Unemployment Insurance/Compensation

Background

The U.S. Constitution does not recognize any right to work for pay. However, by virtue of a myriad of federal and state laws, persons who work for pay but lose their employment through no fault of their own and are unable to immediately secure other employment are generally eligible for temporary monetary assistance.

"Unemployment compensation" is generally paid to eligible persons through mandatory state programs designed to protect workers from interruption of wages or income due to loss of work. Compulsory, state-imposed unemployment insurance is generally carried at the expense of employers. Unemployment insurance shifts the burden of unemployment from the taxpayer at large to industry and business. It also alleviates the burden of financing public assistance for unemployed persons.

Program Overview

The unemployment insurance program was established under Title IX of the federal **S**OCIAL **S**ECURITY ACT OF **1935** (42 **USC** 1101). Correlative with that act is the Federal Unemployment Tax Act (FUTA) (26 USC 3301 et seq.) Under this law, each state administers a separate unemployment insurance program that must be approved by the Secretary of Labor based on federal standards (42 USC 503; 20 CFR 640.1 et seq.). Federal standards apply because the state programs are made applicable to areas normally regulated by federal law (under labor, COMMERCE, and general welfare clauses). Special federal rules apply for nonprofit organizations and governmental entities.

Under FUTA, a combination of federal and state taxes is levied upon employers. Although they are imposed as "taxes," the amounts paid are, in reality, akin to "premiums" that are paid for unemployment insurance coverage.

Proceeds from the taxes are deposited in the U.S. Treasury's Federal Unemployment Trust Fund (the Fund) and each state has a separate account in the Fund. The funds are generally invested by the Secretary of the Treasury in government SECURITIES similar to those for social security trust funds. The use of these funds for any purpose other than payment of unemployment benefits is strictly prohibited. (42 USC 1104).

The Fund itself holds revenues in three separate federal accounts:

- The Employment Security Administration Account covers federal and state administrative costs for unemployment insurance and other employment services, such as for veterans. This account also contains federal grants to states under 42 USC 1101 et seq. for UNEMPLOYMENT COMPENSATION administration.
- The Extended Unemployment Compensation Account contains the federal share of revenues which are drawn upon for extended unemployment benefits during periods of high unemployment.
- The Federal Unemployment Account advances moneys to depleted state trust funds to ensure that benefit obligations are met. These funds are repayable by the states to this account.

As long as a state maintains minimum standards required under the federal Act, it remains eligible to participate in the federal-state collaboration that provides it with access to the above funds and grants (in the form of replenishment of exhausted funds, advances, special assistance when economic crises exist, etc.). While states are not required to conform to every federal STATUTORY provision, they may not preempt federal law with respect to those areas where federal law is express. Thus, while state law generally governs eligibility requirements, amounts received, and maximum eligibility periods for benefits, these provisions must not conflict with any expressed federal provisions.

Federal Preemptive Laws

- The Railroad Unemployment Insurance Act (45 USCS 351) expressly governs unemployment compensation for workers in the railroad industry.
- The Trade Act (19 USCS 2271) provides special payments to workers unemployed or facing unemployment as a result of imported goods and products that compete in the domestic market with goods or products produced by the workers' employers. Special federal rules also apply for nonprofit organizations and governmental entities.

Federal Unemployment Tax Act (FUTA)

The FUTA tax is in the form of a payroll tax imposed upon (and paid by) employers. It is not withheld from employee wages. The amount that employers must pay is based on the amount of wages they pay to employees (excluding agricultural and domestic workers). Generally, employers are liable for FUTA taxes if one of the following applies:

- They have paid wages totaling at least $1,500 in any calendar quarter
- They have at least one employee on any given day in each of 20 calendar weeks (the 20 weeks need not be consecutive, and the "one employee" need not be the same person).

Once an employer is liable for FUTA under the above criteria, the employer must pay FUTA tax for the current calendar year as well as the next calendar year. The FUTA tax is currently at 6.2 percent, scheduled to decrease to 6.0 percent in 2008. The FUTA tax is imposed as a single flat rate on the first $7,000 of wages for each employee; no tax liability is incurred beyond the $7,000.

FUTA taxes are reported annually on Form 940, "Employer's Annual Federal Unemployment Tax Return," due every January 31 for the preceding year. On an annual basis, the Secretary of Labor reviews and certifies each state unemployment insurance program to the Secretary of the Treasury. The certification is necessary in order for employers who contribute to state unemployment funds to obtain FUTA tax credits. Employers who pay their state unemployment taxes on time are permitted to claim a credit equal to 5.4 percent of federally taxable wages, which effectively reduces the FUTA tax rate to 0.8 percent (6.2 minus 5.4).

State Unemployment Provisions

State tax rates (for the next calendar year) are proportional to the amount of benefits received in past years by employees drawing from the funds. The taxes, in the form of payroll taxes against the employer, are not deducted from employee wages. States may provide additional unemployment benefits above minimum requirements, e.g. for disabled workers or those with dependents, for which additional taxes may apply.

In order for claimants to receive unemployment insurance benefits (paid weekly), all states generally require that they not have left employment voluntarily without good cause and/or that they were not discharged from employment for "fault" (misconduct). Additionally, states generally require that claimants have met the following qualifying factors in order to receive benefits:

1. They have made a claim;
2. They have registered for work and reported to an employment office;
3. They are capable of doing work and is available to do it;
4. They have been totally or partially unemployed for the benefit week;
5. They have made reasonable and active effort to secure work for which they are qualified.

The formula used to calculate benefits varies from state to state, but some general principles and terms apply. A "base period" usually refers to the work period (consisting of four to five quarters of annual employment, i.e., there are four calendar quarters in a year) last worked by claimants. The claimants' prior work must have been "insured work," that is, work performed for an employer who paid into the unemployment insurance fund.

ALABAMA: In addition to the above qualifying criteria, Alabama requires that claimants, during the base period, have been paid wages for work equal to or exceeding one and a half times the total of wages for work paid to them in the quarter of the base period in which the total wages were the highest. Persons who have received benefits in a preceding benefit year shall not be eligible to receive benefits in a succeeding benefit year unless, after the beginning of the preceding benefit year, they have earned wages equal to at least 8 times the weekly benefit amount established for them in the preceding benefit year. See Alabama Code 25-4-77.

ALASKA: In addition to the above criteria, Alaska statutes provide that benefits are payable to individuals who have earned at least $1000 during the base period and which amount was paid over at least two of the calendar quarters of the base period. Claimants are disqualified for the first six weeks of unemployment if termination of employment was for miscon-duct. See Alaska Stat. 23.20.350-406).

ARIZONA: In addition to the above criteria, Ariz. Rev. Stat. Ann. 23-601 et seq. provides that benefits are payable for a maximum of 26 weeks and may not exceed one-third of the yearly base pay. **C**HILD SUPPORT payments are automatically deducted from benefits.

ARKANSAS: In addition to the above criteria, Arkansas statutes provide that claimants must have earned wages of at least 27 times their weekly benefit during at least two quarters of the base period. The unemployment must not be the result of a labor dispute. Claimants are eligible for benefits in the amount of 1/26th of total wages paid during one quarter of the base period in which highest wages were paid. Code Ann. 11-10-100 et seq.

CALIFORNIA: In addition to the above qualifying criteria, California's Unemployment Insurance Code also provides for benefits to persons unable to work because of nonindustrial DISABILITY resulting from illness or injury ("Unemployment Compensation Disability" or UCD).

COLORADO: In addition to the above criteria, Colorado's Employment Security Act (8-70-101) limits the maximum benefit period to 26 weeks. Claimant are ineligible if unemployment was due to a strike in which the claimants had direct interest. Illegal ALIENS are not eligible for benefits. Severance pay may reduce or postpone benefits. Full benefits are available where an employer disregards its own discharge policy (677 P.2d 447).

CONNECTICUT: In addition to the above criteria, Connecticut has a one week "waiting" period. Claimants are disqualified for benefits if they were discharged for committing LARCENY. All employees may be eligible for benefits if they voluntarily quits due to DOMESTIC VIOLENCE, but employers' accounts are not charged for the claim See Section 31-222. et seq.

DELAWARE: In addition to the above criteria, Del. Code Ann, Title 19.3300 et seq. provides that claimants must have earned wages equal to at least 36 times their weekly benefit amount during the base period. Claimants are disqualified for voluntary termination, discharge for good cause, refusal to accept work for which they are reasonably qualified, for strikes, for illegal alien status, for temporary breaks in athletic employment, and INCARCERATION.

DISTRICT OF COLUMBIA: In addition to the above criteria, District of Columbia requires minimum earnings during base period of at least $1,300 in one quarter or $1,950 in two quarters and total wages during base period equal to one and a half times the highest wages in any quarter. See Code Section 46-108. Pregnancy creates no presumption of inability to work. Benefits are denied to illegal aliens and those who fail to attend training or retraining programs.

FLORIDA: In addition to the above criteria, Florida provides for benefits equal to 1/26th of total wages paid during quarter in which highest wages were paid during base period. See Fla. Stat. Ann, Section 443.001 et seq. Since 2000, Florida has been paying an extra five percent of weekly benefit for the first eight weeks. Automatic child support payments are deducted. Employers who must lay off workers may qualify for a state program which permits them to shorten work weeks for employees, who will then qualify for benefits for the time they are not working (443.111(6)).

GEORGIA: No information available. See generally, Georgia Statutes 34-8 et seq.

HAWAII: In addition to the above criteria, Hawaii requires claimants to have earned wages at least five times their weekly benefit amount. Maximum benefit is 2/3 of statewide average weekly wage. Benefits are limited to 26 weeks but may be extended 13 weeks by the state governor. Hawaii has some unusual exemptions; for example, companies that only employ family members who own at least 50 percent of the company are exempt from the statutes. One week waiting period occurs before claimants receive benefits. See Hawaii Rev. Stat. 383-7 et seq.

IDAHO: Follows general requirements; no unusual provisions. See Idaho Code 72-1316 et seq.

ILLINOIS: In addition to the above criteria, Illinois requires that claimants have earned at least $1,600 in wages, of which at least $440 of wages paid during base period must have been paid outside of the calendar quarter in which wages were the highest. Illinois adjusts the amount of benefits according to the number of dependents wage-earners have. (820-405/401 to 405/403). 805 and 820 Ill. Comp. Stat. Ann.

INDIANA: In addition to the above criteria, Indiana law provides that persons retired under compulsory provisions of a COLLECTIVE BARGAINING unit are nonetheless eligible for benefits if otherwise qualified (IC22-2-14-1) See Ind. Code Ann. 22-4-12-2 for benefit rates.

IOWA: No unusual requirements are in effect in addition to the above criteria.

KANSAS: No unusual requirements are in effect in addition to the above criteria. See Kansas Stat. Ann.44-706 for benefits rates.

KENTUCKY: In addition to the above criteria, there is a one week waiting period under Kentucky law. Benefits may not exceed the lesser of 26 times the weekly benefit or one-third of base period wages. See KRS 341.350 et seq.

LOUISIANA: In addition to the above criteria, Louisiana requires a one-week waiting period and earned wages equaling at least one and a half times the wages paid in the calendar quarter in which wages were the highest. Disqualifications include receiving payments under a private PENSION or retirement plan. (Title 23, Section 1600 et seq.)

MAINE: In addition to the above criteria, Maine has a one week waiting period and disqualifies claimants who are receiving pensions, terminal pay, vacation pay, or holiday pay. Claimants are not disqualified if they voluntarily leave work because of illness, spousal transfer, acceptance of another job that failed to materialize, or domestic abuse, if claimants have reasonably attempted to preserve employment. (Title 26, Sections 1191-1193.)

MARYLAND: In addition to the above criteria, Maryland requires that claimants have been paid wages for two calendar quarters that total one and a half times the upper limit of division of highest quarter wages. Additional benefits for up to five dependent children under 16 years of age. Benefits may be extended during periods of high state or national unemployment. See Md. Code Ann., 8-800 to 8-1110.

MASSACHUSETTS: In addition to the above criteria, Massachusetts requires that claimants have earned a minimum of $2000 during base period. The maximum benefits are for 30 weeks or 36 percent of total wages for preceding year, whichever is less. See Mass. Gen. Laws, Ch. 151A.

MICHIGAN: In addition to the above criteria, Michigan law provides that weekly benefits shall be 4.1 percent of claimants' wages paid in calendar quarter in which claimants earned their highest wages, plus $6 per dependent, up to five. Maximum benefit is $300 weekly. See MCL 421.20 et seq. Child support is withheld.

MINNESOTA: In addition to the above criteria, Minn. Stat. Ann. 268.01 et seq. provides that weekly benefit amount is the higher of (1) 50 percent of average weekly wage during the base period up to a maximum of 66 2/3 percent of state's average weekly wage; or (2) 50 percent of average wage during the higher quarter up to a maximum of 50 percent of the state's average weekly wage, whichever is higher. Generally, 26 weeks is the benefit maximum.

MISSISSIPPI: In addition to the above criteria, Mississippi requires that a claimant have earned wages equal to 40 times his/her weekly benefit during two quarters of the base period. Weekly benefit amounts are 1/26th of the total wages for highest quarter of base period, but not more than $165 per week. If weekly benefit computes to less than minimum, individual is not entitled to benefits. See Miss. Code Ann. 71-5-501 et seq.

MISSOURI: In addition to the above criteria, Missouri requires earned wages of at least $1000 in at least one quarter of base period and a one week waiting period. Since 2001, maximum weekly benefit is $250. See Vernon's Ann. Mo. Stat. 288.030 et seq.

MONTANA: In addition to the above criteria, Montana Code Ann. 39-51-2101 et seq. provides that claimants may be required to participate in reemployment service. Maximum benefit is 60 percent of average weekly wage. Maximum benefit weeks depends upon amount of earnings during base period.

NEBRASKA: In addition to the above criteria, Nebraska law establishes an "unemployment benefit" table. Since 1999, individuals must have earned wages of not less than $1600 during two quarters of base period ($800 each quarter) and must have worked. Child is support automatically withheld. See Neb. Rev. Stat. 48.601 et seq.

NEVADA: In addition to the above criteria, Nevada law provides that weekly benefits are equal to 1/25th of total wages during highest wage quarter, with a maximum of 50 percent of state's average weekly wage. See Nev. Rev. Stat. Ann. 612.340 et seq.

NEW HAMPSHIRE: No unusual requirements are in effect in addition to the above criteria. See N.H Stat. Ann. 282-A, Section 31.

NEW JERSEY: In addition to the above criteria, New Jersey statutes permit benefits if claimants have worked at least 20 weeks or earned at least 12 times the state average weekly wage or 1,000 times the

MINIMUM WAGE of the year prior to benefits. (These rules are different for agricultural workers.) Maximum benefits of 26 weeks. See N.J. Stat. Ann. Title 43, Ch. 21.

NEW MEXICO: In addition to the above criteria, weekly benefit is 1/26th of wages in highest quarter. Maximum benefit is for the lesser of 26 times weekly benefit or 60 percent of base period wages. See N.M. Stat. Ann. 51-1-1.

NEW YORK: In addition to the above criteria, New York permits the accumulation of days for the purpose of benefits, with benefit rate based upon claimants' average weekly wages. The maximum weekly benefit is $365. Benefits are available for victims of domestic violence who have left employment for good cause. See N.Y. Labor Laws Section 590 et seq.

NORTH CAROLINA: In addition to the above criteria, North Carolina has substantial PENALTY waiting periods for leaving employment voluntarily or being fired for substantial fault. See N.C. Gen. Stat. 96-01 et seq.

NORTH DAKOTA: In addition to the above criteria, North Dakota has no exceptional or unusual requirements. See, generally, N.D. Cent. Code 52-01-01 et seq.

OHIO: In addition to the above criteria, Ohio has no exceptional or unusual requirements. See, generally, Ohio Revised Code (ORC) 4141.01 et seq.

OKLAHOMA: In addition to the above criteria, Oklahoma requires that claimants have earned at least minimum wage during base period. See Okla. Stat. Ann. Title 40-2-201 et seq.

OREGON: In addition to the above criteria, Oregon requires claimants to have worked for subject employers at least 18 weeks with wages of $1,000. Claimants must have earned six times the weekly benefit amount in base period. Benefit amounts are based on state average weekly covered wages. See Or. Rev. Stat. 657.101 et seq.

PENNSYLVANIA: In addition to the above criteria, Pennsylvania law requires that claimants have earned not less than 20 percent of total base year wages in one or more quarters of the base period. Benefits are based on the greater of either an amount based on highest quarterly wage or 50 percent of full time weekly wage. Benefits are reduced for retirement pensions, severance pay, etc. See Pa. Cons. Stat. Ann. 43.751 et seq.

RHODE ISLAND: In addition to the above criteria, no unusual requirements are in effect. Benefits are available in addition to tuition benefits. See R.I. Gen. Laws 28-42 to 28-48.

SOUTH CAROLINA: In addition to the above criteria, South Carolina requires earned wages in the first four of previous five calendar quarters exceeding 1 1/2 times total of wages paid in highest earnings quarter. See S.C. Code Ann. 41-27-10 to 41-41-50.

SOUTH DAKOTA: In addition to the above criteria, South Dakota requires base period wages (in other than highest quarter) equal to or exceeding 20 times the weekly benefit amount. Weekly benefits are equal to 1/26th of wages paid in quarter of highest earnings. Special formula and waiting period exist for persons leaving employment voluntarily. See S.D. Codified Laws Ann. 61-6-1 et seq.

TENNESSEE: In addition to the above criteria, Tennessee has no unusual requirements. Maximum benefit as of 1999 was $255 weekly. See Tenn. Code Ann. 50-7-101 et seq.

TEXAS: In addition to the above criteria, Texas has a lengthy list of exclusions based on the nature of employment (e.g., insurance agents or solicitors if earnings are solely by commission, newscarriers under age 18, etc.) See Tex. Labor Code, 207.001 et seq.

UTAH: In addition to the above criteria, Utah requires that claimants have earned wages in preceding benefit year equal to at least six times the weekly benefit amount. Weekly benefits are reduced by 100 percent of retirement income attributable to that week. See Utah Code Ann. 35A-4-401 et seq.

VERMONT: In addition to the above criteria, Vermont law provides that claimants be paid one half of average weekly wages, based on 20 weeks of highest earnings during base period. See Vt. Stat. Ann., 21-1330 et seq.

VIRGINIA: In addition to the above criteria, Virginia law requires that claimants have earned wages during the highest two quarters of the base period an amount exceeding that specified in a table contained in Va. Code Ann. 60.2-602.

WASHINGTON: In addition to the above criteria, Washington law provides that weekly benefits are payable in an amount equal to 1/25th of the wages of the two highest average quarters. Maximum benefit is 55 percent of state average weekly wage for prior calendar year preceding June 30. Maximum benefits are lesser of 1/3 of base year earnings or 30 times weekly benefit. See Wash. Rev. Code Ann.
50.01 et seq.

WEST VIRGINIA: In addition to the above criteria, West Virginia requires that claimants have earned at least $2,200 during more than one quarter of base period. Maximum benefit is 66 2/3 percent of state average weekly wage. Alabama requires See W. Va. Code art. 6 et seq.

WISCONSIN: In addition to the above criteria, Wisconsin requires that claimants have earned at least 30 times the weekly benefit during the base period and four times weekly benefit outside of the quarter with the highest wages in the base period. See Wis. Stat. Ann. 108.01 et seq.

WYOMING: In addition to the above criteria, Wyoming has no unique requirements. See Wyo. Stat. Ann. 27-3-101 et seq.

Additional Resources

Martindale-Hubbell Law Digest. Martindale-Hubbell,

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Summary of American Law. Weinstein, Martin, The Lawyers Cooperative Publishing Company, 1988.

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