complementary part of an adequate

program for protection against the hazards of unemployment, in which stimulation of private employment and provision of public employment on a security-payment basis are other major elements."[23] Thus, CES recommended an employment assurance program (including the now long defunct Works' Progress Administration)[24] *and* an unemployment insurance program.

As just a single prong of the proposed unemployment response, CES devised the federal-state UI program to support only a subset of workers.[25] Entitlement was determined on an individual basis. One scholar noted that the "'collective' security [under the CES UI system] seems to be collective only in the sense that the summing of individual securities – which are attained by appropriate individual efforts in the marketplace – should result in security for all.'"[26] Only recently employed workers would be eligible for the program.[27] Likewise, not all work was insured. For example, job loss from agricultural and domestic work was expressly excluded in the original law.[28] Workers experiencing long-term unemployment also would be ineligible for benefits.[29] Workers who voluntarily quit *without* good cause or were fired for misconduct would be ineligible for benefits.[30] Overall, CES estimated that the program would cover about 70% of fields experiencing unemployment, but less than half of all workers.[31] The exclusions disproportionally harmed workers of color; the CES policy as originally enacted in the SSA excluded 65% of Black workers.[32] So, the UI program originally devised by CES and born of the SSA was not intended to cover all workers, and indeed it did not.

While much of CES's policies were codified in federal law, CES also heavily influenced the would-be discretionary components of state UI laws. Roughly six months before the SSA became law, CES presented two model state UI bills to the Senate Committee on Finance.[33] Both model bills contained an identical provision to disqualify workers from receipt of UI when their unemployment was caused by a labor dispute. The provision read:

> "*During trade disputes*.- An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed."[34]

CES's proposed labor dispute disqualification was born not only from its vision of a limited version of UI, but also from European law. In its review of European unemployment compensation laws, CES found that, at the time, the United Kingdom,[35] Switzerland,[36] and Germany[37] excluded workers unemployed due to a labor dispute. Thus, CES concluded states would follow suit.[38]

CES's model bills were succeeded by draft bills from the Social Security Board[39] (the precursor to the Social Security Administration).[40] Here again, both draft bills contained identical language disqualifying workers unemployed due to a labor dispute:

> "Sec. 5. An individual shall be disqualified for benefits –
> (d) For any week with respect to which the commissioner finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed:
> *Provided*, That this subsection shall not apply if it is shown to the satisfaction of the commissioner that-
> (1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the disputes:

Provided, That if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment, or other premises."[41]

The introductory language of each draft bill clearly indicates that the bills were mere suggestions, *not* recommendations.[42] Nevertheless, thirty-three states adopted the draft bill language wholesale (or nearly so).[43] All remaining states also disqualified workers unemployed due to some or all labor dispute types or causes.[44] Thus, although not required by federal law, and while at odds with the NLRA's recognition of the economic importance of collective bargaining, the UI labor dispute disqualification was born.

Labor Dispute Disqualifications in Current UI Law

All states retain some elements of the original labor dispute disqualification provision, although the scope of the disqualification has been reduced or all but removed in New York, New Jersey, Washington, and Oregon. The prevalence of the labor dispute disqualification should not be confused with uniformity; state laws vary greatly. The sections below review some important components of state laws regarding: (1) which disputes are disqualifying, and (2) who is disqualified. It is outside the scope of this brief to cover all aspects of state labor dispute disqualification laws. But the sections below illustrate how broad, ill-defined, and nonsensical the laws can be.

Which Disputes are Disqualifying?

To determine which disputes are disqualifying, the first question to ask is how is "labor dispute" defined? Unfortunately, neither the CES's model bills nor the Social Security Board's draft bill defined "labor dispute." Likewise, definitions of "labor dispute" are absent in many states' UI laws.

Some states expressly distinguish between labor disputes, strikes, and lockouts. For example, in a precedential Virginia case, the appeals examiner explained, "while it is true that disputes in the labor field are often characterized by actions of the parties described as 'strikes', 'walk-outs, or 'lockouts' these acts themselves are not the dispute, but merely the means taken by the disputants to gain their point."[45] In a way, this squares with the NLRA approach, which defines labor dispute not by specific concerted activities but as "any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[46] Alabama codified the NLRA definition of labor dispute in its UI law.[47]

Some states include strikes and/or lockouts as *types* of labor disputes. North Dakota's disqualification extends to "any kind of labor dispute, including a strike, sympathy strike, or lockout."[48] Oregon significantly amended its labor dispute disqualification law in 2025 and added a definition of labor dispute.[49] The term now is defined as "any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms of employment of

the individuals are involved."[50] The state also separately defined lockouts[51] (which are excluded from the disqualification)[52] and strikes.[53] Louisiana also limits the disqualification to unemployment due to strikes.[54] The state defines a strike as: "Any concerted act of the employees in a lawful refusal of the employees to perform work, or services for the employer, provided such acts are not recognized as unlawful under Louisiana state and federal law, and if the employees are represented by a labor organization, that the said labor organization shall have approved or sanctioned the act."[55]

Lockout Exception

Most states exclude some or all lockouts from the labor dispute disqualification. However, the terms of the exception can vary greatly. In California[56] and Texas,[57] the lockout exception derives not from statute, but from case law. Sixteen states except all lockouts."[58] Fifteen states provide a specific definition of the lockouts excluded from the disqualification.[59] This is where the greatest variability among state lockout exceptions are found.[60]

Some states only exclude lockouts from the labor dispute disqualification where the lockout was not preceded by the threat of an employee strike, or the threat or infliction of property damage by the employees. For example, Florida does not except a lockout if it was preceded by the workers giving the employer a strike notice or "if the lockout action was taken in response to threats, actions, or other indications of impending damage to property and equipment or possible physical violence by employees or in response to actual damage or violence or a substantial reduction in production instigated or perpetrated by employees."[61] Massachusetts does not except a lockout if an employer can establish by a preponderance of the evidence that the lockout is in response to damage to or threats of damage to the employer's property by employees.[62] Colorado law distinguishes between "defensive lockouts"[63] and "offensive lockouts."[64] Only unemployment due to an offensive lockout is excluded from the labor dispute disqualification.[65]

Some states distinguish between the purpose of the lockout. Vermont[66] and Maine[67] only exclude lockouts used to "gain some concession from employees." In contrast, Connecticut[68] and Massachusetts[69] except lockouts "whether or not such action is to obtain for the employer more advantageous terms."

Exception for Certain Strikes

Several states create exceptions to the labor dispute disqualification for strikes arising from an employer's violation of law and/or breach of the employment contract.[70] As with the lockout exception, strike exceptions vary by state and can be very narrow and fact-dependent. In Maine[71] and Minnesota,[72] the exception to the labor dispute disqualification is limited to when the employer's breach of contract or violation of law creates dangerous conditions. For example, both states contain provisions requiring that the employer must *intentionally* fail to comply with the "safety and health section of a union contract or [fail] to comply with an official citation for a violation of federal or state laws involving occupational safety and health" for the exception to apply.[73] Missouri limits the exception to when "the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or federal court of law for an act or actions preceding or during the strike."[74]

Broad Labor Dispute Disqualification Exceptions

Many states are considering legislation to remove or reduce the labor dispute disqualification.[75] New York and New Jersey currently have the broadest exceptions to the labor dispute disqualification. In New York,

the benefit rights of a worker unemployed due to a labor dispute are suspended (delayed) for one-week *past* the waiting week for all workers.[76] In New Jersey, the suspension period is two weeks.[77]

In their 2025 legislative sessions, Oregon and Washington enacted laws to substantially remove their labor dispute disqualification provisions. In Oregon, effective in 2026, lockouts will be excepted from the disqualification.[78] Workers unemployed due to a strike will only be disqualified for one-week.[79] They then will be able to qualify for eight to ten weeks of benefits depending on the adequacy of the trust fund.[80] In Washington, workers unemployed due to a strike are eligible for up to six weeks of benefits 15 or 21 days after the start of the dispute.[81] There is no disqualification for workers unemployed due to lockouts.[82]

Who is Disqualified?

While most states disqualify workers unemployed due to a labor dispute (and this causal determination is a whole other complex area of the law), a majority of states create statutory exceptions for certain workers. These exceptions are often extremely narrow and use ill-defined or ambiguous language. For example, thirty-seven state laws[83] contain a variation of the provision included in the draft bills that excepts a worker from the disqualification if the worker:

- "Is not participating in or financing or directly interested in the labor dispute that caused the unemployment of the individual; [and/or]
- Does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, were members employed at the premises at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute." [84]

Workers in four states can be excluded from the disqualification if they meet *either* condition.[85] Workers in thirty-three states must *at least* meet both conditions (and, in some states, other conditions) to be excepted from the exclusion.[86]

Each condition of the exception contains legal terms of art that are rarely defined in state law. This has left state courts to interpret the terms, leading to further variation across states in the interpretation of even identical statutory language. The sections below review each condition and how its terms are defined.

Participating in, Financing, or Directly Interested in the Dispute

Since workers in thirty-three states must meet *both* the first and second conditions, if it can be shown that a worker participated in, financed, or is directly interested in the dispute that caused their unemployment, then the worker will be disqualified. Further, each element of the first condition is generally considered separately.[87] So, there are three ways a worker can fail to meet the first condition. If a worker is found to have: (1) participated in, or (2) financed, or (3) been directly interested in the dispute, they are disqualified. In practice, the "directly interested" provision has the broadest reach, but all three sub-elements are confusing, extremely broad, fact-dependent, and vary by state. In most states, workers bear the burden of proving they should not be disqualified and thus will need to prove each sub-element.[88]

Participating in

Participating in a labor dispute may seem the most straightforward of the three elements, but in practice it can be more complex. For example, participating in a dispute can be distinct from specifically participating

in a strike. In *Poggemoeller v. Industrial Commission,* the Missouri Court of Appeals considered whether locked out workers who did not strike and were not members of the union that struck were participating in the labor dispute.[89] The workers were members of a different union that was jointly negotiating with a single employer.[90] The court found "the labor dispute in the instant case was neither the strike, nor the lockout, nor both, but the strike and the ultimate lockout were the result of the labor dispute."[91] Thus, it was immaterial that neither the workers nor their union struck.[92]

Several states' laws have specific provisions related to whether crossing or not crossing picket lines constitutes participation in a labor dispute. In Colorado,[93] Kansas,[94] and Texas[95] failure to cross a picket line constitutes participating in a labor dispute. In contrast, Illinois law states, "an individual's failure to cross a picket line at such factory, establishment, or other premises shall not, in itself, be deemed to be participation by him in the labor dispute."[96]

Several states also address sympathy strikes. In Texas, a worker can be disqualified if during the dispute they were "a member of a labor organization that is the same as, represented by, or directly affiliated, acting in concert, or *in sympathy with* the labor organization involved in the labor dispute at the premises of the labor dispute" (emphasis added).[97] In Michigan, a worker can be found directly involved in a labor dispute if the worker "voluntarily stops working [. . .] in sympathy with employees in some other establishment or department in which a labor dispute is in progress."[98]

Financing

The second element of the first condition workers unemployed due to a labor dispute must meet to avoid disqualification is "financing." While this element is less prolific in state laws, at present twenty-six state statutes include the term "financing" in the labor dispute disqualification exception.[99] Florida,[100] Massachusetts,[101] Virginia,[102] and Michigan expressly exclude payment of "regular" union dues from the definition of financing.[103]

As with other labor dispute provisions, both the financing and the related dues provisions can be quite complicated in practice. In *Baker v. General Motors Corp,*[104] the Supreme Court of Michigan considered whether emergency dues constituted "regular" dues within the meaning of the statute. Michigan's dues provision states: "The payment of regular union dues, in amounts and for purposes established before the inception of the labor dispute, is not financing a labor dispute."[105] In *Baker,* workers became unemployed during slowdowns and plant closures that followed strikes at other plants.[106] The other plants were separate but "functionally integrated" with the plants that ultimately shutdown.[107] The workers who lost employment were not engaged in the strike but were members of the union that struck.[108] The workers paid regular dues, which primarily contributed to union administration and, to a lesser degree, a strike fund.[109] Then, three months before the strikes that preceded the plant shutdowns, the union established additional emergency dues to greatly increase contributions to the strike fund during collective bargaining.[110] The Court found that the emergency dues did not meet the state's "regular" dues exception, notwithstanding that the dues increase was made three months before the strikes.[111] In a subsequent appeal, the Supreme Court of Michigan held that, through the emergency dues, the workers financed the labor dispute; the workers were disqualified from UI on that basis alone.[112]

Directly Interested

The "directly interested" element is among the broadest and least intuitive components of the labor dispute disqualification provision. Workers are directly interested in a labor dispute if their wages, hours, or working conditions can be even indirectly impacted by the dispute.[113] While Michigan's disqualification statute provides a comprehensive definition of "direct interest,"[114] in most states the provision is solely defined in case law.

In many states,[115] workers can be directly interested even if they are not a member of the union involved in the dispute. For example, in *Huiet v. Boyd*, workers who were not members of the union and did not strike filed for UI after a strike at their place of employment.[116] The Georgia Court of Appeals found the workers were disqualified on the basis of direct interest because their wages could have increased had the strike been successful.[117] The court explained, "It is immaterial that the claimants, whether as members of the union or not, may not have voted for or participated in the strike which caused the stoppage of the work, and may not have been in sympathy with the strike and may have attempted to go back to work but were prevented by the pickets. Since they are directly interested in the dispute which caused the stoppage of the work and their unemployment, they are not entitled to the benefits of the act."[118]

As is fitting with this overbroad provision, merely being represented by, a member of, or affiliated with a union that engaged in the labor dispute that causes the worker's unemployment can also constitute direct interest. In a precedential case in Virginia, workers who did not strike, did not work in the same state as workers who struck, and did not perform the same type of work as the striking workers, were disqualified for benefits. The appeals examiner found that the Virginia workers were directly interested in the dispute because they were represented by the same union and their wages increased because of the dispute. Similarly, in *Foley v. Adams*, the Supreme Court of New Hampshire found unionized workers to be directly interested in a dispute when members of a joint bargaining agency union went on strike.[119]

Grade or Class of Workers Participating in the Dispute

The second common condition for exclusion from the labor dispute disqualification is that a worker not be a member of a "grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises[120] at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute." As discussed below, "grade or class of workers" is often not defined in state law. But, on its face, this provision would allow workers to be disqualified if they are a member of a "grade or class" of workers that is directly interested in the dispute, even if the individual worker is not directly interested in the dispute. Worse yet, not only is the language of this condition extremely confusing, but as with the first condition, workers generally bear the burden of proving they are not in the same grade or class of workers involved in the dispute.[121] The net effect of this condition often "creates a broad area of guilt by association."[122]

Given that "grade or class" of workers is often not defined in state law, the provision has been largely left to courts to interpret. The key determinant for whether the worker is in the same "grade or class" as workers participating, financing, or directly interested in the dispute is "homogeneity of interest."[123] This is a fact-dependent determination that can lead to wide-ranging results. "A maintenance man and millworkers may be considered to be of the same grade or class because of interdependence of terms and conditions of employment; but not photo-engravers and editorial employees. And the test of eligibility in the same union would group together fixture workers and those engaged in sash and door work, but not the clerical staff and production workers."[124]

In *Renne v. Unemployment Compensation Board of Review*, the Supreme Court of Pennsylvania considered whether a full-time substitute teacher was in the same grade or class as permanent teachers who went on strike.[125] The court rejected a purely function-based test used by the lower court in favor of a totality of the circumstances test that considers "factors of employment [. . .] including salary, benefits, working conditions, hours, job security, skills, training, job rank and employment contracts."[126] On this basis, the court found the substitute teacher was not in the same grade or class as the striking teachers.[127]

Massachusetts and Michigan are among the only states to define the "grade or class" term within law. In Massachusetts a worker cannot be a member of a grade or class of workers if they are "not a member of or eligible to membership in the group or organization which caused the stoppage."[128] Michigan establishes seven relevant factors for the grade or class determination that focus on functional integration of work, shared membership and/or representation by a common union, unit, bargaining agent, or contract, and possible shared direct or indirect benefits as a result of the dispute.[129]

Flawed Bases for Disqualification

Given the convolution and breadth of the labor dispute disqualification, it is worth considering why the disqualification continues to pervade UI law. Four justifications cited for the labor dispute disqualification provision in state laws are: (1) to ensure only *involuntarily* unemployed workers receive UI,[130] (2) to maintain state neutrality in labor disputes,[131] (3) to comply with federal law, and (4) to prevent a further burden on state UI systems. As reviewed below, all four justifications are unfounded.

Involuntariness

The focus on the involuntariness of unemployment arose with the CES (and Roosevelt[132]) position, discussed earlier, that UI only be available for certain workers who meet individual requirements for entitlement. Yet, while UI may have *initially* been designed for a subset of the labor force, experts have long contested whether voluntariness was or is a primary determinant of individual eligibility for the program. As one scholar explained, "The fact that benefits are paid to individuals who voluntarily leave work but *with good cause* or who refuse an offer of *unsuitable* employment indicates that the criterion of voluntariness is subordinated to other criteria which from the social point of view are considered paramount."[133] Given the near concurrent passage of the NLRA which enshrined worker and employer rights with respect to labor disputes, even *if* job separations due to labor disputes were voluntary, the right to engage in protected concerted activities under the NLRA should be paramount; that is, workers involved in labor disputes should be considered unemployed *with* good cause.

The voluntariness argument further falls flat given the broad scope of most states' labor dispute disqualification provisions. As discussed earlier, workers can be disqualified when they have no part in the dispute, no knowledge of the dispute, and, in the case of the grade or class condition, even when the worker has no direct or indirect interest in the dispute. How can a worker voluntarily quit if they neither quit nor have any prior knowledge of or interest in the dispute leading to their job loss?

As noted, early on, some states found the voluntariness assessment to be distinguishable based on the type or basis of the dispute. Several states' initial statutes excluded lockouts from the disqualification.[134] Currently, thirty-three states exclude some or all lockouts from the labor dispute disqualification.[135]

Additionally, as early as 1955, four states did not disqualify workers unemployed due to a labor dispute "if the dispute is caused by the employer's violation of 'any state or United States law on hours, wages, or other conditions of work.'"[136] Currently, ten states provide an exception to the labor dispute disqualification for strikes preceded by the employer's breach of contract and/or violation of state or federal law.[137] The aforementioned statutes excepting lockouts and/or certain strikes are silent on whether workers' unemployment in those cases is seen as *involuntary* or whether, particularly in the case of the excepted strikes, the merits of the strike are paramount to the voluntariness requirement.

Neutrality

CES cited European UI systems as the source of the neutrality principle, concluding: "[T]he unemployment compensation fund may not be used as an instrument for or against labor disputes."[138] Presumably, CES's concern was threefold: First, employers would be deterred from engaging in lockouts because they would be liable for benefits paid to workers during the dispute. This concern clearly was lost on many states given the prevalence of the lockout exception from the labor dispute disqualification. Second, workers could be incentivized to engage in strikes because UI benefits would attenuate their economic risk. This concern is not founded in fact. Strikes are typically less than two weeks long.[139] Most states require workers to meet entitlement for benefits for two weeks before the worker is paid a single week of benefits.[140] Moreover, UI benefits typically only replace less than half of the worker's prior wages.[141] Thus, "the prospect of receiving a fraction of normal wages after the lapse of several weeks will seldom lead a labor organization to call a strike which it would have avoided had benefits not been payable."[142]

The third concern may have been that provision of an employer-funded benefit to workers during labor disputes would disrupt the balance of power between workers and employers. This relies on the unfounded presumption that workers and employers are situated equally in the first place. This presumption was attacked by scholars shortly after the federal-state UI system was established:

> "In view of the recognized public policy of equalizing bargaining power between employers and employees [as evidenced by the NLRA], it seems illogical to insist that 'neutrality' requires nonpayment of benefits. Since the employer is usually capable of greater endurance than his workers, a strictly neutral state would merely be adjusting the unequal balance if it made generous immediate payments."[143]

Legality

The neutrality/balance of power justification intersects with the argument that the disqualification is required by federal law. In 1979, the U.S. Supreme Court considered whether the SSA, NLRA, and Federal Unemployment Tax Act preempted New York from broadly removing the disqualification to extend UI to striking workers. While a plurality of the Court held that states were not preempted from granting (or denying) workers UI during labor disputes, Justice Powell, joined by Chief Justice Berger and Justice Stewart, concluded that extending UI to striking workers would disrupt the balance of power established by the NLRA:

> "The effect of the New York statute is to require an employer to pay a substantial portion of the wages of employees who are performing no services in return because they have voluntarily gone on strike. This distorts the core policy of the NLRA—the protection of free collective bargaining."[144]

Although a plurality opinion, a majority of the Court disagreed with Powell, at least in the result. Justice Stevens, joined by Justice White and Justice Rehnquist, explained:

> "Congress was aware of the possible impact of unemployment compensation on the bargaining process. The omission of any direction concerning payment to strikers in either the National Labor Relations Act or the Social Security Act implies that Congress intended that the States be free to authorize, or to prohibit, such payments."[145]

The plurality's opinion was consistent with the Court's prior ruling in *Ohio v. Hodory* (1977). In *Hodory*, the Court considered the legality of the labor dispute disqualification provision. "The fact that Congress has chosen not to legislate on the subject of labor dispute disqualifications confirms our belief that neither the Social Security Act nor the Federal Unemployment Tax Act was intended to restrict the States' freedom to legislate in this area."[146] Thus, states are free to maintain or remove their labor dispute disqualification provisions. The provision was just a *suggestion* from the Social Security Board, after all.

Alleged Burden

Some proponents of the disqualification argue its removal will burden state UI systems. However, fears of UI claims rising exponentially if the disqualification is removed are unfounded. While labor disputes (depending on the state law) may go beyond strikes and lockouts, in 2024 there were just 356 strikes and only 3 lockouts.[147] In total, only 0.17% of the labor force was unemployed due to a strike or lockout in 2024.[148] While far more workers than just those who participate in a dispute are disqualified by the labor dispute provision, the UI program can withstand these claims. Afterall, UI has grown from a *complementary* program that intentionally covered only a subset of workers, to a standalone program that covers 90% of all workers.[149] The estimated costs of increased claims that will result from the removal of the disqualification are minimal.[150] And immeasurable dollars may be saved from states no longer having to administer and litigate such a convoluted fact-dependent provision.

Further, the federal-state UI program *should* support the minimal additional claims that will arise from removal of the disqualification. The history, prevalence, and convolution of the labor dispute disqualification are at odds with the federal-state UI program. The primary purpose of UI is to help workers maintain household spending during job loss. This, in turn, keeps dollars flowing into the economy to limit cascading effects of unemployment and to provide economic stability. This stability is needed regardless of whether unemployment is caused by a permanent plant closure, a seasonal layoff, or a strike to contest employment conditions. In our interdependent economy, disqualifying a worker unemployed due to a labor dispute not only deprives that worker of just compensation, but it harms all of the businesses and governments that rely on that worker's earnings. And targeting that deprivation to workers who engage in or are even tangentially impacted by labor disputes contravenes the NLRA's protection of workers engaging in collective bargaining and related concerted activities. Thus, a broad disqualification of workers who otherwise would qualify for UI is antithetical to even the original limited vision of UI, let alone the more robust program that now exists.

Solution: The Labor Dispute Disqualification Must Go

> "What, then, is the solution? We urge a simple and direct one: the labor dispute disqualification clauses should be repealed."[151]

Such was the conclusion of two scholars in 1940, a mere five years after the SSA became law. While many components of the ninety-year-old federal-state UI system have held up to time and scrutiny, the labor dispute disqualification is a relic that was deemed by many to be antithetical to the purpose of UI from the start. CES anticipated that amendments to its work would be necessary. In its 1934 report to President Roosevelt, CES cautioned: "The plan of unemployment compensation, we suggest, is frankly experimental. We anticipate that it may require numerous changes with experience, and, we believe, is so set up that these changes can be made through subsequent legislation as deemed necessary."[152] Here, subsequent legislation is necessary.

- State lawmakers can and should remove this overly broad, convoluted, and harmful disqualification provision from their laws. Helpful resources include:
    - NELP: Unemployment Insurance for Striking Workers
    - EPI: Unemployment Insurance for Striking Workers: A Low-Cost Policy That's Good for Workers and State Economies
- Likewise, federal lawmakers should continue efforts to ban or at least limit the disqualification.
    - Support legislation like the Empowering Striking Workers Act.
    - Oppose bills like the "Securing Help for Involuntary Employment Loss and Displacement" (SHIELD) Act, which would federalize the disqualification.
        - See NELP's Fact Sheet about the bill here.

UI is for workers, including those who strike, or are directly interested in the dispute, or just so happen to be in the same grade or class (whatever that happens to mean in a given state) as those directly interested in the dispute. If our interdependent economy is to become a good-jobs economy, all workers should be entitled to UI, and no workers should be disqualified without good reason. Directly fighting for better working conditions or being a co-worker or fellow union member of a worker who does so is no good reason to deny workers and economies the benefits of UI.

About NELP

Founded in 1969, the National Employment Law Project (NELP) is a nonprofit advocacy organization dedicated to building a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. NELP is the leading national nonprofit working at the federal, state, and local levels to create a good-jobs economy. Learn more at www.nelp.org.

Endnotes

[1] As is discussed *infra*, few state UI laws expressly define the term "labor dispute." However, the National Labor Relations Act defines "labor dispute" as "any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." 29 U.S.C.A. § 152. *Black's Law Dictionary* defines "labor dispute" as "A controversy between an employer and its employees concerning the terms or conditions of employment, or concerning the association or

representation of those who negotiate or seek to negotiate the terms or conditions of employment." Labor Dispute, Black's Law Dictionary (10th ed. 2014). Generally, strikes and lockouts are the most common dispute activities that arise in the context of the UI labor dispute disqualification laws. States may define these terms differently, as is discussed *infra*.

[2] *Princess House, Inc. v. Dep't of Indus., Lab. & Human. Rels. Of State*, 330 N.W.2d 169, 177 (1983).

[3] Calculated by dividing the number of worker engaged in strikes or lockouts (293,500), *Id.,* by the total labor force size as of August 2024 (168,496,000), *Employment Situation Summary Table A. Household Data, Seasonally Adjusted* U.S. Bureau Lab. Stat. (Sept. 5, 2025), https://www.bls.gov/news.release/empsit.a.htm.

[4] 63 A.L.R.3d 88 § 1.

[5] Jerre S. Williams, *The Labor Dispute Disqualification – A Primer and Some Problems* 8 VAND. L.REV. 338, 375 (1955).

[6] 63 A.L.R.3d 88 § 1.

[7] *Annese v. Bd. of Rev. of Dept. of Empl. Sec.,* 249 A.2d 46, 48 (R.I. 1969).

[8] *Great Depression Facts* FDR PRESIDENTIAL LIBRARY, https://www.fdrlibrary.org/great-depression-facts (last visited Oct. 31, 2025).

[9] Chistopher Klein, *Last Hired, First Fired: How the Great Depression Affected African Americans* HISTORY (May 28, 2025), https://www.history.com/articles/last-hired-first-fired-how-the-great-depression-affected-african-americans.

[10] *Hoovervilles* HISTORY (Aug. 26, 2025), https://www.history.com/articles/hoovervilles.

[11] *Id.*

[12] *Industrial Revolution* HISTORY (MAY 27, 2025), https://www.history.com/articles/industrial-revolution.

[13] David Montgomery, *Labor in the Industrial Era* U.S. Dep't of Labor, https://www.dol.gov/general/aboutdol/history/chapter3.

[14] *Labor Movement* HISTORY (MAY 28, 2025), https://www.history.com/articles/labor.

[15] *Circular Flow Model: Definition and Calculation* Investopedia (May 27, 2025), https://www.investopedia.com/terms/circular-flow-of-income.asp.

[16] 42 U.S.C. §§ 501-506.

[17] President Franklin D. Roosevelt, *Message to Congress on the Objectives and Accomplishments of the Administration* (June 8, 1934), https://www.presidency.ucsb.edu/documents/message-congress-the-objectives-and-accomplishments-the-administration.

[18] 29 U.S.C.A. § 151.

[19] *Id.*

[20] 42 U.S.C. 503; 26 U.S.C. § 3301, et seq.

[21] "(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;" Originally in Title IX, section 903 of the Social Security Act, this section later became part of the Federal Unemployment Tax Act (FUTA). 42 U.S.C. § 1103.

[22] *The Committee on Economic Security* SSA, https://www.ssa.gov/history/ces.html.

[23] Comm. Econ. Sec., *Report of the Committee on Economic Security* (Jan. 1935), https://www.ssa.gov/history/reports/ces/ces5.html (hereinafter CES Report).

[24] *Works Progress Administration (WPA)* (MAY 28, 2025), https://www.history.com/articles/works-progress-administration.

[25] *Id.*

[26] Mary E. O'Connell, *On the Fringe: Rethinking the Link Between Wages and Benefits*, 67 TUL. L. REV. 1421, 1431 (1993).

[27] CES Report, *supra* note 23.

[28] Comm. Econ. Sec., *Social Security in America* 107 (1937), https://www.ssa.gov/history/reports/ces/cesbook.html (hereinafter CES Book).

[29] CES recognized that the program would "not directly benefit those now unemployed until they are reabsorbed in industry." CES Report, *supra* note 23. Further, CES recommended against the extended benefits available in some European systems for workers who were unable to find suitable work during the benefit period. *Id.* "[W]e recommend they should be given, instead of an extended benefit in cash, a work benefit--an opportunity to support themselves and their families at work provided by the Government. *Id.*

[30] CES Report, *supra* note 23.
[31] CES Book, *supra* note 28, at 107-08.
[32] Ava Kofman & Hannah Fresques, *Black Workers are More Likely to be Unemployed but Less Likely to Get Unemployment Benefits* PROPUBLICA (Aug. 24, 2020, 5:00AM), https://www.propublica.org/article/black-workers-are-more-likely-to-be-unemployed-but-less-likely-to-get-unemployment-benefits.
[33] *Economic Security Act: Hearings Before the Committee on Finance, Seventy-Fourth Congress First Session, on S. 1130 A Bill to Alleviate the hazards of Old Age, Unemployments, Illness, and Dependency, to Establish a Social Insurance Board in the Department of Labor, To Raise Revenue, and for Other Purposes* 591 (1935), https://www.ssa.gov/history/pdf/s35witтePart7.pdf (hereinafter CES Model Bill).
[34] *Id.,* at 601, 621-22.
[35] CES Book, *supra* note 28, at 27.
[36] *Id.* at 45.
[37] *Id.* at 33.
[38] *Id.* at 125.
[39] *Id.* at 106 n.3.
[40] *Social Security Board* SSA, https://www.ssa.gov/history/boardmembers.html.
[41] Soc. Sec. Board, *Draft Bills for State Unemployment Compensation* 20-23, 96-99 (1937) (hereinafter Draft Bills).
[42] "This draft is merely suggestive and is intended to present some of the various alternatives that may be considered in the drafting of the State compensation acts. Therefore, it cannot be properly termed a 'model' bill or even a 'recommended' bill. This is keeping with the policy of the Social Security Board of recognizing that it is the final responsibility and the right of each State to determine for itself just what type of legislation it desires and how it shall be drafted." *Id.,* at 1, 77.
[43] Milton I. Shadur, *Unemployment Benefits and the "Labor Dispute" Disqualification,* 17 U. CHI. L. REV. 294, 294-95 (1950).
[44] *Id.*
[45] Va. Employment Comm'n Decision # 3184-C (Jan. 28, 1958), https://www.vec.virginia.gov/vecportal/unins/precedent/pdf/Labor-Section35/35-3184-C.pdf.
[46] 29 U.S.C.A. § 152.
[47] Ala. Code § 25-4-78 (1).
[48] N.D. Cent. Code Ann. § 52-06-02 (4).
[49] S.B. 916, 83rd Leg. Assemb., Reg. Sess. (Or. 2025).
[50] O.R.S. 657.010 (12) (Effective Jan. 1, 2026).
[51] O.R.S. 657.010 (13) (Effective Jan. 1, 2026).
[52] O.R.S. 657.200 (1) (Effective Jan. 1, 2026).
[53] O.R.S. 657.010 (16) (Effective Jan. 1, 2026).
[54] La. Stat. Ann. § 23:1601 (4).
[55] La. Stat. Ann. § 23:900 (1).
[56] *See John Morrell & Co. v. California Unemployment Ins. Appeals Bd*., 254 Cal. App. 2d 455 (Ct. App. 1967).
[57] *Brown v. Texas Empl. Comm'n,* 540 S.W.2d 758 (Tex. Civ. App.), writ refused NRE (Dec. 15, 1976).
[58] The sixteen states are: Arkansas, Ark. Code Ann. § 11-10-508 (a); Kentucky, Ky. Rev. Stat. Ann. § 341.360 (1)(a); Maryland, Md. Lab. & Empl. Code Ann. § 8-1004 (a)(1); Michigan, Mich. Comp. Laws Ann. § 421.29 (8)(a)(2); Minnesota, Minn. Stat. Ann. § 268.085 Subd. 13b. (c)(2); Montana, Mont. Code Ann. § 39-51-2305 (1); New Hampshire, N.H. Rev. Stat. Ann. § 282-A:36 (II)(a); New York, N.Y. Lab. Law § 592 (1)(a); Ohio, Ohio Rev. Code Ann. § 4141.29 (D)(1)(a); Oklahoma, Okla. Stat. Ann. tit. 40, § 2-410 (2)(c); Oregon (through 2025), O.R.S. 657.200 (3)(a); Pennsylvania, Pa. Stat. Ann. tit. 43, § 802 (d); South Dakota, S.D. Codified Laws § 61-6-15 (3); Tennessee, Tenn. Code Ann. § 50-7-303 (a)(4)(A); Washington, D.C., D.C. Code Ann. § 51-110 (f); and Wisconsin Wis. Stat. Ann. § 108.04 (10)(a).
[59] The fifteen states are: Arizona, Ariz. Rev. Stat. Ann. § 23-777 (B); Colorado, Colo. Rev. Stat. Ann. § 8-73-109; Connecticut, Conn. Gen. Stat. Ann. § 31-236 (a)(3)(C); Delaware, Del. Code Ann. tit. 19, § 3314 (4); Florida, Fla. Stat. Ann. § 443.101 (4)(b); Georgia, Ga. Code Ann. § 34-8-194 (4)(C); Illinois, 820 Ill. Comp. Stat. Ann. 405/604; Louisiana, La. Stat. Ann. § 23:1601 (4);*see also* La. Stat. Ann. § 23:900 (2); Maine, Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(D)(E); Massachusetts, Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(4); Mississippi, Miss. Code Ann. § 71-5-513

(A)(4)(b); New Jersey, N.J. Stat. Ann. § 43:21-5 (d)(2); Rhode Island, 28 R.I. Gen. Laws Ann. § 28-44-16 (b); Vermont, Vt. Stat. Ann. tit. 21, § 1344 (a)(4)(B); and West Virginia W. Va. Code Ann. § 21A-6-3 (4)(b)-(c).

[60] Some variability in state laws exceeds categorization. For example, Connecticut law contains a robust definition of lockout which, in part, includes when an employer "makes an announcement that work will be available after the expiration of the existing contract only under terms and conditions that are less favorable to the employees than those current immediately prior to such announcement." Conn. Gen. Stat. Ann. § 31-236 (a)(3)(C)(ii). Mississippi only excepts workers unemployed due to "an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert." Miss. Code Ann. § 71-5-513 (A)(4)(a).

[61] Fla. Stat. Ann. § 443.101 (4)(b).

[62] Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(4).

[63] "'Defensive lockout' means a lockout: Reasonably imposed by an employer to protect materials, property, or operations; or Where a union or two or more employees that are represented by the union take economic action against an employer and that action causes the employer to lock out; or By any member of a multiemployer bargaining unit or an employer engaged in coordinated bargaining with one or more other employers if such lockout is initiated because of a strike or labor dispute involving any member of such multiemployer bargaining unit or coordinated bargaining group."[63] Colo. Rev. Stat. Ann. § 8-73-109 (1)(a)(II).

[64] Colorado defines "offensive lockouts" as anything other than a "defensive lockout." Colo. Rev. Stat. Ann. § 8-73-109 (1)(a)(V).

[65] Colo. Rev. Stat. Ann. § 8-73-109 (1)(c).

[66] Vt. Stat. Ann. tit. 21, § 1344 (a)(4)(B).

[67] Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(E).

[68] Conn. Gen. Stat. Ann. § 31-236 (a)(3)(C).

[69] Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(4).

[70] States with these exceptions include: Alaska, Alaska Stat. Ann. § 23.20.383 (b)(2); Arizona, Ariz. Rev. Stat. Ann. § 23-777 (B); Maine, Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(D); Minnesota, Minn. Stat. Ann. § 268.085 Subd. 13b. (c) (1); Missouri, Mo. Rev. Stat. Ann. § 288.040 (6)(b)(2); Montana, Mont. Code Ann. § 39-51-2305 (3); New Hampshire, N.H. Rev. Stat. Ann. § 282-A:36 (II)(a); New Jersey, N.J. Stat. Ann. § 43:21-5 (d)(3); Oregon (until 2026), O.R.S. 657.176 (5); and Utah, Utah Code Ann. § 35A-4-405 (4).

[71] Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(D).

[72] Minn. Stat. Ann. § 268.085 Subd. 13b. (c)(1).

[73] Minn. Stat. Ann. § 268.085 Subd. 13b. (c)(1). Maine also allows good faith quits due to an "abnormally dangerous condition for work at the place of employment." Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(D).

[74] Mo. Ann. Stat. § 288.040 (6)(b)(2).

[75] Daniel Perez, *Unemployment Insurance for Striking Workers* 3-4 EPI (Feb. 3, 2025), https://www.epi.org/publication/ui-striking-workers/.

[76] Nick Garber, *State Boosts Benefits for Striking Workers, Helping Union Ahead of Hotel Battle* Crain's New York Business (May 20, 2025), https://www.crainsnewyork.com/politics-policy/ny-boosts-benefits-striking-workers-helping-hotel-union-ahead-contract-battle.

[77] NJ ST 43:21-5 (d)(ii)(4).

[78] O.R.S. 657.200 (1) (Effective Jan. 1, 2026).

[79] O.R.S. 657.200 (2)(a) (Effective Jan. 1, 2026).

[80] O.R.S. 657.200 (2)(b) (Effective Jan. 1, 2026).

[81] S.B. 5041, 69th Leg., Reg. Sess. (Wa. 2025).

[82] *Id.*

[83] *See* Alaska Stat. Ann. § 23.20.383 (b)(1); Ariz. Rev. Stat. Ann. § 23-777 (A); Ark. Code Ann. § 11-10-508 (b); Colo. Rev. Stat. Ann. § 8-73-109 (1)(d)(2); Conn. Gen. Stat. Ann. § 31-236 (a)(3); Fla. Stat. Ann. § 443.101 (4)(a); Ga. Code Ann. § 34-8-194 (4); Haw. Rev. Stat. Ann. § 383-30 (4); Idaho Code Ann. § 72-1366 (9); 820 Ill. Comp. Stat. Ann. 405/604; Ind. Code Ann. § 22-4-15-3 (b); Iowa Code Ann. § 96.5 (2)(a)(1); Kan. Stat. Ann. § 44-706 (d); Me. Rev. Stat. Ann. tit. 26, § 1193 (4); Md. Lab. & Empl. Code Ann. § 8-1004 (b); Mass. Gen. Laws Ann. ch. 151A, § 25 (b); Miss. Code Ann. § 71-5-513 (4); Mo. Rev. Stat. Ann. § 288.040 (6)(1); Mont. Code Ann. § 39-51-2305 (1); Neb. Rev. Stat. Ann. § 48-628.09 (1); N.M. Stat. Ann. § 51-1-7 (c); N.H. Rev. Stat. Ann. § 282-A:36 (I); N.J. Stat. Ann. § 43:21-5 (d); N.M. Stat. Ann. § 51-1-7 (C); N.D. Cent. Code Ann. § 52-06-02 (4); Okla. Stat. Ann. tit. 40, § 2-410 (2); O.R.S. §

657.200 (3)(b); Pa. Stat. Ann. tit. 43, § 802 (d); 29 L.P.R.A. § 704 (6); 28 R.I. Gen. Laws Ann. § 28-44-16 (a); S.C. Code Ann. § 41-35-120 (6); S.D. Codified Laws § 61-6-15; Tex. Labor Code Ann. § 207.048 (b); Va. Code §60.2-612(A)(2); 24 V.I.C. § 304 (b)(6); Wash. Rev. Code Ann. § 50.20.090 (2 (Effective until Jan. 1, 2026); D.C. Code Ann. § 51-110.

[84] Soc. Sec. Board, *Draft Bills for State Unemployment Compensation* 20-23, 96-99 (1937) (hereinafter Draft Bills).

[85] Ariz. Rev. Stat. Ann. § 23-777 (A); Ga. Code Ann. § 34-8-194 (4); Me. Rev. Stat. Ann. tit. 26, § 1193 (4); Okla. Stat. Ann. tit. 40, § 2-410 (2).

[86] *See* Alaska Stat. Ann. § 23.20.383 (b)(1); Ark. Code Ann. § 11-10-508 (b); Colo. Rev. Stat. Ann. § 8-73-109 (1)(d)(2); Conn. Gen. Stat. Ann. § 31-236 (a)(3); Fla. Stat. Ann. § 443.101 (4)(a); Haw. Rev. Stat. Ann. § 383-30 (4); Idaho Code Ann. § 72-1366 (9); 820 Ill. Comp. Stat. Ann. 405/604; Ind. Code Ann. § 22-4-15-3 (b); Iowa Code Ann. § 96.5 (2)(a)(1); Kan. Stat. Ann. § 44-706 (d); Md. Lab. & Empl. Code Ann. § 8-1004 (b); Mass. Gen. Laws Ann. ch. 151A, § 25 (b); Miss. Code Ann. § 71-5-513 (4); Mo. Rev. Stat. Ann. § 288.040 (6)(1); Mont. Code Ann. § 39-51-2305 (1); Neb. Rev. Stat. Ann. § 48-628.09 (1); N.M. Stat. Ann. § 51-1-7 (c); N.H. Rev. Stat. Ann. § 282-A:36 (I); N.J. Stat. Ann. § 43:21-5 (d); N.M. Stat. Ann. § 51-1-7 (C); N.D. Cent. Code Ann. § 52-06-02 (4); O.R.S. § 657.200 (3)(b); Pa. Stat. Ann. tit. 43, § 802 (d); 29 L.P.R.A. § 704 (6); 28 R.I. Gen. Laws Ann. § 28-44-16 (a); S.C. Code Ann. § 41-35-120 (6); S.D. Codified Laws § 61-6-15; Tex. Labor Code Ann. § 207.048 (b); Va. Code §60.2-612(A)(2); 24 V.I.C. § 304 (b)(6); Wash. Rev. Code Ann. § 50.20.090 (2 (Effective until Jan. 1, 2026); D.C. Code Ann. § 51-110.

[87] 62 A.L.R.3d 314.

[88] *Id.*

[89] *Poggemoeller v. Indus. Comm'n, Div. of Empl. Sec.,* 371 S.W.2d 488 (Mo. App. 1963).

[90] *Id.,* at 504-505.

[91] *Id.,* at 504.

[92] *Id.*

[93] Colo. Rev. Stat. Ann. § 8-73-109 (2).

[94] Kan. Stat. Ann. § 44-706 (d)(2).

[95] Tex. Labor Code Ann. § 207.048 (c).

[96] 820 Ill. Comp. Stat. Ann. 405/604.

[97] Tex. Labor Code Ann. § 207.048 (d)(1)(A).

[98] Mich. Comp. Laws Ann. § 421.29 (8)(c)(3).

[99] Of the states listed in note 83, *supra*, only eleven states exclude the term “financing”: Alaska, Alaska Stat. Ann. § 23.20.383 (b)(1); Arkanasas, Ark. Code Ann. § 11-10-508 (b); Hawaii, Haw. Rev. Stat. Ann. § 383-30 (4); Mississippi, Miss. Code Ann. § 71-5-513 (4); New Mexico, N.M. Stat. Ann. § 51-1-7 (c); North Dakota, N.D. Cent. Code Ann. § 52-06-02 (4); Oklahoma, Okla. Stat. Ann. tit. 40, § 2-410 (2); Pennsylvania, Pa. Stat. Ann. tit. 43, § 802 (d); Puerto Rico, 29 L.P.R.A. § 704 (6); Virgin Islands, 24 V.I.C. § 304 (b)(6); and District of Columbia, D.C. Code Ann. § 51-110.

[100] F.S.A. § 443.101 (4)(a)(1).

[101] Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(3).

[102] Va. Code §60.2-612(2)(b).

[103] Mich. Comp. Laws Ann. § 421.29 (8)(c).

[104] *Baker v. Gen. Motors Corp.,* 297 N.W.2d 387 (Mich. 1980).

[105] Mich. Comp. Laws Ann. § 421.29 (8)(c).

[106] *Baker*, *supra* note 104, at 389.

[107] *Id.,* at 390.

[108] *Id.,* at 389.

[109] *Id.,* at 398-99

[110] *Id.,* at 399.

[111] *Id.*

[112] *Baker v. Gen. Motors Corp.,* 363 N.W.2d 602, 639 (Mich. 1984). Plaintiffs later appealed to the U.S. Supreme Court on the issue of whether Michigan’s financing provision violated the NLRA. *Baker v. General Motors Corp.,* 478 U.S. 621 (1986). The Court concluded the provision was not preempted by the NLRA. *Id.,* at 638.

[113] 62 A.L.R.3d 314.

[114] Mich. Comp. Laws Ann. § 421.29 (8)(c).

[115] *Brobston v. Emp. Sec. Comm'n*, 385 P.2d 239, 243 (Ariz. 1963); *Burak v American Smelting & Refining Co*., 302 P2d 182 (Colo. 1956); *Lanyon v. Adm'r, Unemployment Comp. Act*, 89 A.2d 558, 565 (Conn. 1952); *Huiet v. Boyd*, 13 S.E.2d 863, 867 (Ga. App. 1941); *Ankrum v. Empl. Sec. Agency*, 361 P.2d 795, 802 (Idaho 1961); *Kemiel v. Rev. Bd., Ind. Emp. Sec. Div*., 72 N.E.2d 238 (Ind. App. 1947); *Senegal v. Lake Charles Stevedores, Inc.*, 197 So. 2d 648 (La. 1967); *Gerber v. Bd. of Rev., Div. of Emp. Sec., New Jersey Dep't of Lab. & Indus.,* 120 A.2d 436, 439 (N.J. 1956); *Martineau v. Dir. of Div. of Emp. Sec.,* 106 N.E.2d 420, 424 (Mass. 1952); *Nobes v. Michigan Unemployment Comp. Comm'n*, 21 N.W.2d 820 (Mich. 1946); *Poggemoeller v. Indus. Comm'n, Div. of Emp. Sec.,* 371 S.W.2d 488 (Mo. App. 1963); Va. Employment Comm'n, *supra* note 45; *Lepper v. Unemployment Comp. Bd. of Rev.,* 146 A.2d 337 (Pa. Super. 1958); *Annese v. Bd. of Rev. of Dep't of Emp. Sec.*, 249 A.2d 46, 47–48 (R.I. 1969).
[116] *Huiet v. Boyd*, 13 S.E.2d 863 (Ga. App. 1941).
[117] *Id.,* at 867.
[118] *Id.*
[119] *Foley v. Adams*, 257 A.2d 9 (N.H. 1969)
[120] A majority of state laws contain a variation of a provision stating, "if separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises." *See* Alaska Stat. Ann. § 23.20.383 (a); Ark. Code Ann. § 11-10-508 (c); Ariz. Rev. Stat. Ann. § 23-777 (A); Colo. Rev. Stat. Ann. § 8-73-109 (3); Fla. Stat. Ann. § 443.101 (4)(a)(2); Ga. Code Ann. § 34-8-194 (4); Haw. Rev. Stat. Ann. § 383-30 (4)(B); 820 Ill. Comp. Stat. Ann. 405/604; Ind. Code Ann. § 22-4-15-3 (c); Iowa Code Ann. § 96.5 (4)(b); Kan. Stat. Ann. § 44-706 (d)(2); Md. Lab. & Empl. Code Ann. § 8-1004 (a)(2); La. Stat. Ann. § 23:900 (4); Me. Rev. Stat. Ann. tit. 26, § 1193 (4); Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(2); Miss. Code Ann. § 71-5-513 (A)(4); Mo. Rev. Stat. Ann. § 288.040 (6)(1); Mont. Code Ann. § 39-51-2305 (2); Neb. Rev. Stat. Ann. § 48-628.09 (2); N.J. Stat. Ann. § 43:21-5 (d)(1); N.M. Stat. Ann. § 51-1-7 (C); Okla. Stat. Ann. tit. 40, § 2-410 (3); N.D. Cent. Code Ann. § 52-06-02 (4); 29 L.P.R.A. § 704 (6); S.C. Code Ann. § 41-35-120 (6)(b); S.D. Codified Laws § 61-6-15; Tenn. Code Ann. § 50-7-303 (a)(4)(B); Tex. Labor Code Ann. § 207.048 (e); Va. Code §60.2-612(A)(3); 24 V.I.C. § 304 (b)(6); Wash. Rev. Code Ann. § 50.20.090 (2)(b) (Effective until Jan. 1, 2026); D.C. Code Ann. § 51-110 (f)(2).
[121] 81 C.J.S. Social Security and Public Welfare § 440.
[122] Williams, *supra* note 5.
[123] Herbert A. Fierst & Marjorie Spector, *Unemployment Compensation in Labor Disputes*, 49 Yale L.J. 461, 488 (1940).
[124] *Id.*
[125] *Renne v. Unempl. Compen. Bd. of Rev.,* 453 A.2d 318 (Pa. 1982).
[126] *Id.,* at 322.
[127] *Id.*
[128] Mass. Gen. Laws Ann. ch. 151A, § 25 (b)(2).
[129] Mich. Comp. Laws Ann. § 421.29 (8)(d).
[130] Shadur, *supra* note 43, at 296.
[131] *Id.*
[132] "We must not allow this type of insurance to become a dole through the mingling of insurance and relief. It is not charity. It must be financed by [employer] contributions, not taxes." President Franklin D. Roosevelt, *Address to Advisory Council of the Committee on Economic Security on the Problems of Economic and Social Security* (November 14, 1934), https://www.ssa.gov/history/fdrstmts.html.
[133] Leonard Lesser, *Labor Disputes and Unemployment Compensation*, 55 Yale L.J. 167, 171 (1945).
[134] Shadur, *supra* note 43, at 305 n. 44.
[135] *See* notes 56, 57, 58, and 59, *supra.*
[136] Shadur, *supra* note 43, at 304.
[137] States with these exceptions include: Alaska, Alaska Stat. Ann. § 23.20.383 (b)(2); Arizona, Ariz. Rev. Stat. Ann. § 23-777 (B); Maine, Me. Rev. Stat. Ann. tit. 26, § 1193 (4)(D); Minnesota, Minn. Stat. Ann. § 268.085 Subd. 13b. (c) (1); Missouri, Mo. Rev. Stat. Ann. § 288.040 (6)(b)(2); Montana, Mont. Code Ann. § 39-51-2305 (3); New Hampshire, N.H. Rev. Stat. Ann. § 282-A:36 (II)(a); New Jersey, N.J. Stat. Ann. § 43:21-5 (d)(3); Oregon (until 2026), O.R.S. 657.176 (5); and Utah, Utah Code Ann. § 35A-4-405 (4).
[138] CES Book, *supra* note 28, at 125.

[139] Perez, *supra* note 75, at 10.
[140] U.S. Dep't of Labor, Comparison of State Laws, 2023, at 3-17 to 3-19, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/complete.pdf.
[141] *UI Replacement Rates* U.S. Dep't of Labor, https://oui.doleta.gov/unemploy/ui_replacement_rates.asp (last visited Oct. 31, 2025).
[142] Shadur, *supra* note 43, at 298.
[143] Fierst & Spector, *supra* note 123, at 465.
[144] *New York Tel. Co. v. New York State Dept. of Lab.,* 440 U.S. 519, 567 (1979).
[145] *Id.,* at 544.
[146] *Ohio Bureau of Empl. Services v. Hodory*, 431 U.S. 471, 488–89 (1977).
[147] Iyer, D. K., O'Brien, L., Han, H., and Kallas, J. (2025). Labor Action Tracker: Annual Report 2024. ILR School, Cornell University & LER School, University of Illinois, available at: https://www.ilr.cornell.edu/faculty-and-research/labor-action-tracker-2024.
[148] Calculated by dividing the number of worker engaged in strikes or lockouts (293,500), *Id.,* by the total labor force size as of August 2024 (168,496,000), *Employment Situation Summary Table A. Household Data, Seasonally Adjusted* U.S. Bureau Lab. Stat. (Sept. 5, 2025), https://www.bls.gov/news.release/empsit.a.htm.
[149] *The Insured Unemployment Rate* Fed. Res. Bank St. Louis (Dec. 14, 2023), https://fredblog.stlouisfed.org/2023/12/the-insured-unemployment-rate/.
[150] *See* Perez, *supra* note 75.
[151] Fierst & Spector, *supra* note 123, at 489.
[152] CES Report, *supra* note 23.