

## **Expanding Unemployment Insurance For Low-Wage Workers: State Legislative Highlights (1996-2001)**

### **Introduction**

Over the last several decades, access to the unemployment insurance system has declined to unacceptably low levels, due largely to the failure of the program to keep pace with the changing needs of today's workforce. While in the past, as many as half of the nation's unemployed received unemployment insurance (UI), the national average has now dropped to about one-third. Those people working in the highest turnover jobs who rely most on their unemployment check, including low-wage workers and low-income single parents, have an even harder time collecting UI benefits due to outdated eligibility rules.

As a result of these conditions and the new funding opportunities made possible by the recent build-up of state UI trust reserves, a movement has taken hold in the states to expand access to the unemployment system. In the past few years, states as politically diverse as California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Oregon, Washington, Wisconsin, Texas and Vermont, have enacted or are now actively debating broad reforms to close the gaps in coverage. For example, Wisconsin recently enacted an especially extensive package of UI reforms specifically targeting the growing constituency of low-wage, women and part-time workers.

What follows is a round-up of the state legislative reforms that have been enacted and proposed since 1996, the year when UI legislative activity began to pick up in the states. This summary covers the multiple stages in the eligibility process where low-wage and women workers are most often denied unemployment benefits. It also describes selected regressive measures that have been promoted in the states, such as new rules denying UI to temp workers. **Updated annually, this year's version includes a summary of key trends in state UI legislation since the Year 2000 (see box, page 9).** For more information about state UI campaigns and for technical assistance to develop state initiatives, contact the National Employment Law Project (NELP) or access NELP's Web site (<http://www.nelp.org/ui>) for additional UI resources.

## State Legislative Highlights

- **State Study Commissions**

Following the lead of a 1996 federal commission, the Advisory Council on Unemployment Compensation, several states (Georgia, Illinois, Maine, New Hampshire, North Carolina and Washington) established legislative task forces, commissions and subcommittees charged with evaluating the effectiveness of their UI laws. These efforts have also focused on the impact of state eligibility rules on contingent and low-wage workers. For example, North Carolina enacted state legislation requiring county agencies to evaluate the impact of UI on low-wage and contingent workers.

- **The “Alternative Base Period” & UI Earnings Requirements**

A growing number of states (California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Michigan, New Jersey, New Hampshire, New York, North Carolina, Oregon, Texas, Wisconsin) introduced alternative base period (ABP) legislation. The ABP is considered the single-most effective measure to expand access to UI for low-wage and part-time workers. It allows workers to count their most recent earnings to qualify for UI benefits. In those states that have not adopted the ABP, the worker’s earnings must fall in the first four of the last five completed calendar quarters, thus excluding up to six months of their latest wages.

Since 1996, six states enacted ABP legislation (Michigan, New Hampshire, New Jersey, New York, North Carolina, Wisconsin), doubling the number of ABP states. The other states that have the ABP include Maine, Massachusetts, Ohio, Rhode Island, Vermont, and Washington. As a result, six of the ten states with the most UI claims filed last year now have the ABP, which accounts for about one-third of the nation’s unemployment claims. ABP legislation has passed with bipartisan support in states like New Jersey, North Carolina, New Hampshire, and most recently Wisconsin, where the measure was signed into law by former Governor Tommy Thompson.

In addition to the ABP, other state reforms have recently been adopted to help level the playing field for low-wage workers. For example, Oregon became the second state to allow an individual to qualify for benefits based on the number of hours he or she worked (500) as an alternative to requiring a specified amount of earnings. Washington

has a similar law (requiring 680 hours of work), while also accommodating those workers who need to qualify using the ABP.<sup>1</sup>

- **Unemployment Benefits for Workers on Family Leave**

On June 13, 2000, the U.S. Department of Labor issued final regulations authorizing the states to provide unemployment benefits to workers taking a leave to care for a newborn or newly-adopted child. Since the regulations were issued, 16 states have introduced “Baby UI” legislation, and the proposal has been actively debated in a number of them (including Connecticut, Illinois, Indiana, Maryland, New Jersey, Massachusetts, Oregon, Washington and Vermont).

While the legislation has not yet been enacted in any state, several Legislatures initiated task forces and studies to address the issue and make legislative proposals (Connecticut, Illinois, Maine, Massachusetts, New Hampshire, Oregon). In Massachusetts, one of the two states that first petitioned for the Labor Department ruling, the legislative session is still in progress. A high-level working group has been established to issue a recommendation on the legislation.<sup>2</sup>

- **Leaving Work for Domestic Circumstances**

A growing number of states expanded their unemployment laws to provide benefits to individuals who leave work due to compelling domestic circumstances, including child care, domestic violence and other situations that significantly impact women workers. These benefits are not “charged” to the employer, meaning that the unemployment fund absorbs the costs of the benefits so that they do not affect the employer’s UI tax rating.

Domestic Violence: The most active new area of UI reform in the states relates to a provision allowing workers who leave their jobs as a result of domestic violence to qualify for unemployment benefits. Domestic violence is thus considered “good cause” for the individual to quit her job. In some states, workers fired for absenteeism related to domestic violence is also specifically covered. Some of these state domestic violence laws are more generous than others with regard to the level of proof required

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<sup>1</sup> For more details about state ABP statutes, see “What Is An “Alternative Base Period” & Why Does My State Need One? Expanding UI for Low-Wage & Part-Time Workers” (NELP, August 2000) (available on-line at <http://www.nelp.org/pub23.pdf>).

<sup>2</sup> A comprehensive set of materials on the Baby UI initiative are available on NELP’s Web site at <http://www.nelp.org/action1.htm>.

to document the abuse and the types of relationships that are covered beyond spousal abuse.

While proposed in many more states, 16 states (California, Colorado, Connecticut, Delaware, Maine, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon, Minnesota, Montana, Rhode Island, Wisconsin and Wyoming) have enacted laws mandating that domestic violence be recognized as “good cause” for leaving work. Since 2000, the number of states with domestic violence provisions has more than doubled. These states join the 15 or so others that recognize domestic violence within their general UI exemption for individuals who leave work for “compelling and necessitous circumstances.” Maine -- the first state to enact the domestic violence provision covering workers who quit their jobs -- recently enacted another provision protecting workers who are fired from their jobs for absenteeism related to domestic violence.<sup>3</sup>

Other Domestic Circumstances: North Carolina enacted a law providing that an “undue family hardship” constitutes “good cause” for leaving work. The phrase is specifically defined to cover an individual who refuses a work shift change that would interfere with his or her ability to care for a minor child or to care for a disabled or aged parent. An “undue family hardship” provision was also proposed in Georgia, specifically covering domestic violence, childcare responsibilities (when there is no “reasonable alternative” to the individual’s presence), and situations where the individual has to leave work to care for a sick or elder family member.

A new Oklahoma law also recognizes a number of domestic circumstances for leaving work. In Oklahoma (as in many other states), an individual who leaves work due to his or her medical illness or the illness of a minor child is now considered to have left work for “good cause.” So too is an individual who left a job to follow his or her spouse to another location. In Idaho, a worker who leaves a job to follow his or her spouse to another location is no longer automatically disqualified from benefits (a provision that was proposed in other states). In Washington, the voluntary quit disqualification was amended to exempt those situations when a spouse relocates due to an employer-initiated, mandated transfer.

In addition, Wisconsin and Rhode Island enacted laws specifically covering victims of sexual harassment, which was also proposed in Texas, New York and other states.

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<sup>3</sup> For more details about these domestic violence provisions, see “Unemployment Insurance for Survivors of Domestic Violence: Expanding UI for Women, Low-Wage & Part-Time Workers,” (NELP, Revised July 2001) (available on-line at <http://www.nelp.org/pub38.pdf>).

Maine law now also covers workers who are fired from their jobs due to absenteeism connected with the illness of an immediate family member.

- **Dependent Allowances**

At least 13 states provide allowances that increase the UI benefit level for individuals with dependant children and/or elders. Among these states, the definition of a compensable dependent and the amount of the supplemental benefit vary considerably. Most recently, Connecticut increased its allowance from \$10 to \$15 per dependent per week. The law also removed the cap on the total amount of the allowance permitted so that it may now add up to 100% of the individual's weekly benefit check.

- **Part-Time Workers**

Several states (Connecticut, Georgia, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, Oregon, Texas, Washington, Wisconsin) recently introduced legislation to allow unemployed workers to meet their states' work-search requirements when they are only available to accept part-time work.

The Massachusetts proposal would, among other things, expand the circumstances under which a claimant may limit her work search to accommodate family care-giving and other situations. The Connecticut bill applied specifically to individuals seeking part-time work to accommodate a physical or mental impairment, which is a provision that has been adopted in at least 12 states.

This year, Minnesota enacted legislation clarifying that UI recipients seeking less than full-time work can continue to qualify for UI. Proposals related to part-time workers are still being seriously debated in Maine (this year's bill was held over to the next session) Massachusetts, New Hampshire (this year's bill was carried over to the next session) and Wisconsin. Wisconsin and New Hampshire previously established study groups to review specific proposals to accommodate part-time workers.

- **Telephone Claims & Multilingual Services**

In response to the massive shift around the country to telephone claims processing of unemployment benefits -- and the threatened closing of nearly all UI offices that allow for in-person claims taking -- Massachusetts enacted legislation regulating the new automated system. Specifically, the law requires that telephone claims supplement, rather than replace, in-person claims taking, thus keeping open 15 claims offices while also requiring translation of notices to guarantee language access to the new intake system.

California also enacted broad legislation requiring in-person services, multilingual access to the telephone claims process, and a state auditor evaluation of the new telephone system. Washington law similarly requires an independent evaluation of the call center system. In addition, Wisconsin issued regulations protecting claimants who are denied benefits because of administrative problems caused by interruptions in the telephone claims-taking process. This year, Colorado also enacted regulations related to telephone claims, providing that UI claims must be filed by telephone unless telephone filing would cause the parties “undue hardship.”

With regard to language accommodation more generally, Florida passed a law requiring bilingual instructional and educational materials and the posting of bilingual notices in unemployment offices advising workers that translators are available (translators are required in those counties where at least 5% of the households are classified as a single language minority). The Florida law does not require translation of individual notices and determinations issued to the workers. Legislation was enacted in Connecticut (“An Act Prohibiting Employment Exploitation of Immigrant Labor”) requiring the state to translate and distribute employee rights material in multiple languages, including information necessary to access UI, Wage and Hour and other state and federal workplace protections.

- **Revisiting the “Waiting Week”**

Several states have repealed or modified the requirement that all unemployed workers serve a one-week waiting period before receiving their first unemployment check. Vermont recently joined the 11 states that have entirely eliminated their waiting period. Tennessee and Virginia enacted modifications to their waiting week, joining five other states that have similar provisions. In Tennessee, claimants are now reimbursed for the waiting week if they continue to receive UI for at least three weeks. Virginia’s new law waives the waiting week for those workers who are unemployed because the employer closed its business or declared bankruptcy without paying the individual her final wages.

- **Supporting Workers Seeking Education and Training**

Supplemental UI While in Training: Providing income support to those who need it is a critical element of most effective training programs. Some federal programs, including the NAFTA-Trade Adjustment Assistance system, provide supplemental UI to laid off workers to support them while they participate in training. But only a handful of states now provide UI along side their training programs. In 2000, Washington enacted a model state program, providing up to 52 weeks of UI (Washington’s standard UI program provides up to 30 weeks of benefits) to a broad category of displaced workers

participating in skills training. In addition, Washington now provides up to 74 weeks of UI to selected categories of workers displaced from jobs in the aerospace, timber and fishing industries. This year, New Jersey also liberalized its supplemental UI program to cover more unemployed workers (the program provides an additional 26 weeks of UI to workers in approved training). Legislation was also proposed in California that would provide an additional 26 weeks of UI if the worker is enrolled in approved training, and an Oregon bill proposed to provide up to 78 weeks of UI for dislocated workers in approved professional technical training.

Segregated State Training Funds: Several other states took advantage of the authority under the federal UI law to create a new funding stream to support education and training by imposing a payroll tax assessment that is offset by the UI payroll tax. Virginia recently established the Workforce Development Fund, and Rhode Island created the Employment Security Reemployment Fund (an assessment of 0.03% to fund a three-year pilot research and demonstration rapid reemployment program). In addition, California extended its Employment Training Fund indefinitely (the assessment was scheduled to expire in January 2002). This year, New Jersey broadly expanded its program, creating new funding to specifically support basic skills training. And Indiana adopted a modest training payroll tax to fund a new apprenticeship and job training program.

Modifying the UI Work-Search Rules: In the 1970's, Congress enacted legislation directing the states to exempt all workers who are participating in state-approved training from having to also seek and accept new work as condition of receiving UI. In the past few years, several states have expanded on and clarified this federal requirement.

For example, Maine and Montana recently clarified that any workers participating in training approved under the Workforce Investment Act of 1998 (WIA) are automatically entitled to UI without having to also seek new work. Nebraska enacted a similar law, covering both WIA training and activities funded under the federal Welfare to Work program. In Virginia, the law was changed to help workers who are participating in degree programs or higher education, thus not limited to state approved training programs. Specifically, an individual who limits her availability for work on a particular shift (s/he can only limit her availability on one shift, not more) will be eligible for UI if s/he is enrolled in a certificate or a degree program at a higher education institution.

- **Special Circumstances Related to Educational Employees**

Joining California, Washington enacted legislation this year making it more feasible for certain community college employees (especially part-time and adjunct professors) to qualify for UI. The Washington law clarifies the federal restriction that denies UI to

educational employees who have a “reasonable assurance” of subsequent employment with the educational institution. Under the new state law, there’s now a presumption that community college employees do not have a “reasonable assurance” of future employment when the employer’s offer of work is conditioned on class enrollment, available funding and other contingencies.

Taking advantage of an underutilized option available under federal law for states to offer UI to nonprofessional school employees between academic terms, Minnesota enacted legislation covering food service workers provided by a private employer to an elementary or secondary school (the exemption expires December 2001). Legislation was recently introduced in several other states (Maine, New Hampshire, New York, Ohio, Oregon, Vermont) to also allow other non-professional school employees, such as school employees, cafeteria workers and bus drivers, to collect benefits in between academic terms.

### ***Be on the look out for...***

- **UI Tax Cuts:** With the rapid build up of UI trust funds resulting from the low unemployment rate, business groups have been lobbying aggressively for hefty cuts in UI payroll taxes. The pace of tax cut legislation has increased significantly, with at least 25 states having enacted tax cut legislation since 1996. Among the most noteworthy examples are Georgia (1999 legislation was passed cutting taxes by \$ 1 billion over four years), Michigan (a 1996 measure cut taxes by 10%, costing the trust fund \$500 million over three years), South Carolina (cutting taxes by 50% costing the fund an estimated \$50 million), and New York (the tax rate was reduced by 27%, costing the fund \$420 million). From 1994-2000, the average UI tax rate for employers has dropped by one-third, from .92% of total wages to just .54%, which is the lowest rate in the history of the UI program. NELP estimates that the drop in the rate of taxes paid by employers has cost the UI trust funds \$47 billion during the period 1994-2000.<sup>4</sup>
- **Temp Worker Restrictions:** The American Staffing Association (formerly the National Association of Temporary Services), has lobbied aggressively for the past several years to deny UI benefits to temp workers, promoting the “ASA Model Temporary Help Insurance Law”. Currently, about half the states apply the ASA legislation, which requires all temp workers to report back to their temp agency for a new assignment in order to avoid being disqualified for “voluntarily quitting” work. At least 17 states have adopted the ASA model legislation (Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Mexico,

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<sup>4</sup> More details on the recent developments related to UI financing are found in NELP’s report (authored by Marc Baldwin, Ph.D.), *Beyond Boom and Bust: Financing Unemployment Insurance in a Changing Economy* (April 2001).

North Dakota, Oklahoma, Rhode Island, Texas). Five states have implemented the ASA model as policy and seven others have passed a modified version of the ASA bill. In 2001, only one state (Minnesota) enacted the ASA law, and legislation was introduced in two states (Michigan and Rhode Island) to repeal the ASA law. This year, Ohio enacted a law related to temp workers that is not as restrictive as the ASA legislation.<sup>5</sup>

- **Working Off Unemployment Benefits:** Oregon enacted legislation (which was reauthorized in 2001) creating the “Jobs Plus” program. The program screens recipients of unemployment benefits for participation in a mandated work program (mandated in the sense that, if “suitable” work is offered to UI recipients, they must accept the work ). The individual’s wages in the work program are then subsidized by his or her UI benefits. The program uses funds from a segregated UI tax, which was authorized by the U.S. Department of Labor. The UI mandated-work program is being promoted in other states by a conservative think tank, the Cascade Policy Institute.

#### Key Trends in State UI Legislation for the Years 2000-2001

- **Domestic Violence:** Since 2000, 10 additional states enacted laws providing unemployment benefits to workers who are forced to leave their jobs due to circumstances related to domestic violence.
- **Education & Training:** An impressive number of states also enacted broad new policies promoting access to education and training while workers collect UI. Washington led the way, creating an expansive new program offering dislocated workers up to 52 weeks of UI while they participate in training. In addition, new training initiatives were enacted in California, Indiana, New Jersey, Rhode Island and Virginia (funded by an offset from UI payroll taxes).
- **Contingent Workers:** This year, the momentum started to shift in favor of temp workers as fewer states adopted the American Staffing Association’s (ASA) bill denying UI to temp workers (Minnesota), and two states introduced bills to repeal their ASA provisions. In addition, proposals to cover more part-time workers are still being seriously debated in Maine, Massachusetts, New Hampshire and Wisconsin, while Minnesota adopted new part-time worker protections.
- **Waiting Week:** A growing number of states enacted legislation repealing or modifying their one-week waiting periods (Vermont, Tennessee, Virginia).
- **Tax Cuts:** UI payroll tax cuts in the states have continued unabated through 2001. As a percent of total wages, employers are now only paying 0.54% in UI taxes, which is the lowest rate in the history of the UI system.

<sup>5</sup> For more details related to temporary workers, see “Temp Work and Unemployment Insurance—Helping Employees at Temporary Staffing and Employee Leasing Agencies” (March 2001) (available on-line at <http://www.nelp.org/pub63.pdf>).