

# Is Leaving Work to Obtain Safety “Good Cause” to Leave Employment?—Providing Unemployment Insurance to Victims of Domestic Violence in Washington State

*L’Nayim A. Shuman-Austin\**

I. INTRODUCTION .....	798
II. THE CONDITIONS OF UNEMPLOYMENT	
COMPENSATION ELIGIBILITY .....	802
A. Ms. B .....	805
B. The History and Purpose of Unemployment Insurance.....	807
C. Nonmonetary Terms of State Unemployment Insurance Programs .....	809
1. Eligibility and “Good Cause” Requirement.....	810
2. “Able, Available, and Actively Seeking” Requirement .....	811
D. Gendered Perspectives.....	812
1. Gender Specific Jobs and the Unemployment Compensation Scheme.....	813
2. “Good Cause” Requirements.....	814
3. “Able, Available, and Actively Seeking” Requirement .....	818
III. DOMESTIC VIOLENCE AND THE WORKPLACE.....	820
A. Domestic Violence—A “Work Related” Issue.....	820

---

\* J.D. Candidate 2000, Seattle University School of Law. I would like to thank the *Law Review* members, particularly Dave Seaver, for their patience and assistance with this Comment. Specifically, thanks to my husband, James M. Austin, who suffered through innumerable drafts of this article, supported me through law school, and who is proud of my advocacy efforts on behalf of women and children; my own and the Austin family, for their kindness, love, and humor these last three years; Professor Lisa Brodoff, for her insight, wisdom and exceptional teaching style; the attorneys at the Juvenile Justice Division of the Olympia Attorney General’s Office, my heroes who fight child abuse each and every day; Bruce Neas, for the idea for the topic of this Comment and invaluable research assistance; the members of the Unemployment Law Project, especially Pam Crone, for allowing me to be a transitory member of the legislative coalition; and all the survivors of domestic violence I have met or will meet in the future—hopefully the changing spirit of the law will embrace the needs of these individuals, their families and their communities.

B.	Providing Benefits to Domestic Violence Victims Through Reinterpretation of Current Unemployment Insurance Schemes.....	823
C.	Providing Benefits to Domestic Violence Victims Through Agency Policy.....	828
IV.	LEGISLATIVE EFFORTS TO PROVIDE UNEMPLOYMENT INSURANCE BENEFITS.....	829
A.	An Era of Change: Legislation Leaders—1987 Through 1998.....	830
1.	Maine.....	830
2.	New Hampshire.....	831
3.	California.....	833
B.	National Attempts at Legislation—1996.....	834
C.	National Attempts at Legislation—1998.....	835
V.	THE CASE FOR LEGISLATION IN WASHINGTON.....	839
A.	The Benefits of Providing Unemployment Insurance to DV Victims.....	839
B.	Why Has Washington Not Instituted Unemployment Insurance for DV Victims?.....	840
C.	Current Legislative Effort in Washington.....	843
VI.	CONCLUSION AND NOTES FOR ADVOCATES.....	845

## I. INTRODUCTION

In our American society, unemployment insurance fulfills many roles and bears many names. For the social historian, unemployment insurance is a deserved safety net for those who were once members of the working class and now need temporary government assistance to prevent impoverishment.<sup>1</sup> An economist would add that unemployment compensation programs are a form of social insurance which help to stabilize the economy by assuring that there is no permanent underclass of needy made up of the temporarily unemployed. However, a business owner may very well believe that unemployment insurance is merely another form of welfare, doled out to those unable to hold a job, and thus an unfair burden on commerce and business owners.

The historical and current primary purpose of unemployment insurance is to provide for those who were once significantly attached

---

1. See generally 1 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 445-73 (1938) [hereinafter ROOSEVELT PAPERS]. President Roosevelt, arguably the creator of the modern unemployment insurance program, strongly advocated the need for some form of insurance for the maintenance and support of men and women during times of involuntary unemployment. *Id.* at 454.

to the labor market who become unemployed through no fault of their own.<sup>2</sup> In his Address on Unemployment Insurance in New York City on March 6, 1931, President Roosevelt specifically recognized the need of social insurance to reflect the changing nature of human experience:

What impresses me most is that insurance as a whole is a constantly changing and a constantly growing force in our individual lives and in our business lives . . . In the various demands which are made by worthy citizens for the protection of business and individuals against new risks, one essential basis for all insurance is often forgotten. I refer to the fundamental principle that insurance must, if it is to survive, be based on human experience.<sup>3</sup>

However, as our labor market has changed, our unemployment insurance programs have not.<sup>4</sup> Unemployment insurance, as currently implemented in the United States, is a very gender-oriented system.<sup>5</sup> Although our workforce is now nearly half female, and the proportion of women which constitute the unemployed has risen as well,<sup>6</sup> unem-

---

2. See generally Evelyne M. Burnes, *Unemployment Compensation and Socio-Economic Objectives*, 55 YALE L.J. 1, 8-9 (1945); Elizabeth F. Thompson, Comment, *Unemployment Compensation: Women and Children—The Denials*, 46 MIAMI L. REV. 751, 759 (1992). See e.g., COLO. REV. STAT. § 8-73-108(1)(a) (1999) (“it is the intent of the general assembly that the division at all times be guided by the principle that unemployment insurance is for the benefit of persons unemployed through no fault of their own; and that each eligible individual who is unemployed through no fault of his own shall be entitled to receive a full award of benefits”); CAL. UNEMP. INS. CODE § 100 (West 1999) (“The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum.”); MD. CODE ANN. LAB. & EMP. § 8-102(4)(c) (1999) (“The General Assembly declares that, in its considered judgment, the public good and the general welfare of the citizens of the State require the enactment of this title, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own.”). See also Advisory Council on Unemployment Insurance: Report and Recommendations 1 (1994) [hereinafter ACUC Report I] stating that the unemployment insurance system serves as the foundation of economic security for millions of workers who are temporarily laid off or permanently lose their jobs.

3. See ROOSEVELT PAPERS, *supra* note 1, at 453.

4. Amy B. Chasanov, *Part I: Unemployment Compensation and Eligibility: Clarifying Conditions for Nonmonetary Eligibility in the Unemployment Insurance System*, 29 U. MICH. J.L. REFORM 89 (1995) in 1 Advisory Council on Unemployment Compensation: Background Papers 15 (1995). See also ACUC Report I, *supra* note 2, at 5.

5. See generally Deborah Maranville, *Changing Economy, Changing Lives: Unemployment Insurance and the Contingent Workforce*, 4 B.U. PUB. INT. L.J. 291 (1995) [hereinafter Maranville, *Economy*].

6. Young-Hee Yoon et al., *Unemployment Insurance: Barriers to Access for Women and Part-Time Workers*, National Commission for Economic Policy Resources, Rep. No. 95-06, at 42

ployment insurance fails to provide for the needs of women in the labor force. For example, part-time workers and members of the service industry, both groups predominantly made up of women,<sup>7</sup> are often not qualified to receive unemployment insurance benefits due to hour and wage qualification requirements of state unemployment insurance schemes.<sup>8</sup> When attachment to the labor force is measured by a minimum number of work weeks required, more than twice as many women than men fail to be eligible for state unemployment insurance (twenty percent of women as compared to eight percent of men).<sup>9</sup>

Women face an additional hurdle when they do qualify for unemployment insurance benefits. For individuals who voluntarily leave jobs, unemployment insurance is only available to those who leave for "good cause" reasons.<sup>10</sup> Leaving work to take care of domestic or family obligations, a task routinely left to women in two-parent families and single mothers,<sup>11</sup> is not considered "good cause" in most states.<sup>12</sup> Additionally, while domestic violence predominately affects

---

(July 1995). This report indicates that women's labor force participation increased from 33% in 1948 to 59% in 1994. Additionally, women made up 46% of the unemployed in 1994 as compared to 29% of the unemployed in 1949. See also U.S. Bureau of Labor Statistics, Bulletins 2217, 2307, and 2340, in U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, Table Nos. 652 and 653 (118th ed. 1998) [hereinafter ABSTRACT] (indicating that 59.8% of women in 1997 participated in the labor force—67.9% of married women, 61.6% of single women, and 48.6% of women with spouse absent). See also ACUC Report I, *supra* note 2, at 5.

7. See, e.g., U.S. Bureau of Labor Statistics, U.S. Dept of Labor, 1998, unpublished tabulations, in THE WORLD ALMANAC (1999) at 150 (indicating that women made up 69.3% of part-time workers in 1998); Anne E. Polivka, 119 MONTHLY LAB. REV. 3, 10-14 (Oct. 1996) (indicating temporary workers are 53% women); U.S. Bureau of Labor Statistics, *Employment Earnings*, Jan. 1998, in ABSTRACT, *supra* note 6, at Table No. 672 (indicating that women made up 60.1% of all service workers in 1983 and 59.4% in 1997).

8. Yoon et al., *supra* note 6, at 25-26.

9. *Id.* at 26.

10. See, e.g., Chasanov, *supra* note 4, at 95, comparing various "good cause" categories of quits. State statutes generally use the good cause terminology for voluntary quits but the reader should note that this good cause requirement evolved from the traditional requirement that eligibility for unemployment compensation turned upon the question of whether the employee had become unemployed through no fault of his or her own. Historically, if the employee has voluntarily quit a job, then the reasons for quitting must be related to the work situation and be no fault of the employee, i.e., the employee must not have left because of frivolous personal reasons which he or she had control over. Only no fault reasons would be considered good cause to voluntarily leave employment. It is easy to confuse the related concepts of good cause and no fault.

11. BARBARA R. BERGMANN, THE ECONOMIC EMERGENCE OF WOMEN 256-58 (1986). See also ARLIE HOCHSCHILD, THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME (1989); Chasanov, *supra* note 4, at 16.

12. Chasanov, *supra* note 4 at 9; see also Maranville, *Economy*, *supra* note 5, for a discussion of how unilateral employer changes in employee work schedules that conflict with domestic duties may also affect eligibility for unemployment insurance after a voluntary quit.

women,<sup>13</sup> individuals who leave work to obtain safety from an abusive partner or stalker are generally not considered as having a good cause reason to leave employment.<sup>14</sup> Although a domestic violence or stalking situation is no fault of the victim, and a claimant for unemployment insurance under such dangerous circumstances has become unemployed through no fault of her own, in most states a woman must resort to welfare assistance in order to provide for her family and herself.<sup>15</sup>

Some states, such as Arkansas and Pennsylvania, have attempted to fill this gap in unemployment insurance eligibility by resorting to the courts.<sup>16</sup> However, a few states have recognized that reliance on the courts and the discretion of individual judges is an inadequate remedy and will not provide a long-term solution for domestic violence advocates and survivors. These states have enacted legislation that provides unemployment insurance benefits in limited circumstances to domestic violence survivors who leave work to obtain safety.<sup>17</sup>

This paper focuses on the unemployment compensation statutes, administrative law decisions, and the case law of Washington state and proposes that domestic violence creates involuntary unemployment and should, therefore, be considered a compelling good cause situation for provision of unemployment compensation benefits. Title 50 of the Revised Code of Washington, which provides the structure and provisions of unemployment compensation eligibility, should be liberally construed by agency officials and courts or amended so as to

---

13. The U.S. Department of Justice estimates that 24.8% of women, as compared to 7.6% of men, have been raped and/or physically assaulted by an intimate partner. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 191 (1999) [hereinafter SOURCEBOOK].

14. Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing, and Coverage 91-100 (1995) [hereinafter ACUC Report II], summarizing the survey by the Interstate Conference of Employment Security Agencies (ICESA).

15. Yoon et al., *supra* note 6, at 42 (finding that only eleven percent of working women welfare recipients received unemployment compensation, relying instead on welfare as a "poor woman's unemployment insurance.")

16. See, e.g., Bacon v. Commonwealth, 491 A.2d 944 (Pa. 1985) (holding contrary to overwhelming majority of case law in the states, that the cause of a voluntary quit need not be related to job for employee to remain eligible for unemployment insurance benefits); Rivers v. Stiles, 695 S.W.2d 938 (Ark. 1985) (establishing that the existing statutory "Personal emergency" exemption to disqualification for unemployment insurance benefits after a voluntary quit applies to domestic violence situation, thus providing benefits to the claimant).

17. California, Maine, New Hampshire, Connecticut, New York, North Carolina, Colorado, Wisconsin, New Jersey, Oregon, and Wyoming each have specific provisions that provide benefits to claimants who leave work to escape domestic violence. See, e.g., CAL. UNEMP. INS. CODE § 1256 (West 1999); ME. REV. STAT. ANN. tit. § 1193-1A(4) (West 1999); N.H. STAT. ANN. § 82A-A:32I(a)(3) (West 1998).

provide unemployment compensation benefits to victims of domestic violence who leave work to obtain safety.

Part II of this paper illustrates how the terms of unemployment compensation eligibility, both in Washington and other states, are defined and how those terms have traditionally been interpreted. I will demonstrate how these terms have a gendered perspective and have historically been utilized to include men and traditional male-oriented jobs within the protection of the unemployment compensation scheme and exclude women and traditional female-oriented jobs from the economic safety net of the unemployment compensation scheme. Although current legislation does not make the distinction between male and female applicants for unemployment insurance, this type of legislation predominantly affects women, thereby correcting short-sighted unemployment insurance laws that prevented women from obtaining benefits in domestic violence situations.

Part III offers statistics of how domestic violence affects the workplace, both nationally and within the states. This part of the paper also examines how the terms of the unemployment scheme, as currently written in Washington and other states, have been interpreted to provide benefits in favor of domestic violence victims. Part IV illustrates how other states, in recognition of the connection between domestic violence and unemployment, have enacted domestic violence legislation to provide unemployment compensation to domestic violence victims. Finally, in Part V, I propose similar legislation for Washington, weigh the pros and cons of such legislation, and discuss the current efforts at such legislation.

## II. THE CONDITIONS OF UNEMPLOYMENT COMPENSATION ELIGIBILITY

All unemployment compensation schemes in the United States include both monetary and nonmonetary eligibility requirements.<sup>18</sup> These requirements are specifically outlined in the statutory provisions of the unemployment compensation program of each state and are subject to judicial and agency interpretation. Monetary requirements provide that, before unemployment, the claimant must either have worked a certain number of hours or have earned a certain sum of money, or both, during a certain specified period of time called a "base year" or "base period."<sup>19</sup> These requirements are not waivable.

---

18. See, e.g., Chasanov, *supra* note 4, at 89.

19. See Sharon Dietrich et al., *Violence and the Workplace: Exploring Employee Rights and Remedies*, 467 CLEARINGHOUSE REV. 161 (Special Issue 1994) (noting that eligibility for unemployment benefits is based on an individual's earnings during a "base year" or a "base period," a

If an individual has not earned enough money or worked long enough to qualify for unemployment insurance then benefits are summarily denied. All but nine states ignore earnings in the two most recent calendar quarters when defining the term "base year."<sup>20</sup> Monetary requirements assure that an individual has significant attachment to the labor force prior to unemployment, thus fulfilling a primary historical purpose of unemployment insurance.<sup>21</sup>

In contrast, nonmonetary requirements provide that a claimant must not have been fired for misconduct, or that a claimant who has voluntarily quit a job or refused a job during unemployment must have done so with good cause.<sup>22</sup> Historically, nonmonetary requirements were designed to limit payment of benefits only to workers who became or remained unemployed primarily through no fault of their own.<sup>23</sup> However, these nonmonetary requirements were altered since unemployment insurance was first implemented in the United States and generally now only include unemployment situations that are no fault of the employer or are work-related.<sup>24</sup> For example, until RCW

one-year period of time within which an individual's wages are counted toward establishing monetary eligibility). For example, WASH. REV. CODE § 50.04.020 (1998) provides that in order for an individual to be eligible for unemployment compensation benefits, the individual must have worked at least 680 hours in the past base year, which is either the first four or the last four of the last completed calendar quarters.

20. These nine states include MASS. GEN. LAWS ANN. ch. 151A, § 1(a) (West 1999); MICH. COMP. LAWS § 421.46 (1995); MINN. STAT. § 268.04(2) (West 2000); N.Y. LAB. LAW § 520 (McKinney 1999); N.J. STAT. ANN. § 43:21-19(c)(10) (West 1999); OHIO REV. CODE ANN. § 4141.01(Q) (Anderson 1999); R.I. GEN. LAWS § 28-42-3(10) (1999); VT. STAT. ANN. tit. 21, § 1301(17) (1999); and WASH. REV. CODE § 50.04.020 (1998).

21. See Thompson, *supra* note 2, at 759.

22. See, e.g., ALASKA STAT. § 23.20.379(b)(2) (Michie 1999); WASH. REV. CODE § 50.20.080 (1998).

23. See, e.g., Chasanov, *supra* note 3; Maranville, *Economy*, *supra* note 5. See also, *Matison v. Hutt*, 85 Wash. 2d 836, 837, 539 P.2d 852, 853 (1975) (emphasizing that the "good cause" requirement "reflects the concept common to the unemployment compensation statutes of various states that benefits are to be available to those unemployed through no fault of their own."). See also Roosevelt Papers *supra* note 1, at 453.

24. See, e.g., Chasanov, *supra* note 4. WASH. ADMIN. CODE § 192-16-009(1) (1999) interprets the good cause provision of RCW 50.20.050(1) to mean that an individual must satisfactorily demonstrate

- (a) That he or she left work primarily because of a work connected factor(s); and (b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and (c) That he or she first exhausted all reasonable alternatives prior to termination: Provided, That the individual asserting good cause may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

See also ACUC Report I, *supra* note 2, at 31-40 stating the reciprocity rate of unemployment insurance has dropped dramatically between 1940 and 1980 due to tightening limitations on eligibility.

50.20.050 was amended in 1977, good cause was not limited solely to work-connected factors.<sup>25</sup>

Currently, the type of circumstances that are legitimate good cause situations to quit employment are limited and exclude most personal reasons for leaving employment.<sup>26</sup> Discussion of what constitutes good cause to leave employment in various states has included sexual harassment in the workplace,<sup>27</sup> significant change in working conditions,<sup>28</sup> medical disabilities caused or exacerbated by working conditions,<sup>29</sup> and child care responsibilities.<sup>30</sup> Limiting good cause to nonpersonal reasons for quitting employment places a significant burden on unemployment insurance claimants. Although the claimant may have worked for many years and fulfilled the monetary requirements for eligibility, a life and death domestic violence situation is not statutorily considered good cause, nor have most courts interpreted a

---

25. See Washington Laws of 1977, 1st Ex. Sess., ch. 33, sec. 4; *In re Bale*, 63 Wash. 2d 83, 385 P.2d 545 (1963). The amended good cause exception no longer covers the circumstances presented in *In re Bale* and *Ayers v. Department of Employment Sec.*, 85 Wash. 2d 550, 536 P.2d 610 (1975), in which the employee's quitting employment in order to follow a spouse to a new residence was held to be good cause as a compelling personal reason under the predecessor to RCW 50.20.050. Instead, the circumstances in *In re Bale* and *Ayers* would be covered by the current exception of RCW 50.20.050(2)(c), which provides a claimant remains eligible for benefits if he or she left work to relocate for the spouse's employment which is outside the labor market.

26. See, e.g., ACUC Report II, *supra* note 14, at 122, n.11 (indicating that 32 states disqualify claimants who leave jobs to perform domestic obligations). *But see Reep v. Commissioner of Dep't of Employment and Training*, 593 N.E.2d 1297 (Mass. 1992) (finding that although a former employee was not married to her partner of thirteen years, this did not preclude a determination that she had "urgent, compelling and necessitous" reason to leave employment to follow her partner to bona fide work).

27. See Diana M. Pearce & Monica L. Phillips, *When Sexual Harassment Happens: State Unemployment Insurance Coverage of Workers Who Leave Their Jobs Because of Sexual Harassment*, 5 STAN. L. & POL'Y REV. 75 (1994).

28. See, e.g., *Director, Dep't of Indus. Relations, State of Alabama v. Ford*, 700 So. 2d 1388 (Ala. Civ. App. 1997) (finding that a claimant who had closed business of which he was both president and employee had good cause to quit his employment and was eligible for unemployment compensation because he knew his business was failing and the bank would foreclose on the mortgage).

29. See, e.g., *Department of Indust. Relations v. Henry*, 172 So.2d 374 (Ala. Ct. App. 1965) (holding that a claimant who suffered from pulmonary emphysema which developed from the flu which he caught while working outside selling products from door to door had good cause connected to work for quitting where employment required him to be outside, carry heavy objects and make long walks).

30. See *Thompson*, *supra* note 2, at 760; *In re L.P.*, Docket No. 9-09225 (Wash. Employment Sec. Dep't, commissioner's decision 1982) (finding that single father who quit his job to take care of children after learning his oldest daughter had been skipping school and another daughter had been arrested for shoplifting was eligible for benefits under the "domestic responsibilities" provision of RCW 50.20.050(4) but had to submit to the ten week waiting period before benefits were allowed).



domestic violence situation to constitute a good cause reason to quit employment.

#### A. Ms. B

Ms. B was a resident of Washington when her personal and professional life underwent a frightening change for the worse.<sup>31</sup> Ms. B was a college professor whose husband of twenty years had repeatedly threatened her at home and had begun to stalk her at her workplace.<sup>32</sup> The public could easily access the college buildings, and Ms. B's husband constantly left threatening messages at work and on occasion came to her office and threatened her with violence.<sup>33</sup> Ms. B's husband also stole the car that she used to get to work and attempted to thwart her efforts at economic independence.<sup>34</sup> Finally, in front of friends and family, Ms. B's husband threatened to kill her.<sup>35</sup> He also stated that she couldn't "be surrounded all the time" by those who might protect her.<sup>36</sup> Because Ms. B's husband had demonstrated he could easily reach her at home and work, had stolen her car, and had gained access to her office, Ms. B fled for her safety. She left a resignation note that same week and temporarily moved out of the state.<sup>37</sup>

Ms. B's initial application of unemployment benefits was denied by the Commission of the Washington Employment Security Department (ESD) and again, on appeal, by an administrative law judge at the Office of Administrative Hearings (OAH), on the grounds that the domestic abuse was not work-connected and thus was not a good cause reason to leave employment.<sup>38</sup> An appeal to superior court resulted in a reversal of the decision and a remand for another hearing.<sup>39</sup> Ms. B prevailed in her second OAH hearing not because domestic violence is sufficiently work-connected, thus good cause to justify the voluntary quit, but because the court found the domestic

---

31. *Middleton v. Employment Sec. Dept.*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996). For safety reasons, the name of the plaintiff has been changed, as well as her occupation and a few factual details. Domestic violence decisions in Washington are difficult to find. ESD and OAH have not published any decisions relating to domestic violence, although many have been decided. For this reason, only cases that reach the superior court level or above can be located. (Case on file with the *Seattle University Law Review*).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. Petitioner's Brief at 2, *Middleton v. Employment Sec. Dep't*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996).

39. *Id.*

abuse Ms. B suffered effectively disabled Ms. B so as to necessitate quitting her job.<sup>40</sup> Essentially, the court ruled that the domestic violence of the type that Ms. B experienced was a disability, entitling her to unemployment benefits under RCW 50.20.050(2).<sup>41</sup>

This ruling is both hopeful and dangerous. It is hopeful in the sense that Washington courts and administrative judges are beginning to recognize the compelling situations that victims of domestic violence are in when they quit jobs to obtain safety from their abusers. The ruling is also dangerous because it establishes domestic violence as a "disability" rather than a good cause reason to quit work. Allowing a judge to determine on a case-by-case basis whether a claimant's domestic violence was serious enough to disable a claimant and necessitate the quit from a job removes this decision from the claimant. If a claimant realizes that a judge may not find her situation life-threatening enough to constitute disability, the claimant may feel she has no choice but to remain where she is, accessible to her abuser and susceptible to further danger.

Only because Ms. B's situation was so frightening and her husband's threats and acts so high in number did Ms. B qualify for a disability exemption under Washington's unemployment compensation laws. The administrative judge in Ms. B's second hearing stated that Ms. B was eligible because she had taken such "drastic action," leaving employment, "only after years of abuse, failed counseling and other attempts to find support and remedy [sic] through support groups, family friends and law enforcement and the justice system."<sup>42</sup>

Must a woman in a domestic violence situation exhaust all other remedies before she leaves employment to find safety in order to qualify for unemployment insurance? Must a woman be trapped in such a severe pattern of domestic violence that it actually endangers her life to satisfy a judge that the domestic violence constitutes a disability? Must a woman choose between her job and her life? In Washington, the answer may be yes.

---

40. *Id.*

41. WASH. REV. CODE § 50.20.050(2) (1998) provides that

An individual shall not be considered to have left work voluntarily without good cause when: . . . (b) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, . . . to protect his or her employment status . . .

42. *Middleton*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996).

### B. *The History and Purpose of Unemployment Insurance*

The Social Security Act of 1935 created our nation's unemployment insurance program.<sup>43</sup> The act established a dual system of state and federal unemployment compensation laws and was brought about primarily because of the overwhelming numbers of unemployed caused by the economic depression of the 1930s.<sup>44</sup> The act was also a response to the reality that many workers who joined the war effort in the early years of World War II would soon become unemployed.<sup>45</sup> During its formative years, the unemployment compensation system was mainly geared toward the needs of the "primary wage earners," men who wanted and needed full-time work, but also included women.<sup>46</sup>

The unemployment compensation system of the United States is called a dual system because it is a federal-state program where each state determines its own eligibility requirements with some minimal requirements imposed by federal regulations.<sup>47</sup> Specific state regulations and interpretations of those state regulations create and implement unemployment insurance across the nation.<sup>48</sup> Although the historical federal purpose of the unemployment insurance program was to provide benefits to those who became unemployed due to economic factors beyond their control and beyond the control of employers, this focus has either been superseded or supplanted by the purposes of the various state systems holding the power to enact and regulate the unemployment compensation programs.

43. Social Security Act, ch. 531, 49 Stat. 636 (1935) (codified as amended at 42 U.S.C. §§ 1101-1109 (1994)).

44. *Id.* See, e.g., Joseph E. Hight, *Unemployment Insurance: Changes in the Federal-State Balance*, 59 U. DET. J. URB. L. 615 (1982); Arthur Larson & Merrill G. Murray, *The Development of Unemployment Insurance in the United States*, 8 VAND. L. REV. 181 (1955); Edwin E. Witte, *Development of Unemployment Compensation*, 55 YALE L.J. 21 (1945). See generally Evelyn M. Burns, *Unemployment Compensation and Socio-Economic Objectives*, 55 YALE L.J. 1 (1945).

45. See, e.g., Larson & Murray, *supra* note 44; ACUC Report I, *supra* note 2, at 5.

46. See, e.g., Larson & Murray, *supra* note 44; ACUC Report I, *supra* note 2, at 5. See also Chasanov, *supra* note 4, at 122-23 (emphasizing that the labor force in 1935 consisted mostly of men who worked full-time).

47. 26 U.S.C. § 3304 (a)(5) (1994) prevents states from denying benefits to eligible claimants who refuse to accept a job when a job is vacant due to a strike or lockout, job wages, hours or conditions that are substantially less favorable than those for similar work in the same area, or where an individual would be required to join or not be permitted to join a company union. This statute also prevents the denial of benefits solely on the basis of pregnancy. See, e.g., *Wiberly v. Labor and Indus. Relations Comm'n*, 479 U.S. 511 (1987).

48. All fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands have some form of unemployment compensation program. For the sake of simplicity, I will refer to these entities collectively as states, unless I am referring to a specific program within a specific political boundary.

The primary purpose of Washington state's unemployment compensation scheme, like most state schemes, is found in the preamble to the Washington Employment Security Act, RCW 50.01.<sup>49</sup> Washington's unemployment compensation scheme created a "compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."<sup>50</sup> The act further mandates that the provisions of the title should "be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."<sup>51</sup>

In 1944 the Washington Supreme Court reinforced the historical purpose of Washington's unemployment compensation scheme by holding that the purpose of the unemployment compensation act was to reduce unemployment and economic insecurity due to unemployment, and that in order to effectuate that purpose a liberal construction of the act was required.<sup>52</sup> The mandate for a liberal construction of the act to provide for reducing involuntary unemployment was repeated in 1976<sup>53</sup> and 1992.<sup>54</sup> However, current interpretations of Washington's unemployment compensation program are not in congruence with this mandate of liberal interpretation.

In other states, the historical purpose of unemployment compensation is quite similar to Washington's.<sup>55</sup> However, eligibility standards in other states have also narrowed since their inception in the early 1940s. For example, a recent New Jersey Supreme Court decision held that claimants who voluntarily quit, electing for early retirement when management announced the General Motors (GM) plant

---

49. WASH. REV. CODE § 50.01.010 (1998).

50. *Id.*

51. *Id.*

52. See *In re Yakima Fruit Growers Ass'n*, 20 Wash. 2d 202, 146 P.2d 800 (1944).

53. See *Kenna v. Employment Sec. Dept.*, 14 Wash. App. 898, 545 P.2d 1248 (1976) (holding an individual's eligibility for unemployment compensation must be determined on the specific facts of his case and in light of the legislative mandate that provisions of the Employment Security Act are to be liberally construed to reduce involuntary unemployment and the resulting suffering to a minimum as per § 50.01.010).

54. See *Tapper v. Employment Sec. Dept.*, 66 Wash. App. 448, 832 P.2d 136 (1992), *rev'd on other grounds*, 122 Wash. 2d 397, 858 P.2d 494 (1993) (holding that Washington's unemployment compensation law is to be liberally construed to alleviate suffering caused by involuntary unemployment).

55. See, e.g., N.J. STAT. ANN. 43:21-2 (West 1999). § 43:21-2 outlines the statutory mission of New Jersey's unemployment insurance act and stating, in part, "[T]he public policy of this state is declared to be as follows: economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Involuntary employment is therefore a subject of general interest and concern which requires appropriate [Legislative] action . . ." This public policy was later supported by *Krauss v. A. & M. Karagheusian*, 100 A.2d 277 (N.J. 1953) (affirming that the underlying mission of the act was "to afford protection against the hazards of economic insecurity due to involuntary unemployment.").

they worked at would be closing, were ineligible for unemployment compensation.<sup>56</sup> Although GM had emphasized that the plant closure was irreversible, the court found that the claimant's decision to quit rather than be laid off did not constitute good cause because the layoffs were only possible, and the claimants were never actually laid off (they had volunteered for early retirement).<sup>57</sup> The claimants failed to demonstrate they had a "subjective fear of imminent lay off based on definite objective facts."<sup>58</sup> Essentially, the claimants carried the burden to show that even though GM told them their plant was closing, they had to know they were going to be laid off before they would be eligible for unemployment benefits.

### C. Nonmonetary Terms of State Unemployment Insurance Programs

As discussed above, nonmonetary requirements for unemployment benefits eligibility include both preunemployment and postunemployment circumstances.<sup>59</sup> First, in order to qualify for unemployment insurance benefits, a claimant usually must become unemployed due to work-related or other good cause factors. In addition, the claimant must be able to work, available for work, and actively seeking suitable future employment in order to remain eligible for unemployment insurance. These requirements limit the ability of a domestic violence survivor to leave work and regroup a life destroyed by abuse.

This article focuses on the good cause requirement for voluntary quits and the requirement that a claimant be "able, available and actively seeking" employment during the period of unemployment in order to remain eligible. These are the two primary barriers a domestic violence survivor must overcome to obtain and maintaining unemployment insurance. Although only briefly addressed in this Comment, the reader must also keep in mind a third nonmonetary eligibility requirement: that a claimant who refuses "suitable" employment must have good cause to do so.<sup>60</sup>

---

56. See *Brady v. Board of Review*, 704 A.2d 547 (N.J. 1997).

57. *Id.* at 559.

58. *Id.*

59. See *infra* Section II.

60. Suitable employment in some states may exclude employment that a claimant is not qualified to do, or employment that requires the claimant to take a substantial cut in previous earnings or work below his or her qualifications. Suitable work is often also defined as full-time work, which limits options for individuals who traditionally work part-time, such as individuals with substantial domestic responsibilities. See, e.g., Chasanov, *supra* note 4; Maranville, *Economy*, *supra* note 5. These articles address, in part, the good cause requirement for refusing suitable employment and also discuss the gendered perspectives of this requirement and its substantial effect on those seeking part-time employment, primarily women.

### 1. Eligibility and "Good Cause" Requirement

All state statutes provide that a worker may not voluntarily leave her job except for good cause. In many states, good cause for a voluntary quit generally is limited to only work-related situations.<sup>61</sup> Some states also provide that certain nonwork-related situations, such as leaving work to care for the health of a seriously ill family member<sup>62</sup> or to accompany a spouse to a new job,<sup>63</sup> is good cause. However, most statutes either explicitly or implicitly specify, through agency and court rulings, that any personal reasons for leaving employment are not good cause.<sup>64</sup> Personal circumstances typically include lack of childcare during working hours,<sup>65</sup> illness of child or family member,<sup>66</sup> or other domestic obligations.<sup>67</sup> Because domestic violence includes a variety of these situations, it is a "personal circumstance" by default.

Thirty-eight states restrict good cause for a voluntary quit to issues connected with work or attributable to the employer.<sup>68</sup> For instance, Arizona excludes from its good cause provision nonwork-related circumstances such as the illness of a child<sup>69</sup> and lack of transportation to work.

Only six states specifically provide in statute or regulation that good cause includes personal circumstances of either a compelling or substantial nature so as to necessitate a quit.<sup>70</sup> Another twenty-five

61. See, e.g., Chasanov, *supra* note 4, at 9. See also Richard McHugh & Ingrid Kock, *Unemployment Insurance: Responding to the Expanding Role of Women in the Workforce*, 27 CLEARINGHOUSE REV. 1422 (1994).

62. See, e.g., WASH. REV. CODE § 50.20.050(1) (1998) (a claimant may have a good cause reason for a voluntary quit if the claimant voluntarily quits due to the illness of claimant or a family member to take care of family member).

63. See, e.g., WASH. REV. CODE § 50.20.050(3) (1998); *Reep v. Commissioner of Dep't of Employment and Training*, 593 N.E.2d 1297 (Mass. 1992).

64. See, e.g., Chasanov, *supra* note 4.

65. *Id.* at 125.

66. *Id.* at 124.

67. *Id.*

68. The 38 states include the following: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. See, e.g., ALA. CODE § 25-4-78 (1975); ARK. CODE ANN. 11-10-513 (Michie 1999); 1999 Alaska Sess. Laws 23.30.378; ARIZ. REV. STAT. § 23-775 (1999). See also Chasanov, *supra* note 4, at 8.

69. See *Lara v. Arizona Dept. of Econ. Sec.*, 565 P.2d 1287 (Ariz. Ct. App. 1977).

70. See ARIZ. REV. STAT. § 23-775-1 (1999); ARK. CODE ANN. § 11-10-513(b) (Michie 1997); COLO. REV. STAT. § 8-73-108 (1999); KAN. STAT. ANN. § 44-706(a)(II) (West 1999); MD. CODE ANN. [Labor and Employment] § 8-1001(c)(1)(ii) (1999); MASS. GEN. LAWS ANN. ch. 151A, § 25(e) (West 1999). Other states, while having no specific statutory or legislative language, allow individuals to show that good cause exists where claimants face compelling and

states allow a claimant to argue good cause when he or she quits due to illness.<sup>71</sup> However, because domestic violence situations are usually classified as personal circumstances,<sup>72</sup> and not an illness, they would generally not qualify as a good cause reason to quit in the majority of jurisdictions today.

## 2. "Able, Available, and Actively Seeking" Requirement

The general requirement that an unemployed claimant be "able, available, and actively seeking" work in order to continue receiving benefits demonstrates that a primary purpose of unemployment insurance is to provide for the welfare of an unemployed individual and the individual's family while the claimant is searching for other suitable work.<sup>73</sup> All states require that a claimant be available and seeking work in order to qualify for unemployment benefits.<sup>74</sup> This mandate encompasses the requirement that a claimant be available for suitable work.<sup>75</sup> If a claimant is not looking for suitable work, the claimant either becomes ineligible for benefits for a certain amount of time or forfeits benefits altogether. In at least one state, "suitable" work is limited to a search for full-time work; part-time work is not considered suitable.<sup>76</sup> Additionally, some states define "suitable" work as that in

---

necessitous circumstances that provide no alternative to leaving employment. *See, e.g.,* Molenda v. Thomsen, 772 P.2d 1303 (N.M. 1989) (claimant did not show that employer speaking to her in loud voice was a compelling and necessitous circumstance of such magnitude so as to leave her no alternative but to quit employment); Stevenson v. Morgan, 522 P.2d 1204 (Or. Ct. App. 1974) (good cause for leaving employment exists when external pressures are so compelling that a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting work under similar circumstances).

71. Those states are Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Some states also provide that other specific circumstances may be "good cause" for a voluntary quit. *See, e.g.,* 820 ILL. COMP. STAT. § 405-601(B) (West 1999) (sexual harassment at work is considered 'good cause' to leave employment); KAN. STAT. § 44-706(a)(1) (Supp. 1999) (good cause to leave employment includes illness of worker or family member, leaving to join armed forces, or leaving to follow a spouse when transferred to another work location).

72. *See, e.g.,* Chasanov, *supra* note 4.

73. *See generally* Chasanov, *supra* note 4; Thompson, *supra* note 2; Maranville, *Economy*, *supra* note 5; WASH. REV. CODE § 50.20.010 (1998) (requiring that claimant, in order to be eligible for benefits, must be "ready, able, and willing, immediately to accept any suitable work . . . and must be actively seeking"); Tapper v. State Employment Sec. Dept., 122 Wash. 2d 397, 858 P.2d 494 (1993) (holding that a chief purpose of unemployment compensation is to provide support for unemployed workers as they seek new jobs).

74. *See* Chasanov, *supra* note 4, at 106-10.

75. *See generally* Chasanov, *supra* note 4; Thompson, *supra* note 72; and Maranville, *Economy supra* note 5.

76. *See* IND. CODE ANN. § 22-4-14-3(a)(3) (West 1999). *See also* National Employment Law Project, Analysis of State Unemployment Compensation Availability for Work

which an employee earns at least eighty percent of the employee's past wages, thus effectively restricting employment opportunities in part-time work.<sup>77</sup>

Thus, for victims of domestic violence who successfully argue their initial eligibility for benefits, the subsequent difficulty surrounding the "able, available, and actively seeking" requirement is twofold. First, a victim of domestic violence who has fled her abuser has to regroup her life. She has to search for housing, medical assistance, and care for her children. She cannot immediately look for work and may be disqualified for not being able, available, and actively seeking. Second, a victim of domestic violence, often female,<sup>78</sup> may be limited by a requirement that only full-time work is suitable work. Due to her obligations to herself and her uprooted family, she may not be able to immediately work full-time. In order for a domestic violence survivor to regroup, reestablish stability, and become employable, an exemption to the able, available, actively seeking requirement should apply for a short period of time.

#### D. Gendered Perspectives

The unemployment insurance system, as written and interpreted, is not only unfavorable to victims of domestic violence, it is also unfavorable to women as a whole. Maranville asserts that the laws of our country, although they attempt to treat different groups equally by applying the same terms and conditions to each, have been structured primarily by men to fit male life patterns.<sup>79</sup> In essence, the terms of the law fit a "norm" that is essentially male. In the field of unemployment insurance, the presumed norm of the working individual is reflected in the requirements of eligibility. Most unemployment insurance schemes are structured around the needs of a full-time worker who works at one job for several years, and who has few

---

Requirements When Work Search Is Limited to Part-Time Work (Oct. 25, 1994) (unpublished data, on file with the University of Michigan Journal of Law Reform) [hereinafter NELP Review]. The NELP Review asserts that because of certain restrictions and requirements in unemployment compensation laws regarding hours worked or wages earned, eligibility for unemployment insurance generally does not occur for claimants seeking part-time work in at least forty states.

77. See, e.g., IDAHO CODE § 72-1366(9) (1999); MICH. COMP. LAWS ANN. § 421.29(6)(a) (West 1999).

78. See Bergman, *supra* note 11, at 256.

79. See Deborah Maranville, *Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation and the Male Norm*, 43 HASTINGS L.J. 1081, 1085 (1992) [hereinafter Maranville, *Theory*].



domestic responsibilities. This hypothetical worker mirrors the statistics of men generally in our society,<sup>80</sup> but excludes most women.<sup>81</sup>

### 1. Gender Specific Jobs and the Unemployment Compensation Scheme

Unemployment compensation schemes primarily benefit full-time workers, and those who work in management and government positions. These positions are heavily weighted by men and are considered male-dominated.<sup>82</sup> In contrast, the positions which often are not covered by unemployment insurance are those that include part-time or contingent workers,<sup>83</sup> usually those in child or elderly care, low-level health care providers, and maintenance staff.<sup>84</sup> All of these areas of work are heavily weighted by women.<sup>85</sup>

The reason that the unemployment insurance scheme splits between these two groups—full-time, permanent employees and part-time, contingent workers—is that the eligibility terms of the unemployment compensation scheme usually define an eligible individual as one who either works a minimum amount of hours or earns a minimum amount during a base period, or both.<sup>86</sup> As men statistically fill most full-time positions and earn more money than women, these

---

80. At age 45-65 years, men had their current job for 10.4 years compared to 8.4 years for women. HANDBOOK OF U.S. LABOR STATISTICS, Table 1.42, Median Years of Tenure with Current Employment (3d ed. 1999). Women continue to be the primary care givers in a family, despite their increasing labor force participation. See Chasanov, *supra* note 4, at 16; see also ACUC Report I, *supra* note 2, at 3-5.

81. See, e.g., Mary E. O'Connell, *On the Fringe: Rethinking the Link Between Wages and Benefits*, 67 TUL. L. REV. 1421 (1993) (providing an overview of gender-based assumptions underlying unemployment insurance programs).

82. See, e.g., Anne E. Polivka, *A Profile of Contingent Workers*, 119 MONTHLY LAB. REV. 3, 10-14 (Oct. 1996) (indicating that temporary workers are 53% female, 25% under the age of 25, and 22% African-American); Francoise J. Carre, *Temporary Employment in the Eighties*, in NEW POLICIES FOR THE PART-TIME AND CONTINGENT WORKFORCE 50 (Virginia du Rivage ed., 1992) (finding that women account for 64.2% of all temporary workers). See also Inst. for Women's Pol'y Research, *The Economic Impact of Contingent Work on Women and Their Families*, RESEARCH IN BRIEF (Sept. 1995) at 2 (defining contingent workers as those workers who worked full-time for part of a year for more than one employer, and those who worked part-time for a full year while mixing self-employment with wage or salary work). Thus, the IWPR report did not count those who were "permanent" part-timers, who worked part-time for the same employer throughout the year. The IWPR report found that women hold 60% of contingent jobs.

83. See generally Maranville, *Theory*, *supra* note 79; Chasanov, *supra* note 4; Sharon Dietrich et al., *Symposium, Work Reform: The Other Side of Welfare Reform*, 9 STAN. L. & POL'Y REV. 53 (1998).

84. Deitrich et al., *supra* note 83, at 54.

85. See, e.g., U.S. Bureau of Labor Statistics, *Employment and Earnings*, at Table No. 672 in ABSTRACT, *supra* note 6. For instance, women made up 96.8% and 94.9%, respectively, of in-home child care providers and home cleaners in 1997.

86. See *infra* Part II.

requirements reflect the traditional gendered perspective that men are the primary "breadwinners" and women who fulfill other roles in the job market are only secondary income earners, thus neither needing nor desiring unemployment benefits.<sup>87</sup>

However, this historical perspective does not mirror the reality of today's work force.<sup>88</sup> Women now make up fifty-nine percent of the work force, as compared to thirty-three percent in 1948, thirteen years after unemployment insurance was formed.<sup>89</sup> Additionally, according to various studies, women make up between fifty-three and sixty-four percent of all temporary workers.<sup>90</sup> Women are also likely to be the primary breadwinners, as approximately eighty-two percent of all single-parent families in 1997 were headed by women.<sup>91</sup> In sum, women are entering the work force in larger numbers than ever before, and they are entering as primary breadwinners of single-parent households. Although there are differences between the average work week and type of job of most men and most women, the economic needs of women for unemployment insurance are just as acute as the economic needs of men who also support their families. The economic needs of a woman who leaves work to obtain safety for herself and her family from an abusive partner or stalker are of particular urgency. Although she may be lucky enough to have a job that would otherwise qualify her for unemployment insurance benefits to assist her during this dangerous time, she generally cannot receive them.

## 2. "Good Cause" Requirements

As the daily realities of adult work lives remain heavily gendered, many women are significantly disadvantaged by the structure of unemployment compensation laws. Washington, like many states, provides that good cause for a voluntary quit should be primarily work-related.<sup>92</sup> Work-related factors that are considered good cause

---

87. See, e.g., Maranville, *Theory*, *supra* note 79.

88. See, e.g., ACUC Report I, *supra* note 2.

89. See, e.g., Chasanov, *supra* note 4, at 123-25.

90. See, e.g., Polivka, *supra* note 82; Carre, *supra* note 82.

91. U.S. Bureau of the Census and unpublished data, in ABSTRACT, *supra* note 6, at Table No. 83, *Current Population Reports*, p. 20-509. See also U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, HOUSEHOLD AND FAMILY CHARACTERISTICS: *March 1998*, at i. In 1998, there were 2.1 million father-child and 9.8 million mother-child family groups.

92. See *infra* Part II, section C2 (discussing various "good cause" reasons for leaving work). See also WASH. REV. CODE § 50.20.050(3) (1998) which states in part, "In determining under this section whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors . . ." and WASH. ADMIN. CODE § 1921-6-009(1) (1999), which states a claimant must satisfactorily demonstrate "(a) [t]hat he or she left work primarily because of a work connected factor(s); and (b) [t]hat said work connected factor(s)

may include a significant change in benefits, hours, and wages;<sup>93</sup> termination without misconduct on the part of the employee (i.e., downsizing); and leaving work to accept a bona fide offer of work. Personal circumstances, like domestic responsibilities and abuse in the home, are not considered work-related in most states and are not, therefore, considered good cause to leave employment.<sup>94</sup>

As previously discussed, domestic responsibilities and domestic abuse are situations that primarily affect women.<sup>95</sup> For example, while 68.3% of women in two parent families are employed,<sup>96</sup> women have the primary childcare responsibilities in seventy-eight percent of all two-parent families<sup>97</sup> and eighty-two percent of single-parent families are headed by women.<sup>98</sup> Domestic responsibilities relating to children, such as illness of a child, childcare difficulties, and others, fall mainly on the shoulders of women. However, by the terms of unemployment compensation eligibility, domestic responsibilities are not good cause reasons for voluntarily leaving employment.<sup>99</sup>

In Washington and other jurisdictions, coworker violence and sexual harassment by coworkers in the work place are considered work-related situations and are good cause for leaving employment.<sup>100</sup> Sexual harassment or violence at work is clearly work-related because it occurs at work, affects job performance, and creates an unsafe environment for employees.<sup>101</sup> These provisions apply to all claimants

---

was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment . . . .

93. See, e.g., WASH. ADMIN. CODE § 192-16-009(c)(2) (1999); *G & G Elec. & Plumbing Dist. v. State Dep't of Employment Sec.*, 58 Wash. App. 410, 793 P.2d 987 (1990), *rev. denied*, 115 Wash. 2d 1023, 802 P.2d 125 (1990) (holding that the accumulation of job-related factors was good cause for resignation without losing the right to unemployment benefits, even though each factor alone is insufficient, when an employee resigned because the employee did not receive an annual bonus or sick leave benefits and work-related stress caused deterioration of the employee's health).

94. See Chasanov, *supra* note 4, at 124-25.

95. See, e.g., Bergmann, *supra* note 11, at 256. See also SOURCEBOOK, *supra* note 13.

96. See U.S. Bureau of Labor Statistics, News USDL 97-195, June 16, 1997, in ABSTRACT, *supra* note 6, at Table No. 656.

97. Chasanov, *supra* note 4, at 16.

98. See U.S. BUREAU OF THE CENSUS, *supra* note 91.

99. See Chasanov, *supra* note 4, at 105-06.

100. See *State v. Hussa*, 34 Wash. App. 857, 664 P.2d 1286 (1983); see also Diana M. Pearce & Monica L. Phillips, *When Sexual Harassment Happens: State Unemployment Insurance Coverage of Workers Who Leave Their Jobs Because of Sexual Harassment*, 5 STAN. L. & POL'Y REV. 75 (1994).

101. See, e.g., *Blair v. Poythress*, 440 S.E.2d 261 (Ga. Ct. App. 1994) (holding that an employee who voluntarily left work because her employer was physically abusive and had at one time threatened to kill her had good cause for quitting work and was entitled to benefits); *Associated Util. Svcs. v. Board of Review, Dep't of Labor and Indus.*, 331 A.2d 39 (N.J. Super. App. Div. 1974) (stating that the intentional harassment by the employee's supervisor created such

who assert they have experienced sexual harassment or violence at work, both women and men. By contrast, Washington courts and most others, have not considered domestic violence, a type of violence which predominantly affects women<sup>102</sup> and affects the cost of business,<sup>103</sup> to be work-related or good-cause to quit.

To date, only eleven states have specific provisions for domestic violence claimants.<sup>104</sup> Arkansas provides unemployment insurance to victims of domestic violence if the situation is a "personal emergency" of such a compelling nature that it necessitates a quit.<sup>105</sup> A Minnesota internal unemployment insurance agency policy provides unemployment insurance to victims of domestic violence.<sup>106</sup> Florida provides benefits where the victim of domestic violence was fired for excessive absenteeism due to injuries she received from her abusive husband.<sup>107</sup> The remaining states generally provide no benefits.<sup>108</sup>

Additionally, good cause for leaving employment is found in some situations involving purely domestic responsibilities. These decisions are important because domestic violence is often deemed a personal or domestic reason for a quit. For instance, in Washington, RCW 50.20.050(2)(c) provides that an employee who relocates to accommodate his or her spouse's employment has good cause to vol-

"intolerable and abnormal working conditions that [the claimant] was justified in quitting . . ."); *McPherson v. Employment Division*, 591 P.2d 1381 (Or. 1979) (noting "[t]he workplace is the setting of much of the worker's daily life. . ." and as a matter of law, a worker is not required to "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits.").

102. See SOURCEBOOK, *supra* note 13.

103. See SHECHTER & GRAY, A FRAMEWORK FOR UNDERSTANDING AND EMPOWERING BATTERED WOMEN, ABUSE AND VICTIMIZATION ACROSS THE LIFE SPAN 242 (1988). Shechter and Gray assert that Bureau of National Affairs statistics show that employers spend between \$3 to \$5 billion each year in lost work time, increased health care, higher turnover, and lower productivity due to domestic violence. *Id.* at 242.

104. California, Maine, New Hampshire, Colorado, Connecticut, New Jersey, New York, North Carolina, Oregon, Wyoming, and Wisconsin.

105. See *Rivers v. Stiles*, 695 S.W.2d 938 (Ark. 1985).

106. Minnesota internal IU policy #94-03 at 1 (January 27, 1994) (on file with the *Seattle University Law Review*).

107. *Gilbert v. Department of Corrections*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1997) (finding a claimant did not voluntarily leave work but was discharged without considering the good cause issue). *But see* *Hall v. Florida Unemployment Appeals Commission*, 697 So. 2d 541 (Fla. 1997) (holding that a victim of domestic violence who left work to protect herself and children from an abusive husband did not have good cause to leave work and was thus ineligible for unemployment compensation benefits).

108. See, e.g., *Pagan v. Board of Review*, 687 A.2d 328 (N.J. Super. Ct. App. Div. 1997). *But see* Advisory Council on Unemployment Compensation, Unemployment Insurance in the United States: Benefits, Financing and Coverage (1995) at 91-100 (indicating that ten states have policy directives allowing for benefits, benefits vary in an additional nine states, and in thirty-one states domestic violence claimants are ineligible).

untarily leave employment.<sup>109</sup> Other states have similar provisions in their unemployment compensation schemes or have interpreted their compelling personal reasons provisions to include just such a situation.<sup>110</sup> However, relocating to escape abuse that follows a victim to work is not “good cause.”

In sum, although some situations that are purely domestic are considered good cause for reasons of unemployment insurance eligibility, domestic violence by itself usually is not. Other purely domestic or personal situations are considered work-related due to the effect the situations have on the employee’s performance and workplace safety.<sup>111</sup> These effects are similar to how domestic violence negatively impacts a victim’s work performance and threatens the safety of the workplace. However, when domestic violence is routinely classified as a problem that is not work-related it is not, therefore, good cause to leave employment.

While some courts have chosen to provide victims of domestic violence with unemployment benefits in limited circumstances, benefits that many domestic violence victims so desperately need to escape their abuser, legislation is necessary to remove the discretion of fact-finders who determine eligibility on a case-by-case basis.<sup>112</sup> Only when domestic violence is legislatively recognized as good cause to leave employment will victims of domestic violence be assured of some economic assistance other than welfare after leaving employment to find safety for themselves and their children. However, even if statutes begin to define domestic violence as a good cause reason to leave employment, the claimant is still required to actively seek employment during the period of unemployment. In order for domestic violence survivors to reestablish themselves after fleeing

---

109. See, e.g., *In re Bale*, 63 Wash. 2d 83, 385 P.2d 545 (1963) (holding that a wife had good cause to terminate her employment to move with her husband to his new place of residence because it is the duty of a wife, in the absence of good reason for not doing so, to accompany and live with her husband in a home he selects); *Ayers v. Employment Sec. Dept.*, 85 Wash. 2d 550, 536 P.2d 610 (1975) (finding that the abandonment of employment by one spouse in order to move to an area where the other spouse is employed may be a compelling personal reason that constitutes good cause).

110. See, e.g., *Reep v. Commissioner of Dep’t of Employment and Training*, 593 N.E.2d 1297 (Mass. 1992) (holding that a woman who left her job to move with her partner of thirteen years, although unmarried, did not preclude determination that she had “urgent, compelling and necessitous” reasons to leave her employment).

111. See, e.g., *Dep’t of Indust. Relations v. Henry*, 172 So. 2d 374 (Ala. Ct. App. 1965); *Blair v. Poythress*, 440 S.E.2d 261 (Ga. Ct. App. 1994). But see MISS. CODE ANN. § 71-5-513(A)(1)(a) (West 1999) (marital, filial and domestic circumstances and obligations shall not be deemed good cause to voluntarily quit employment).

112. See *infra* Part II.B.

their abusers, this requirement must not apply to claimants who have successfully proven they left their jobs to escape domestic violence.

### 3. "Able, Available, and Actively Seeking" Requirement

As discussed previously, the eligibility requirement that a claimant for unemployment insurance be able, available, and actively seeking work exists in all state unemployment insurance compensation programs.<sup>113</sup> This requirement provides benefits only while the claimant seeks other work and helps to assure that the period of unemployment is as short as possible.<sup>114</sup>

Even where unemployment compensation benefits would have been otherwise provided, these benefits are not awarded when a claimant is not able, available, [and] actively seeking work.<sup>115</sup> This means that, in order to retain eligibility for unemployment benefits, the claimant must immediately undertake a job search for suitable employment.<sup>116</sup> However, this requirement fails to recognize the needs of a claimant who bears the majority of the burdens of domestic responsibilities in both two-parent and single-parent families.<sup>117</sup> Domestic responsibilities may be so overwhelming as to render a claimant with little time to search for, much less accept, available employment.

In addition, some studies estimate that due to statutory earnings requirements, in at least forty states, suitable work actually only includes full-time work.<sup>118</sup> This requirement applies even when the eligible claimant was previously employed part-time and can only work part-time,<sup>119</sup> which is often the case for claimants who have

---

113. See, e.g., Chasanov, *supra* note 4, at 111-17.

114. See, e.g., *In re Anderson*, 39 Wash. 2d 356, 235 P.2d 303 (1951) (holding that a claimant must make an effort to apply for, seek, and accept work of the same or equivalent pay and type and that the burden of establishing rights to benefits is upon claimant).

115. See, e.g., *Coleman v. Employment Sec. Dept.*, 25 Wash. App. 405, 607 P.2d 1231 (1980) (holding that an employment security commissioner's decision that an employee was ineligible for benefits for seven weeks on the basis that she was not actively seeking work during those weeks was not clearly erroneous or arbitrary or capricious).

116. See, e.g., ALA. CODE § 25-4-78 (Supp. 1999), which states in part, "An individual shall be disqualified for total or partial unemployment: (5) FAILURE TO ACCEPT AVAILABLE SUITABLE WORK, ETC. - - If he fails, without good cause, either to apply for or to accept available suitable work . . ."

117. See *infra* Part II.C. See also Chasanov, *supra* note 4, at 123-26; Maranville, *Economy*, *supra* note 5, at 297-306.

118. See generally NELP Review, *supra* note 76, and discussion *infra* Part II.C.; see also Chasanov, *supra* note 4, at 115-16.

119. See Thompson, *supra* note 2, at 762 (suitable work includes only full-time work even when claimant was previously employed part-time and can only work part-time). See also Chasanov, *supra* note 4, at 126 (indicating that unemployed women are more likely than unemployed men to seek part-time work).

domestic responsibilities in addition to work responsibilities. The courts rationalize this strange result by reasoning that a claimant who seeks only part-time work is restricting his or her employment opportunities.<sup>120</sup> If the claimant is restricting employment opportunities, then he or she is not fully "available" for work. Ironically, the same courts do not make the obvious reverse conclusion; a claimant who seeks only full-time work is restricting his or her employment opportunities by not searching for part-time work as well.<sup>121</sup> The definition of suitable work as encompassing only full-time employment ignores the dynamics of the labor market, in which over fifty-nine percent of women participate,<sup>122</sup> and in which part-time workers make up twenty-six percent of all laborers in 1997.<sup>123</sup>

For domestic violence survivors, a requirement for the claimant to make current and active efforts to seek suitable work is too burdensome. Often these survivors are fleeing their abusers and making attempts to go into hiding. These women often leave their homes without any means of transportation, access to housing, or other fundamental supports necessary to find and hold down a job. Additionally, requiring domestic violence victims otherwise eligible for unemployment benefits to search for and take employment immediately after fleeing an abusive situation jeopardizes the safety of the victim and her family. A domestic violence victim must first have time to reconstruct a life before she can reenter the work force.<sup>124</sup>

Some courts have expressed the opinion that the provisions of unemployment compensation statutes purporting to provide economic support for unemployed workers as they seek new jobs should be liberally construed.<sup>125</sup> This could include exempting a domestic violence

---

120. See Chasanov, *supra* note 4, at 126.

121. See *id.* at 126-27.

122. See *id.* at 126.

123. U.S. Bureau of Labor Statistics, *Employment and Earnings*, January 1998, in ABSTRACT, *supra* note 6, at Table Nos. 668, 669. See also Polivka, *supra* note 82; Carre, *supra* note 82 (indicating that women make up between 53% and 64% of all temporary workers).

124. To support the need for a proposed domestic violence good cause provision in current Washington statutes, Washington's Unemployment Law Project Legislative Committee of 1998 itemized the necessary steps a victim of domestic violence must take in order to gain control of her life after fleeing an abuser. These steps include immediate legal protections, emergency and permanent housing search, transportation assistance, medical care and/or hospitalization, counseling for victim and children, obtaining control over checking and credit accounts, reestablishing documentation regarding medical care, tax information, birth certificates, and divorce and custody papers, enrolling children in new school system, and then finding a job. (Checklist and contact numbers to the Unemployment Law Project on file with the *Seattle University Law Review*).

125. See, e.g., *Tapper v. State Employment Sec. Dept.*, 122 Wash. 2d 397, 858 P.2d 494 (1993); *Baird v. Unemployment Compensation Bd. of Review*, 372 A.2d 1254 (Pa. Commw. Ct. 1977).

survivor from work search requirements for a specified period of time to help ensure safety of the worker and her family. This will help make the survivor more employable through stabilization of her life.

### III. DOMESTIC VIOLENCE AND THE WORKPLACE

One of the strongest arguments against providing unemployment insurance benefits to victims of domestic violence who leave work to obtain safety is that their home situation is not truly "work related." However, domestic violence pervades a victim's workplace as well as every aspect of the victim's home. Although national statistics are scarce, at least one state study has shown that emotional abuse directly affects the victim's work performance and physical abuse may prevent the victim from leaving the home to go to work.<sup>126</sup> Often, the abuser harasses the victim at work, creating danger for coworkers and customers.<sup>127</sup> Twenty percent of battered victims lose their jobs altogether.<sup>128</sup> Domestic violence affects everyone it touches.

#### A. Domestic Violence—A "Work-Related" Issue

The drafters of the federal bill H.R. 851<sup>129</sup> focused on labor statistics regarding women and their presence in the workforce. They found that women will account for two-thirds of all new entrants into the work force between 1998 and 2000.<sup>130</sup> Currently, women make up fifty-nine percent of the total labor market.<sup>131</sup>

The drafters of H.R. 851 also relied on several congressional findings to show the connection between domestic violence and work in the United States.<sup>132</sup> The drafters found that violence against

---

126. See New York City Services Agency Report on the Costs of Domestic Violence, in New York State Department of Labor, Report to the State Legislature on Employees Separated from Employment Due to Domestic Violence (Jan. 15, 1996) at 3 [hereinafter N.Y. Report] (on file with the *Seattle University Law Review*). The N.Y. Report estimated that 54% of battered victims miss at least 3 days of work, 56% of battered victims are late for work at least 5 days a week, 28% of battered victims leave work early at least 5 days a month, and 75% of working battered women must use company time to call doctors, lawyers, shelters, counselors, family and friends because they cannot do so at home. *Id.* at 3.

127. The N.Y. Report also estimated that abusive partners harass 74% of employed battered women at work. *Id.*

128. Shechter & Gray, *supra* note 103, at 242.

129. H.R. 851, 105th Cong. (1997) was proposed federal legislation which would have provided unemployment insurance to victims of domestic violence.

130. Bureau of Labor Statistics, 1996 in Congressional Findings of H.R. 851. Congressional Findings of Proposed House Bill, H.R. 851 (on file with the *Seattle University Law Review*).

131. See, e.g., Chasanov, *supra* note 4.

132. See H.R. 851, 105th Cong. (1997).



women is the leading cause of injury to women.<sup>133</sup> A woman in the United States is more likely to be assaulted, injured, raped, or killed by a male partner than by any other type of assailant.<sup>134</sup> In fact, some reports used by the drafters of H.R. 851 estimated that ninety-five percent of victims of domestic violence are women.<sup>135</sup> These statistics established that domestic violence against women by male partners is an issue of enormous magnitude in the United States; it is the leading cause of injury to women.

The drafters of H.R. 851 discovered that violence against women dramatically affects women's workforce participation. Over fifty percent of battered women surveyed by the Bureau of Labor were harassed by their abuser at work, while twenty-five percent of battered women surveyed lost a job due, at least in part, to the effects of domestic violence.<sup>136</sup> A study conducted in New Jersey by Domestic Violence Intervention Services, Inc., estimated that ninety-six percent of the domestic violence victims surveyed had some type of problem in the workplace as a direct result of their abuse or abuser.<sup>137</sup> A New York survey reported that abusive spouses in New York City harassed seventy-four percent of battered women at work, fifty-four percent of battering victims miss at least three days of work per month, and fifty-six percent are late to work at least five times per month.<sup>138</sup> Additionally, domestic violence costs employers in the United States between three and five billion dollars annually in increased medical, health, and leave expenses.<sup>139</sup>

In sum, domestic violence has moved away from the home and into the work place. The leading cause of injury to women in the United States is violence committed by an abusive male partner,<sup>140</sup> and at least fifty percent of battered women have been harassed at work.<sup>141</sup> Domestic violence has a definite impact on the economy and the effi-

---

133. Department of Justice Report, 1996, in Congressional Findings of Proposed House Bill, H.R. 851, *supra* note 130. The Department of Justice report estimated that intimate partners commit more than one million violent crimes against women every year.

134. *Id.* at 1. See also U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SOURCEBOOK, *supra* note 13.

135. Congressional Findings of Proposed House Bill, H.R. 851, *supra* note 130, at 1.

136. See Bureau of Labor Statistics in Congressional Findings of H.R. 851, *supra* note 130.

137. Domestic Violence Intervention Services, Inc., NJ, 1996 Survey, in Congressional Findings of H.R. 851, *supra* note 130.

138. New York City Victims Services Agency survey, 1996, in Congressional Findings of H.R. 851, *supra* note 130.

139. Bureau of National Affairs estimate (1996), in Congressional Findings of H.R. 851, *supra* note 130.

140. *Id.*

141. *Id.* See also Bureau of Labor Statistics in Congressional Findings of H.R. 851, *supra* note 130.

ciency of an employer's business. The cost of domestic violence multiplies when dangers to coworkers, missed days of work, increased medical and health costs, and lateness of employees are considered. By providing short-term unemployment insurance to a victim who needs financial stability to leave her abuser, an employer would suffer less financial loss overall. A victim of domestic violence would not then be forced to choose between her life and her job in order to provide for her family.

The drafters of H.R. 851 emphasized the need for national legislation to provide unemployment insurance benefits to victims of domestic violence. They pointed out that the availability of economic support is a critical factor in women's ability to leave abuse situations. Over fifty percent of battered women surveyed in New York and New Jersey stayed with batterers because they lacked resources to support themselves and their children.<sup>142</sup> Additionally, a recent survey of state unemployment compensation agency directors by the Federal Advisory Council on Unemployment Compensation found that in thirty-one states battered women who leave work as a result of domestic violence do not qualify for unemployment benefits, either by express legislation, agency policy, or judicial interpretation of legislation.<sup>143</sup>

Recognizing the connection between domestic violence and unemployment, some states have chosen to provide unemployment benefits to victims of domestic violence who leave work to obtain safety. These states either (1) interpreted "serious illness" or "compelling personal" exemptions to include domestic violence situations;<sup>144</sup> (2) established an agency policy to provide victims of domestic violence with unemployment benefits, thus fulfilling the primary purpose of unemployment compensation, which is to provide benefits to those who are unemployed due to no fault of own;<sup>145</sup> or (3) enacted legislation that recognized domestic violence as good cause to leave employment.<sup>146</sup>

---

142. Bureau of Labor Statistics in Congressional Findings of H.R. 851, *supra* note 130, at 1. See also Domestic Violence Intervention Services, Inc., 1996 Survey, in Congressional Findings, *supra* note 130.

143. See generally Chasanov, *supra* note 4, describing the ACUC Report II, *supra* note 14, and results. My research here may differ slightly, as the ACUC report was based on a telephone survey of the commissioner of each unemployment insurance agency in each state regarding what the commission believed would be a likely outcome where a claimant for unemployment insurance left work due to a domestic violence situation. This Comment relies on actual case law and statutes.

144. See *Rivers v. Stiles*, 695 S.W.2d 938 (Ark. 1985); *Gilbert v. Dep't of Corrections*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1999).

145. See Minnesota Unemployment Insurance Policy, *supra* note 106.

146. See *supra* note 17.

*B. Providing Benefits to Domestic Violence Victims Through Reinterpretation of Current Unemployment Insurance Schemes*

Interestingly, Washington courts have found that the legislative intent expressed in RCW 50.01.010 to compensate those persons involuntarily unemployed is neither clear, unambiguous, nor well understood when considered together with the limited good cause reasons enumerated by RCW 50.20.050.<sup>147</sup> The specific limitations seem to work a contrary result to the primary purpose of the statute by excluding individuals who are, in fact, unemployed through no fault of their own. As the unemployment compensation statutes of other states have the same primary purpose as Washington's statute, the same contrary result has been witnessed in other jurisdictions.<sup>148</sup> In the case of domestic violence survivors otherwise eligible for unemployment benefits, this result is distressing.

Courts could find domestic violence to be good cause to voluntarily leave unemployment under at least three theories. Under the first theory, courts could find that domestic violence, although considered a domestic or personal situation, in some cases so affects the work situation that the domestic situation becomes work-related and is good cause to leave employment.<sup>149</sup> Second, where a statute provides a "compelling personal circumstances" exception to the bar on domestic or personal situations,<sup>150</sup> domestic violence could clearly qualify as a "compelling personal circumstance." A final theory, outlined in the case of Ms. B, would allow courts to find that although domestic vio-

147. See *In re Bale*, 63 Wash. 2d 83, 385 P.2d 545 (1963).

148. A striking example of this contradiction can be seen by comparing *Hall v. Florida Unemployment*, Appeals Comm., 697 So. 2d 541 (Fla. 1997), with FLA. STAT. ANN. § 44.3.021 (West 1999). The statutory policy of section 44.3.021 provides, in part, that

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and her or his family . . . The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure . . . for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own . . .

*Hall* involved a woman who fled to protect herself and her children from her abusive husband. *Hall*, 697 So. 2d at 542. Although the alcoholic husband had in the past beat the claimant when he was drunk and had recently began to drink again, the court found the claimant's actions did not constitute "good cause" under the family emergency exception. *Id.* at 544.

149. To date, no cases have held that domestic violence, by itself, is work-related.

150. Currently, only twelve states specifically provide a compelling circumstances exception to the general personal circumstances bar to eligibility for unemployment insurances where the claimant voluntarily quit for personal or domestic reasons. Thirty-eight states have no provision of this type. See *supra* note 71.

lence by itself is not good cause to leave employment, domestic violence may in some circumstances be so disabling as to necessitate a quit.

As discussed previously, this final theory exacts a higher standard than the "compelling personal circumstances" theory, and seems to require that a claimant be in imminent danger of disability, injury, or death before the claimant is effectively "disabled."<sup>151</sup> In contrast, the "compelling personal circumstances" theory has allowed for "good cause" quits in less serious situations.<sup>152</sup> For this reason, the disability theory is dangerous and should be used only when necessary.

Because no courts to date have held that domestic violence is, by itself, work-related, this Comment's discussion will focus on the second and third theories. Courts have applied existing statutory provisions analogous to other states' "compelling personal interest" exemption to provide unemployment benefits to domestic violence victims. For instance, in *Rivers v. Stiles*,<sup>153</sup> the court applied a "personal emergency" exception in the Arkansas unemployment insurance statute, which would provide good cause to quit employment, to a domestic violence situation and remanded for a determination of the claimant's reasonable efforts to maintain employment.<sup>154</sup> The claimant in *Rivers* suffered threats of physical abuse, had been ejected from her home, and sought shelter with others.<sup>155</sup> The claimant was no longer able to get to work and also had to resolve emergency housing issues.<sup>156</sup> The court found that this extreme domestic violence circumstance could constitute a "personal emergency" that barred disqualification from unemployment insurance benefits.<sup>157</sup>

Similarly, in 1985 a Pennsylvania court found that a domestic violence situation could be of such a "necessitous and compelling nature" that a claimant could quit a job and remain eligible for unemployment compensation benefits if the claimant could prove that quitting the job was reasonable.<sup>158</sup> The claimant quit her job and took

---

151. See *Middleton v. Empl. Sec. Dept.* No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996), and discussion *infra* Part II.A.

152. See *In re B.J.*, Docket No. 9-09554 (Wash. Employment Security Dep't, commissioner's dec. 1982) (affirming an ALJ's determination that a claimant was eligible for benefits under RCW 50.20.050(3) and had good cause to leave work when the claimant quit to prevent the unwanted attentions of a supervisor).

153. 697 S.W.2d 938 (Ark. 1985).

154. *Id.* at 939. The court did not find, however, that domestic violence, by itself, was good cause to leave employment.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Bacon v. Commonwealth*, 491 A.2d 944, 945 (Pa. 1985). The court did not find that domestic violence, by itself, was good cause to leave employment.

her children to live with their father, her former husband, because she was in fear for her life and for that of her children due to her current husband's past conduct and alcohol consumption.<sup>159</sup> The court emphasized the burden that the unemployment insurance board placed on the claimant to prove that she had no alternative but to quit her job and move out of town: "Specifically, the Board alleges that claimant could have sought a protection from abuse or moved into another home in the area thereby allowing her to retain her job. The Board would place the impossible burden of proving a negative on claimant."<sup>160</sup> Unfortunately, because the Board only imposed a burden on the claimant and did not make any factual findings regarding her choice, the court remanded for factual findings regarding the "reasonableness of the claimant's choice concerning her emotional state at the time and the personal problems with which she had to cope."<sup>161</sup>

Although there is no "compelling personal circumstances" provision in the Washington unemployment insurance statutes, personal reasons have often been so work-related as to constitute good cause for voluntary termination of employment and entitle the worker to unemployment benefits in Washington.<sup>162</sup> For example, *Matson v. Hutt* involved individuals who elected to terminate employment rather than lose union benefits.<sup>163</sup> The plaintiffs were entitled to health, welfare, and pension benefits through their union, but a decertification election terminated the union house relationship with the employer.<sup>164</sup> Although these benefits derived from voluntary membership in a union and were not strictly work-related, *Matson* interpreted the RCW 50.20.050 "good cause" requirement to encompass the loss of union benefits.<sup>165</sup>

In Washington, during a claimant's first appeal<sup>166</sup> for denial of benefits to the Office of Administrative Hearings (OAH),<sup>167</sup> an

---

159. *Id.* at 944.

160. *Id.* at 946.

161. *Id.* at 946-47.

162. See *Matson v. Hutt*, 85 Wash. 2d 836, 539 P.2d 852 (1975); see also *Davis v. Employment Sec. Dep't*, 108 Wash. 2d 272, 737 P.2d 1262 (1987) (holding that the "marital status" exception to the rule that voluntarily quitting employment disqualifies claimant from receiving unemployment compensation benefits does not prevent claimant whose meretricious relationship causes a claimant to leave employment from being disqualified from receiving benefits).

163. *Matson*, 85 Wash. 2d at 837, 539 P.2d at 853.

164. *Id.* at 839, 539 P.2d at 854.

165. *Id.* at 840, 539 P.2d at 854.

166. It is important to note here that the slim number of unemployment insurance eligibility cases based on domestic violence is indicative of the fact that unemployment insurance is directed by administrative agencies. The claim has the possibility of going through at least four different review levels before it ever comes before an appeals court and is published. The claim

administrative law judge (ALJ) may often construe the RCW 50.20.050(4) "marital status" or "domestic responsibilities" exemption to encompass domestic violence situations.<sup>168</sup> However, none of the initial OAH decisions made by ALJs are published and none of the domestic violence decisions that have been affirmed by the Employment Security Department (ESD) have been published as final Commissioner decisions.<sup>169</sup> Therefore, these decisions do not constitute binding authority for future cases.

The third method by which courts could provide benefits to victims who leave work due to domestic violence situations is to find that the domestic violence is of such a nature as to qualify as a disability where disability is considered a legal exemption from the requirement that voluntary quits be work-related. In Washington, although courts have not held that domestic violence, by itself, is either good cause to leave employment or is work-related, some Washington courts have found that domestic violence does qualify, in some circumstances, as a disability.<sup>170</sup> Similarly, an ALJ may also determine that a claimant's

---

is initially seen by an employment security claims officer who reviews and accepts or denies benefits. If the claimant or employer contest this decision, the appeal is taken to an administrative law judge (ALJ) or other independent administrative reviewing officer. See WASH. ADMIN. CODE § 192-04-060 (1999). If this decision is appealed by either the claimant, employee, or the economic security department, then a reviewing officer of the economic security department reviews the findings of the ALJ. See WASH. REV. CODE § 34.05.464(4) (1998). Only if this decision is appealed does the claim come before a district court judge. The decision is only published at the appellate court level. Unfortunately, most published cases regarding domestic violence across the country have held that domestic violence, in itself, is not "good cause" to quit a job. See, e.g., *Hall v. Florida Unemployment Appeals Comm.*, 697 So. 2d 541 (Fla. 1997); *Rivers v. Stiles*, 697 So. 2d 541 (Ark. 1997); *Bacon v. Commonwealth*, 491 A.2d 944 (Pa. 1985).

167. WASH. ADMIN. CODE § 192-04-060 (1999).

168. For example, *In re Khaki*, No. 2-11521-V (Wash. Employment Sec. Dep't Office of Admin. Hearings 1992), applied section 50.20.050(3) of the Revised Code of Washington, which includes the catch-all proviso that the ESD commissioner shall only consider work-related factors in determining good cause for a quit "unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual where he or she required to continue the employment." The claimant was thus able to establish good cause for her voluntary quit due to facts of prior physical abuse, continued threats and harassment.

169. Interview with ALJ Jody Keyes, Office of Administrative Hearings in Olympia, Washington (Feb. 24, 1999). Generally, the Commissioner of ESD publishes various decisions each year that highlight ESD's current interpretation of unemployment laws. These decisions are intended to guide claimants, the Employment Security Department (ESD), and ALJs in making eligibility determinations.

170. *Middleton v. Empl. Sec. Dept.*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996). The superior court remanded for determination of whether domestic violence of such a type to be disabling. The Washington Office of Administrative Hearings for the Employment Security Department held on August 16, 1996, that the claimant had established good cause for her voluntary quit, due to extreme domestic violence situation that effectively "disabled" claimant, as required by WASH. REV. CODE § 50.20.050 (1998).

domestic violence situation was an "illness" as defined under RCW 50.20.050(2)(b).<sup>171</sup>

Without legislation, women who qualify for unemployment compensation receive benefits after leaving work due to domestic violence only if they demonstrate that they tried all other methods prior to a quit,<sup>172</sup> or if the domestic violence was so severe as to constitute a disability<sup>173</sup> or a compelling personal circumstance in some states. Without legislation, the decision of whether a woman in a domestic violence situation, who left work to protect herself and her children, had good cause is often in the hands of the initial claims decision maker.

Because domestic violence is not commonly perceived as a legitimate reason to leave work, an initial rejection would likely cause most claimants to abandon the effort without an appeal.<sup>174</sup> Although domestic violence frequently occurs at work and often causes victims to leave work, domestic violence-related unemployment compensation cases are difficult to find both on the judicial and administrative levels.<sup>175</sup> The consensus among many domestic violence advocates is that domestic violence victims rarely appeal the initial rejection. This is true even if the claimant could otherwise make a good argument before an administrative law judge or in court.<sup>176</sup> If domestic violence

---

171. WASH. REV. CODE §50.20.050(2) (1998) provides: "An individual shall not be considered to have left work voluntarily without good cause" when:

(b) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act . . . .

172. *Middleton*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996).

173. *Id.*

174. Telephone interview with Pam Crone, attorney, Unemployment Law Project, in Seattle, Washington (June 10, 1998); telephone interview with Maurice Emsellen, attorney, National Unemployment Law Project, in New York, N.Y. (June 9, 1998); letter from Jon Bloom, Executive Director, Workers Defense League, New York, New York, to author (Mar. 1, 2000). Pam Crone hypothesized the low number of appeals was probably due in part to the added distress of having to appeal, the claimant being treated as if she had done something wrong, and the possibility of the claimant exposing herself to visibility to her abuser through repeated court appearances. Jon Bloom emphasized that many eligible claimants do not receive unemployment insurance because (a) they are discouraged by initial denials and (b) short deadlines to appeal adverse decisions (usually twenty to thirty days).

175. See N.Y. Report, *supra* note 126, at 3; Bureau of Labor Statistics, in Congressional Findings of H.R. 851, *supra* note 130; note 166, *supra*; and text *infra* Part III.

176. Telephone interview with Pam Crone, attorney, Unemployment Law Project, in Seattle, Washington, (June 10, 1998); telephone interview with Sharon Case, lobbyist, Washington

claimants rarely appeal the initial rejection, it probably means that the numbers of those who would otherwise qualify, if not frustrated by initial rejection, is higher than the numbers of appeals. Legislation would help to remedy the dilemma of those who may be eligible but do not appeal an initial rejection.

### C. *Providing Benefits to Domestic Violence Victims Through Agency Policy*

Another way that unemployment insurance benefits are provided to domestic violence claimants is by agency policy. This may happen in two ways. First, the administrative agency that implements the unemployment compensation program may be directed to address the issue of domestic violence, problems relating to contingent workers, or other unemployment compensation issues by the state legislature. In this scenario, the agency makes recommendations to the legislature and creates policy to implement these recommendations. Second, the administrative agency independently decides to provide benefits to claimants fleeing domestic violence. In both of these situations, the general public has little or no voice in determining whether the agency implements a policy in favor of domestic violence survivors. Agency policy is not rule-making and requires no opportunity for comment. Unless the legislature directs the agency that implements unemployment compensation to adopt a specific rule regarding domestic violence, the public may not even be aware of the agency policy.

In May 1993 the Minnesota legislature directed the Commissioner of Jobs and Training to develop a policy to address the issue of employees forced to leave employment due to domestic violence.<sup>177</sup> The Department of Economic Security (DES), created a policy expanding the serious illness provision of the unemployment insurance laws, which was considered good cause to voluntarily leave employment, to include domestic violence.<sup>178</sup> Although this policy created a small avenue of opportunity for domestic violence victims, the policy made it clear to all DES employees that a domestic violence claimant was required to make "reasonable efforts" to retain employ-

---

State Coalition Against Domestic Violence, Olympia, Washington (Sept. 20, 1998); letter from Jon Bloom, Executive Director, Workers Defense League, New York, New York, to author (Mar. 1, 2000).

177. Minn. H.B. 78 Leg. SF 236 (1993).

178. Minnesota internal UI Policy #94-03 (Jan. 27, 1994) (on file with the *Seattle University Law Review*). See also telephone conversation with Shawn Fremppstead, Attorney, Legal Services Advocacy Project, St. Paul, Minn (June 9, 1998).



ment prior to leaving employment.<sup>179</sup> This policy also creates the risk that initial claims will be denied by those who make initial claims decisions because they do not believe the seriousness of the particular situation or believe the claimant did not make reasonable efforts to keep her job before leaving.

An agency policy providing benefits to victims of domestic violence is similar to legislation and is better than leaving the decision in the hands of the ultimate fact-finder to locate a provision in existing law that might fit the particular situation. Agency policy is applied by agency officials, administrative law judges, and court judges alike, unless it conflicts with existing law. For instance, an agency policy to provide unemployment compensation benefits to victims of domestic violence would conflict with existing law if providing such benefits to victims of domestic violence was specifically prohibited.<sup>180</sup> However, policy decisions that do not conflict with statutory language, but require the claimant to prove that she made reasonable efforts to retain employment before leaving employment, expose the claimant to the mercy of the initial claims examiner. States or domestic violence advocates who consider this approach should be aware of this possible pitfall.

#### IV. LEGISLATIVE EFFORTS TO PROVIDE UNEMPLOYMENT INSURANCE BENEFITS

The third option used by states that recognize the connection between domestic violence and work is to provide unemployment compensation to victims of domestic violence who leave work to obtain safety by adding domestic violence as a work-related good cause reason to leave employment to the state unemployment compensation regulations or statutes. This option is desirable because legislation provides many benefits that reinterperation and agency policy do not. First, legislation regarding domestic violence is publicized. Domestic violence advocates speculate that one reason why the number of domestic violence-related unemployment insurance claims is so low is because of a lack of knowledge by domestic violence survivors about the state of the law and the availability of benefits.<sup>181</sup> A public legislative effort would help to assure that legitimate claimants are not

---

179. Minnesota internal UI Policy #94-03 (Jan. 27, 1994). The memo is unclear regarding what would be considered "reasonable efforts."

180. Currently, no state statutes provide that claimants who leave work due to domestic violence are, *per se*, ineligible for unemployment compensation benefits.

181. See Maine Coalition Against Domestic Violence Memo (on file with the *Seattle University Law Review*).

discouraged by initial rejections of their claims for unemployment benefits.

Second, legislation helps shape the awareness of agency officials. Even if a compelling personal circumstance exemption exists in unemployment compensation laws, an initial agency decisionmaker may believe that domestic violence is not a compelling personal circumstance. Legislation sends a strong message to the entire agency that domestic violence that affects a worker's safety is a legitimate reason to leave work.

Finally, legislation settles many issues regarding the level of proof that a claimant is required to present to prove domestic violence, the standard of review, or the necessity of a claimant to have first made reasonable efforts to preserve employment. This prevents domestic violence cases from being decided in a haphazard manner, dependent upon the discretion of a judge or a decision by an administrative official that the failure of a claimant to take further legal action against an abuser before leaving work indicates a lack of danger.

#### A. *An Era of Change: Legislative Leaders—1987 Through 1998*

##### 1. Maine

In 1987 Maine was the first state to pass legislation providing unemployment compensation benefits to victims of domestic violence who leave work to obtain safety.<sup>182</sup> The Maine statute provides that a claimant who voluntarily leaves work may not be disqualified from unemployment compensation benefits where the leaving was "necessary to protect the claimant from domestic violence and the claimant made all reasonable efforts to preserve employment."<sup>183</sup> This legislation, by defining domestic abuse, settles the problem of the initial claims taker making a unilateral decision and determining that the domestic violence was not severe enough to leave employment. Domestic abuse in Maine is defined in section 1043 of Maine's unemployment compensation statute, and includes attempting to cause or causing bodily injury; attempting to place or placing another in fear of

---

182. ME. REV. STAT. ANN. tit. § 1193-1A(4) (West 1999) provides in part:

An individual shall be disqualified for benefits . . . For the week in which the claimant left regular employment without good cause attributable to that employment. The disqualification continues until the claimant has earned 4 times the claimant's weekly benefit amount in employment by an employer. A claimant may not be disqualified under this paragraph if . . . (4) The leaving was necessary to protect the claimant from domestic abuse and the claimant made all reasonable efforts to preserve the employment.

183. *Id.*

bodily injury; compelling a person by force, threat or intimidation to engage in conduct which the person has a right to abstain from; repeatedly intimidating or harassing a person with the intention of causing fear or intimidation; and knowingly restricting the movements of a person without consent.<sup>184</sup>

This definition allows for many possible situations involving domestic violence. This definition is not limited to instances where the claimant's life was threatened. In addition, although the claimant in Maine bears the burden of proving domestic violence, there is no evidentiary requirement in the statute. Chris Hasted, staff attorney with the Maine Equal Justice Project, who assisted in lobbying for the legislation, emphasizes that, without an evidentiary requirement, the burden of proof is quite simple.<sup>185</sup> Usually a statement from the claimant is enough.<sup>186</sup>

Unfortunately, despite the ease of this process, the number of actual cases filed with Maine's Bureau of Employment Security since the enactment of the statute in 1987 has been negligible. According to Gail Thayer of the Bureau of Employment Security, the actual number is too small to calculate using the Bureau's traditional methods of calculation.<sup>187</sup> This is good news for employers who are charged unemployment insurance tax by percentage of use, but is distressing news for domestic violence advocates who know the problem of domestic violence is larger than the numbers indicate. It is quite possible that the existence of the Maine legislation is not very well known to the public generally, and to domestic violence victims specifically.

## 2. New Hampshire

New Hampshire passed H.B. 579 in June 1998.<sup>188</sup> The legislation was the result of legislative study on the needs of the contingent

---

184. ME. REV. STAT. ANN. tit. § 1043 (West 1999).

185. Telephone interview with Chris Hasted, staff attorney and lobbyist, Main Equal Justice Project, Augusta, Maine (July 14, 1998); telephone interview with Bruce Neas, Attorney, Washington Columbia Legal Services in Olympia, Wash. (July 14, 1998).

186. *Id.*

187. Telephone interview with Gail Thayer, Unemployment Insurance officer, Maine Bureau of Employment Security, Augusta, Maine (July 14, 1998).

188. Codified at N.H. REV. STAT. ANN. § 82-A:32I(a)(3) (1998). Section 82-A:32 I provides in pertinent part:

Until the individual has earned in each of 5 weeks wages in employment as defined in § RSA 282-A:9 . . . (a) The individual left work voluntarily without good cause in accordance with rules of the commissioner. This section shall not apply and benefits shall be paid without regard thereto where . . .

(3) The leaving of employment was necessary to protect the individual from domestic abuse, as defined in § RSA 173-B:1 and in accordance with rules

workforce in New Hampshire.<sup>189</sup> The study and legislation were proposed by New Hampshire Legal Assistance attorneys.<sup>190</sup> The study concluded that domestic violence was a serious problem for New Hampshire's labor force as a whole, and for contingent workers in particular. The study proposed that an exemption to the voluntary quit disqualification be provided to victims of domestic violence. Jonathan Baird, of New Hampshire Legal Assistance, emphasized that a primary reason the legislation passed was that the statistics from Maine regarding the number of claims filed under similar legislation was so low.<sup>191</sup>

The provisions of H.B. 579 were modeled after Maine's law and look quite similar.<sup>192</sup> The legislation provides that a person who leaves a job in order to protect himself or herself from domestic abuse will not be denied unemployment compensation if the leaving was necessary to protect the individual from domestic abuse.<sup>193</sup> However, the New Hampshire legislation requires that the claimant make all reasonable efforts to preserve the employment and either relocate to escape the abuse or be unable to return to work due to changed work circumstances.<sup>194</sup> The legislation also requires that a claimant who is unable to return to work due to changed circumstances must make all efforts to preserve the employer-employee relationship or possibility of

---

adopted by the commissioner, and the individual made all reasonable efforts to preserve the employment, and in addition:

- (A) The individual relocated to escape the abuse; or
- (B) The individual, due to changed circumstances, is able to return to the individual's employment, but the employer is unable to return the individual to the individual's job, or to comparable work, due solely to:
  - (i) A reduction in work force; or
  - (ii) Other economic conditions, and the individual did all things that a reasonably prudent person would have done to continue the employer-employee relationship or the possibility of reemployment during the period the individual was unable to work due to the domestic abuse.

189. Unemployment compensation scholars will be interested to note that this legislative survey resulted not only in the voluntary quit for domestic abuse exemption, but also increased benefit levels, provided an alternative base period for calculating unemployment insurance benefits, and changed the "available" requirement for workers with permanent mental or physical disabilities. See also Memorandum from New Hampshire Assistance Legal to Employment Law Task Force (June 11, 1998) (on file with the *Seattle University Law Review*).

190. *Id.* (listing the steps in the legislative effort to provide benefits to victims of domestic violence).

191. Telephone interview with Jonathan Baird, staff attorney, New Hampshire Coalition Against Domestic Violence in Claremont, N.H. (July 14, 1998).

192. *Id.*

193. See N.H. REV. STAT. ANN. § 82-A:32I (1998).

194. *Id.*

employment during the time the claimant is unable to work due to domestic violence.<sup>195</sup>

These requirements are more strict than Maine's legislative requirements. However, the level of proof required by the New Hampshire legislature is a low standard similar to Maine's. The claimant may prove that domestic violence existed through any evidence at all, including the following: a police report, domestic violence counselor affidavit, or any third party documentation, or even a claimant's statement.<sup>196</sup>

### 3. California

In August 1998 California followed New Hampshire's example and passed S.B. 165.<sup>197</sup> The legislation provides that leaving work to protect oneself or one's children from domestic violence is a good cause reason for eligibility for unemployment compensation.<sup>198</sup> Additionally, the statute explicitly recognizes the effect domestic violence has on employment.<sup>199</sup> Because domestic violence is considered neither the fault of the employee nor the fault of the employer, the legislation is financed through noncharging unemployment insurance benefits.<sup>200</sup>

This legislation continues the progressive efforts of California to provide unemployment insurance benefits in limited nonwork-related situations.<sup>201</sup> The legislation provides up to \$230 per week for twenty-

---

195. *Id.*

196. Telephone interview with Jonathan Baird, *supra* note 191.

197. Codified at CAL. UNEMP. INS. CODE § 1256 (West 1999); see also Legal Aid Society of San Francisco, Unemployment Law Center press release (Aug. 31, 1998). Section 1256 states, in pertinent part, "[a]n individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse." Section 1 of 1998 Cal. Stat. 411, also provides:

The Legislature finds and declares that: The Employment Development Department, through its regulatory authority, currently provides unemployment insurance benefits to victims of domestic violence who left employment with good cause. Because certain other good cause conditions are specified by statute, it is necessary to specify by statute that an otherwise eligible victim of domestic violence can receive unemployment insurance benefits if found to have left with good cause to highlight the existence of this crime and its effect on employment, and in addition, to exempt employers' reserve accounts from increased charges because the victim left employment through no fault of the employer.

198. *Id.*

199. *Id.*

200. *Id.*

201. Existing California unemployment legislation provides benefits to those who leave work to accompany a spouse who moves to another city to take other employment. See, e.g., CAL. UNEMP. INS. CODE § 1256 (West 1999) which provides: "An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to

six weeks, depending upon the claimant's earnings in a base period.<sup>202</sup> The level of proof required by claimants is not specified in the legislation and has not yet been determined by court decision.<sup>203</sup>

### B. National Attempts at Legislation—1996

In 1996 H.R. 3837, The Battered Women's Employment Act, part of the Violence Against Women Act, was proposed.<sup>204</sup> This bill recognized the connection between domestic violence and unemployment and the costs of domestic violence in the workplace. H.R. 3837 attempted to amend section 3304(a) of the Internal Revenue Code of 1986 to include domestic violence. H.R. 3837 also provided that the victim's need to recover from domestic violence or an employer's denial of temporary leave to deal with domestic violence would be good cause to leave employment, "where the employee believes that termination of employment is necessary for the future safety of the employee or employee's family."<sup>205</sup> The act further specified that if a state required a claimant to make all reasonable efforts to maintain employment, such reasonable efforts would include seeking protection or assistance from police, legal or social workers, pursuing legal protection, or participating in psychological, social or religious counseling.<sup>206</sup>

Although H.R. 3837 did not pass, it created quite a stir in the legal services and domestic violence advocacy community.<sup>207</sup> Through the proposal of this bill, the federal government recognized the impact domestic violence had on the workplace. The bill was followed in 1998 by H.R. 851, the Battered Women's Employment Protection Act, which was part of VAWA II.<sup>208</sup> The language was essentially the same as H.R. 3837 and included additional congressional findings regarding domestic violence in the workplace.<sup>209</sup> By defining the situations that would be reasonable efforts and identifying how domestic

accompany his or her spouse to a place from which it is impractical to commute to the employment. For purposes of this section "spouse" includes a person to whom marriage is imminent."

202. CAL. UNEMP. INS. CODE § 1256 (West 1999).

203. *Id.*

204. H.R. 3837, 104th Cong. (1996).

205. *Id.*

206. *Id.*

207. In fact, it was in part due to the statistical findings and tidal wave of support behind VAWA that helped forward the impetus between the recently passed California and Maine statutes that provided unemployment insurance to domestic violence victims. Telephone interview with Robin Runge, staff attorney, San Francisco Legal Assistance, San Francisco, California (July 24, 1998).

208. H.R. 851, 105th Cong. (1997).

209. *Id.*

violence could be proven, both of these acts anticipated the difficulties that domestic violence survivors encounter when attempting to prove domestic violence and proving reasonable efforts to maintain employment.<sup>210</sup>

### C. National Attempts at Legislation—1998

After New Hampshire and California's effective legislative efforts, the 1998–1999 legislative session experienced a small flurry of similarly successful efforts to provide unemployment insurance to victims of domestic violence. Colorado,<sup>211</sup> Connecticut,<sup>212</sup> New Jersey,<sup>213</sup>

---

210. *Id.*

211. COL. REV. STAT. ANN. § 8-73-108(4) (West Supp. 1999) provides that An individual separated from a job shall be given full award of benefits if any of the following reasons and pertinent conditions related thereto are determined by the division to have existed. . . .

- (j) Being physically or mentally unable to perform the work . . . In cases where an individual quits because of domestic abuse, any award of benefits will be made in accordance with paragraph (r) of this subsection (4). . . .
  - (r)(I) quitting a job because of domestic abuse may be reason for a determination of a full award only if:
    - (A) The division has been provided a copy of a police report, criminal charges, restraining order, medical records, or any other corroborative evidence documenting the domestic abuse;
    - (B) The worker provides written substantiation that the worker is receiving assistance or counseling from a recognized counseling entity for domestic abuse; and
    - (C) The division certifies and notifies the employer and the hearing officer that no prior award under the provisions of the paragraph (r) has been made to he worker within the preceding three years.
  - (II) If the worker does not meet the provisions of subparagraph (1) of this paragraph (r), the worker shall be held to have voluntarily terminated employment for the purposes of determining benefits . . .
  - (III) Any benefits awarded to the claimant under the provisions of this paragraph (r) normally chargeable to the employer shall be charged to the fund.

This legislation was adopted in 1999.

212. 1999 Conn. Acts 99-123 (Reg. Sess.) (to be codified at CONN. GEN. STAT. § 31-236(a)(2)(A)). "Good cause" includes leaving "to protect the individual or a child domiciled with the individual from becoming or remaining a victim of domestic violence" provided that the individual has made reasonable efforts to preserve the employment. The employer's account shall not be charged.

213. N.J. REV. STAT. 43:21-5 (2000) provides that

An individual shall be disqualified from benefits . . . (j) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19). No employer's account shall be charged for the payment of benefits to an individual who left work due to circumstances resulting from the individual being a victim of domestic violence.

This legislation was signed into law on January 19, 2000.

New York,<sup>214</sup> North Carolina,<sup>215</sup> Wisconsin,<sup>216</sup> and Wyoming<sup>217</sup> passed legislation either similar to or identical to existing legislation in the first three states. Oregon's Employment Security Department adopted a new agency regulation that provides benefits to victims of domestic violence.<sup>218</sup> As discussed throughout this Comment, resistance to this type of legislation has encompassed issues about standing, levels of proof, and whether the employer should be charged for benefits provided.<sup>219</sup> These statutes, and Iowa's regulation, illustrate an evolving sophistication and efforts to deal with these perceived problems.

For instance, North Carolina limits benefits to individuals who have experienced domestic violence committed upon the claimant by a

214. N.Y. LAB. LAW § 593-1(a) (McKinney 1998) provides in part: "A voluntary separation may also be deemed for good cause if it occurred as a consequence of circumstances directly resulting from the claimant being a victim of domestic violence." This legislation was adopted in 1999.

215. N.C. GEN. STAT. § 96-14(1f) (1998) provides that

For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged.

This legislation was made effective July 1, 1998.

216. Chapter 15, 1999 Wis. Laws 255. The statute allows a domestic violence victim to voluntarily terminate her work and receive unemployment benefits without requalifying if she:

- (I) terminates work because of domestic abuse, concerns about her personal safety or harassment, or concerns about the personal safety or harassment of her family or household members;
- (II) has obtained a temporary or permanent restraining order; AND
- (III) demonstrates to the department that the restraining order has been or is reasonably likely to be violated.

Benefits will not be charged to the employer. This legislation was passed on December 16, 1999.

217. WYO. STAT. ANN. § 27-3-311 (Michie 1999) provides in part:

- (a) An individual shall be disqualified from benefit entitlement beginning with the effective date of an otherwise valid claim . . . until he has been employed in an employee-employer relationship for a period of at least twelve (12) weeks whether or not consecutive, and has earned at least twelve (12) times the weekly benefit amount of his current claim for services after that date, if the department finds that he: (i) Left his most recent work voluntarily without good cause attributable directly to his employment, except . . . (C) If forced to leave the most recent work as a result of being a victim of documented domestic violence.

This legislation was enacted during the 1999 Regular Session.

218. OR. ADMIN. R. 471-030-0038 (1999). Amendment to the rule clarifies that a domestic violence victim who is endangered at a current workplace and who pursues reasonable alternatives prior to voluntarily leaving work may be considered voluntarily leaving work with good cause. Reasonable alternatives may include actions such as seeking a restraining order, relocating to a secure area, and seeking reasonable accommodations from the employer such as a transfer within the company.

219. See discussion, *infra*, Part V.B.



person who has or has had a familial relationship with the claimant.<sup>220</sup> Both Colorado's<sup>221</sup> and New Jersey's<sup>222</sup> statutes outline the types of proof a claimant may provide to show that domestic violence has occurred, Wyoming requires that the domestic violence be "documented,"<sup>223</sup> and North Carolina's statute defines domestic violence with reference to another statutory provision.<sup>224</sup> Colorado's statute provides that the benefits shall be noncharging to the employer and shall come from the general unemployment insurance fund.<sup>225</sup>

These statutes were passed through various efforts; some with the assistance of domestic violence advocates. New Jersey's Domestic Violence Coalition had a strong role in passing its legislation, and the North Carolina Justice Project assisted in the formation and passage of legislation in that state.<sup>226</sup> Similarly, the Domestic Violence and

220. N.C. GEN. STAT. § 96-14(1f) (1998).

221. See COL. REV. STAT. ANN. § 8-73-108(4)(r)(I) (West Supp. 1999). The statute provides that

Quitting a job because of domestic abuse may be reason for a determination for a full award only if:

- (A) The division has been provided a copy of a police report, criminal charges, restraining order, medical records, or any other corroborative evidence documenting the domestic abuse;
- (B) The worker provides written substantiation that the worker is receiving assistance or counseling from a recognized counseling entity for domestic abuse; and
- (C) The division certifies and notifies the employer and the hearing officer that no prior award under the provisions of this paragraph (r) has been made to the worker within the preceding three years.

222. See N.J. REV. STAT. 43:21-5(j) (2000), providing that

For the purposes of this subsection (j), the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following: (1) A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction; (2) A police record documenting the domestic violence; (3) Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19); (4) Medical documentation of the domestic violence; (5) Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or (6) Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

223. WYO. STAT. ANN. § 27-3-311(a)(i)(C) (Michie 1999).

224. N.C. GEN. STAT. § 96-14(1f) (1998).

225. COL. REV. STAT. ANN. § 8-73-108(4)(r)(III) (West Supp. 1999). "Any benefits awarded to the claimant under the provisions of this paragraph (r) normally chargeable to the employer shall be charged to the fund." See also N.J. REV. STAT. 43:21-5(j) (2000).

226. Telephone interview with Maurice Emsellen, attorney, National Employment Law Project (Feb. 15, 2000) (on file with the *Seattle University Law Review*). As a side note, the North Carolina legislation passed unanimously as part of general unemployment legislation. Letter from Dan Gerlach, North Carolina Budget and Tax Center, to author (Feb. 12, 2000) (on file with the *Seattle University Law Review*).

Unemployment Project had a strong role in undertaking state studies on the impact of domestic violence in the workplace and helping to form resulting unemployment insurance laws.<sup>227</sup> In Oregon, legislation failed, so the agency provided benefits under its general rule-making power.<sup>228</sup> However, in New York, the statutory provisions were passed by the legislature without much assistance from the domestic violence advocacy communities.<sup>229</sup> This may mean that this type of legislation is becoming more acceptable to the legislative and business community.

Unfortunately, since these additional statutes have only recently been passed, there are no current cases that utilize the legislation. Furthermore, Maurice Emsellen of the National Employment Law Project in New York reports that the older statutes in Maine, New Hampshire, and California still have not generated many claims.<sup>230</sup> This may be because there are no provisions in any of the statutes that provide for training of unemployment claims processors to recognize domestic violence victims or education of claimants regarding possible eligibility status. Domestic violence victims are not filing for benefits because they do not realize they are eligible.<sup>231</sup> There is still much that domestic violence advocates in these states can do to educate claimants and lawyers.<sup>232</sup>

---

227. Telephone interview with Robin Runge, Staff Attorney, Legal Aid Society of San Francisco (July 14, 1998).

228. Telephone interview with Maurice Emsellen, attorney, National Employment Law Project (Feb. 15, 2000).

229. Letter from Chuck Sheketoff, Oregon Center for Public Policy, in Silverton, Oregon, to author (Feb. 12, 2000) (on file with the *Seattle University Law Review*).

230. Telephone interview with Maurice Emsellen, attorney, National Employment Law Project (Feb. 15, 2000).

231. *Id.*; Telephone interview with Pam Crone, University of Washington Legal Aid Clinic, Unemployment Insurance (Feb. 15, 2000).

232. For example, domestic violence advocates in states which have existing legislation still assert that there is little coordination between the state employment security departments which process claims and claimant advocates. Specifically, Robin Runge of the Legal Aid Society of San Francisco states that their office has had a difficult time speaking with agency representatives to set up training on the new legislation, while Maurice Emsellen of the National Employment Law Project has reported that caseworkers are not trained to process domestic violence claims and little outreach has yet been done. Robin Runge, Staff Attorney, Legal Aid Society of San Francisco, letter to author (July 14, 1998); letter from Maurice Emsellen, attorney, National Employment Law Project, to author (Feb. 16, 2000) (on file with the *Seattle University Law Review*). It must be noted here that Delaware has attempted, and failed, to pass legislation that would provide unemployment insurance to victims of domestic violence. H.B. 252, 140th Gen. Assembl. (Del. 1999). This legislation would provide that an individual who leaves employment due to circumstances directly resulting from domestic violence shall not be disqualified from the receipt of unemployment insurance if leaving work resulted from:

- (i) fear of domestic violence en route to or at work;
- (ii) relocation to another geographic area to avoid domestic violence;
- (iii) recovery from traumatic stress due to domestic violence;

## V. THE CASE FOR LEGISLATION IN WASHINGTON

As this Comment previously notes, domestic violence is increasingly becoming a work-related problem. Domestic violence may occur at home or at a victim's place of employment. As women make up an increasingly larger proportion of the workforce, domestic violence follows them to work. The workplace is the easiest way for an abuser to again locate, harass, intimidate, attack, or even kill his or her victim. Washington is not exempt from this phenomenon. Washington's employers should not ignore the fact that domestic violence takes the lives of employees who are trying to keep their jobs. The benefits of providing an additional option to employees who are forced to choose between their lives and their jobs through unemployment compensation are multifold.

### A. *The Benefits of Providing Unemployment Insurance to DV Victims*

The benefits of providing unemployment insurance to victims of domestic violence who leave employment to seek safety for themselves and their children fall into three primary categories. First, by providing unemployment insurance benefits to victims of domestic violence, the purpose and intent of unemployment insurance—to provide financial assistance to those who are unemployed through no fault of their own—is fulfilled. Domestic violence is not the fault of the victim, and often requires that a victim leave employment to protect herself and her children from further abuse.

The second category includes financial benefits. Because domestic violence often interferes with worker safety, productivity, and morale, providing victims with an opportunity to seek safety while retaining a measure of financial independence saves employers' money lost due to domestic violence situations occurring at work. Because the benefits received through unemployment insurance are expressed as a percentage of past earnings, they are also often higher than welfare or TANF (Temporary Aid to Needy Families) flat payments,<sup>233</sup> thereby providing more financial security for a claimant during a difficult and dangerous period. Additionally, as TANF has a five year

---

(iv) any other circumstance in which the domestic violence victim feels it is imperative to leave work to protect oneself or one's family.

The employer's account would not be charged for receipt of benefits under this legislation.

For more information on advocacy efforts, domestic violence advocates may contact Jackie Payne, Policy Attorney, NOW Legal Defense and Education Fund, at (202) 544-4470 or [jpayne@nowdefdc.org](mailto:jpayne@nowdefdc.org), or sign up for regular information on legislative efforts through the National Employment Law Project at [nelp-uiadvocates@egroups.com](mailto:nelp-uiadvocates@egroups.com).

233. See WASH. REV. CODE § 50.20.120(1) (1998); interview with Pam Crone, *supra* note 174.

lifetime limit in Washington for total benefits,<sup>234</sup> providing unemployment compensation benefits to a domestic violence victim who qualifies for unemployment insurance will assure that the individual's TANF account will not accrue months against her total benefits. TANF could be used at another time of financial need when the individual is ineligible for unemployment insurance.

Finally, as the structure of the work force and economy has changed, providing unemployment insurance benefits to victims of domestic violence is one step toward reforming an unemployment compensation scheme that inaccurately reflects the nation's economic structure. As women make up a greater proportion of the workforce, and as domestic violence increasingly affects the workplace, unemployment insurance programs need to be sensitive to the particular needs of the employees who put their lives at risk to keep their jobs.

This Comment does not argue that we tie the hands of Washington's Employment Security Department (ESD) to determine whether or not a domestic violence claim is a valid, substantiated claim. Under a statute providing that domestic violence is good cause to leave employment, ESD could ask for proof of domestic violence, as it may ask for proof of other good cause reasons to leave employment. What this Comment proposes is that we give ESD and claimants suffering domestic abuse another option. As the legislation is currently written, there is no choice but to deny initial benefits to a claimant who would otherwise be eligible for unemployment insurance except for the fact that the claimant's reason for leaving work is life-threatening domestic abuse. A subsequent administrative or court decision may rule otherwise for the claimant, under a different interpretation of the statutes, but many claimants do not appeal.

### *B. Why Has Washington Not Instituted Unemployment Insurance for DV Victims?*

Employers are concerned with the costs associated with proposed additional unemployment insurance benefits. The unemployment compensation system in Washington works at a cost to the employer. Every employer who has qualified employees pays a base rate of tax that is entered into an unemployment compensation fund.<sup>235</sup> The more often employees utilize the unemployment compensation benefits, the more the employer pays in taxes from the base rate.<sup>236</sup> How-

---

234. See WASH. REV. CODE § 74.08A.010(1) (1998).

235. See generally WASH. REV. CODE § 50.16 (1998); WASH. REV. CODE § 50.24.010 (1998).

236. WASH. REV. CODE § 56.29.025 (1998).

ever, where awarded benefits are not due to the employer's action, the employer can petition for relief of benefits and the tax of the individual employer does not increase.<sup>237</sup> In circumstances where benefits have been awarded to victims of domestic violence, the employers could petition for relief from charges to their account and the cost would come from the unemployment general fund.<sup>238</sup>

Additionally, the cost statistics from states which currently have similar legislation or are considering similar legislation are quite low. For example, in Maine, which has had similar legislation for over ten years, in 1997, only six cases at the administrative hearing level related to domestic violence.<sup>239</sup> Minnesota, which has a Division of Economic Security policy that provides benefits to victims of domestic violence under a statutory "serious illness" provision, has not had any cases reach the hearing level between 1994 and 1997.<sup>240</sup> Additionally, in 1998 North Carolina commissioned a study of domestic violence and unemployment insurance.<sup>241</sup> This survey estimated that the total annual cost of providing unemployment benefits to qualifying victims of domestic violence would be approximately \$300,000.<sup>242</sup>

An informal survey of Washington ALJs who hear initial unemployment compensation appeals indicates that each ALJ has approximately two cases per year on his or her docket.<sup>243</sup> Because there are twenty-eight ALJs statewide who preside over unemployment compensation appeals, this would indicate that there are approximately fifty-six cases per year that make it to the first administrative appeals level. Finally, a fiscal note attached to S.B. 5136, proposed legislation in Washington that would provide domestic violence as good cause to leave employment, estimates that one hundred claimants per year will obtain benefits through the new domestic violence provisions.<sup>244</sup>

---

237. WASH. REV. CODE § 50.29.020 (1998).

238. *Id.*

239. Telephone interview with Alan Toubman, Unemployment Insurance Hearing Officer, Maine Bureau of Employment Security, Augusta, Maine (July 27, 1998).

240. Telephone interview with Shawn Fremsted, attorney, Legal Services Advocacy Project, St. Paul, Minn. (June 9, 1998).

241. Domestic Violence and Unemployment Insurance in North Carolina, Terry Sanford Institute of Public Policy at Duke University, May 1998 (unpublished paper).

242. *Id.* This estimate assumes that 20 percent of domestic violence victims in North Carolina lose their job annually, and that 10 percent of this group would apply for and receive benefits. The North Carolina legislature expects the current statute which provides unemployment insurance to victims of domestic violence, N.C. GEN. STAT. § 96-14, to have little financial impact. Letter from Dan Gelach, North Carolina Budget and Tax Center, to author (Feb. 16, 2000).

243. This survey was conducted by the author during an externship with the Washington Office of Administrative Hearings, January 1999 through May 1999.

244. S.B. 5136, Fiscal Note, 55th Leg., 2d Sess. (Wash. 1999).

Because an average of approximately 91,000 individuals receive unemployment benefits per month<sup>245</sup> and approximately 22,500 new claims are filed each month<sup>246</sup> in Washington, one hundred claimants is a drop in the bucket of overall unemployment insurance costs.

A second concern is what sort of evidence a claimant must provide to show domestic violence existed. Some employers might be worried that a claimant can simply quit work because she does not like her boyfriend and wants to move back home. In Maine, New Hampshire, and California, the three states that have legislation, evidence comes from various sources. For example, in Maine, as there is no evidentiary requirement in the statute, an administrative official considers evidence of a protection order, police reports, or corroborating testimony from an employer.<sup>247</sup> The burden of proving domestic violence is on the claimant.<sup>248</sup> Similarly, the burden of proving good cause for a voluntary quit in Washington is on the claimant.<sup>249</sup> Additionally, S.B. 5136 specifically refers to RCW 9A.46.110, which defines domestic violence.<sup>250</sup> A claimant cannot simply claim that he or she left work due to a domestic violence situation without presenting proof sufficient to convince an ALJ that a domestic violence situation actually existed.

Additionally, employers might argue that the current unemployment scheme provides benefits to victims whose domestic violence situation is extremely "disabling" and that the domestic violence victim has no alternative but to flee work to obtain safety. However, without specific legislation, the provision of benefits to domestic violence survivors depends upon how the presiding ALJ chooses to interpret current regulations. On the very same fact pattern one ALJ may choose to find that a claimant in a domestic violence situation had "domestic responsibilities"<sup>251</sup> necessitating a quit and provide benefits after a ten-week waiting period, while another ALJ may find that the

---

245. Washington State Employment Security Department, *Unemployment Insurance At-A-Glance: New Claims* (visited Feb. 12, 2000) <<http://www.wa.gov/esd/ui/uiat-a-glance/newclaim1.htm>>.

246. Washington State Employment Security Department, *Unemployment Insurance At-A-Glance: Beneficiaries* (visited Feb. 12, 2000) <<http://www.wa.gov/esd/ui/uiat-a-glance/bene.htm>>.

247. Telephone interview with Chris Hastetd, staff attorney and lobbyist, Maine Equal Justice Project, Augusta, Maine (July 14, 1998).

248. *Id.*

249. See *Boeing v. Comm. of Empl. Sec. Dep't*, 39 Wash. 2d 356, 365, 235 P.2d 303, 308 (1951) (holding that the burden of proof to establish a claimant's rights to benefits under the unemployment security act rests upon the claimant).

250. S.B. 5136, 55 Leg., 2d Sess. (Wash. 1999).

251. WASH. REV. CODE § 50.20.050(4) (1998).

situation created an “unreasonable hardship”<sup>252</sup> on the employee to try to maintain employment, and provide benefits immediately. In contrast, a third ALJ might find that a domestic violence situation does not exist anywhere in RCW 50.20 as a good cause reason to leave employment and may therefore deny benefits. This procedure of carving out exceptions on the very same fact pattern leaves the employer and employee both at a loss to predict the outcome of an eligibility determination.

Finally, one of the most compelling reasons why this type of legislation should be enacted is that it is good policy. It reflects the needs of a labor force which is increasingly weighted with female workers and recognizes the fact that domestic violence does impact the workplace. An individual in a domestic violence situation should not have to choose between staying with an abuser and risking his or her life, and leaving employment and risking economic security.<sup>253</sup> While Washington provides a “leave to follow spouse to work” exemption,<sup>254</sup> quitting a job to leave a violent and abusive spouse is not “good cause.” This policy fails to discourage continued violence against women, both in the home and the workplace.

### C. Current Legislative Effort in Washington

An experienced coalition of domestic violence and employee rights advocates in Washington<sup>255</sup> has proposed legislation for the 1999 and 2000 legislative sessions that would amend RCW 50.20.050

---

252. WASH. REV. CODE § 50.20.050(3) (1998).

253. Although very few cases on this issue have had court review, the author finds it ironic that the same state may find that a woman who is fired for absenteeism due to injuries from an abusive husband is eligible for unemployment insurance, *Gilbert v. Dept. of Corrections*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1997), while a woman who resigns and leaves her husband to protect herself and her children from abuse is not eligible for benefits, *Hall v. Florida Unemployment Appeals Commission*, 697 So. 2d 541 (Fla. 1997). Florida courts seem to be of the opinion that a woman must stay at work, and with her abuser, until she loses her life or is fired. *But see Saenz v. Unemployment Appeals Commission*, 647 So. 2d 283 (Fla. Dist. Ct. App. 1994) (holding that a claimant who was physically attacked by the supervisor’s jealous girlfriend who was allowed on the work-site was entitled to benefits because the employer failed to provide the claimant with a work environment free from reasonably foreseeable physical harm).

254. WASH. REV. CODE § 50.20.050(2)(c) (1998).

255. The Unemployment Law Project, the Washington State Coalition Against Domestic Violence, Columbia Legal Services, the Northwest Women’s Law Center, and the Washington Coalition Against Sexual Assault, among others, drafted H.B. 1294. This legislation was proposed during the 1998–1999 legislative session. This legislative coalition is currently in the process of drafting similar legislation for the 1999–2000 legislative session.

to provide unemployment compensation benefits to victims of domestic violence who leave work to obtain safety.<sup>256</sup>

The 1998–1999 bill proposed that domestic violence claimants who are awarded unemployment compensation benefits need not be able, available, and actively seeking work in order to remain eligible for continued benefits.<sup>257</sup> The current bill will do the same.<sup>258</sup> Both bills attempt to alleviate some of the problems faced by domestic violence victims when they attempt to obtain safety for themselves and their families, by recognizing that domestic violence is work-related and deserves to be a good cause reason to leave employment. This bill

256. The 1998–2000 and 1999–2000 bills include domestic violence in WASH. REV. CODE § 50.20.050(2) (1998), which lists good cause reasons for voluntary quits. Both bills provide, in pertinent part, that

An individual shall not be considered to have left work voluntarily without good cause when: (d) the separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined under RCW 26.50.010, or stalking, as defined under RCW 9A.46.110. Protection is evidenced by: (1) Going into hiding or relocating or attempting to relocate; (ii) Actively pursuing legal protection or remedies; or (iii) Participating in psychological, social, or religious counseling to assist the claimant in ending domestic violence or dealing with the results of stalking so as to resume work.

257. Both bills amend WASH. REV. CODE § 50.20.010 (1998), which lists benefit eligibility conditions and provides that

An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any weeks in his or her eligibility period only if the commissioner finds that: (7) The claimant has qualified under RCW 50.20.050(2)(d) and the claimant is temporarily unable to actively search for work because the claimant is seeking safety or relief for the claimant or the claimant's immediate family members from domestic violence or stalking. The claimant is deemed to have fulfilled the requirements of subsection (3) of this section [to be able to work, available for work, and actively seeking suitable work] for up to twelve weeks while seeking safety or relief by: (i) Going into hiding or relocating or attempting to relocate; (ii) Obtaining or receiving medical treatment; (iii) Actively pursuing legal protection or remedies; or (iv) Participating in psychological, social, or religious counseling to assist the claimant in ending domestic violence or dealing with the results of stalking so as to resume work.

258. WASH. H.B. 1901, 56th Leg., 2nd Sess. (1999). The proposed legislation, which failed this past session, would have established a domestic violence compensation program under current unemployment compensation statutory provisions. A domestic violence victim who is unemployed as a result of domestic violence would have been eligible for unemployment insurance if she was otherwise eligible for unemployment benefits but temporarily unable to search for work because she was seeking safety or relief for herself or her immediate family from domestic violence or stalking. Additionally, the legislation provided that the benefits be limited to situations in which:

- (I) the domestic violence occurred within the previous two years;
- (II) the domestic violence can be established by medical records, court documents, policy records, or a certified counselor; and
- (III) the domestic violence victim demonstrates that she is taking action by:
  - (i) relocating or attempting to relocate due to domestic violence;
  - (ii) obtaining or receiving medical treatment due to domestic violence;
  - (iii) pursuing legal protection; or
  - (iv) participating in counseling or support activities.



provides essential economic support to those individuals who wish to leave their abusers and protect themselves and their families from further violence. Enacting this legislation could save lives.

The proposed legislation is the result of a collaborative effort among the Unemployment Law Project, the Labor Council, the Northwest Women's Law Center, the Washington State Coalition Against Domestic Violence, Columbia Legal Services, Northwest Justice Project, and private individuals. These groups have had extensive experience representing domestic violence victims and unemployment claimants. It is the experienced judgment of this coalition that many women do not leave employment and seek safety because they would be unable to provide for themselves or their children.

## VI. CONCLUSION AND NOTES FOR ADVOCATES

In summary, this type of legislation reflects the needs of our current work force and helps to prevent some of the violence against women that is pervasive in our society. Although providing benefits to these claimants costs money, it is money well invested. Allowing an employee to seek safety helps eliminate some workplace violence and reduces other costs to the employer, such as lost productivity and excessive absenteeism. Indeed, some courts have indicated a willingness to allow benefits and charge them to the employer when the employer either fired an employee due to domestic violence or allowed violence to enter into the workplace and failed to adequately protect the employee.<sup>259</sup>

The best advice for claimants who have left work to escape domestic violence and who are now seeking unemployment compensation benefits is to complete the initial application for benefits, regardless of whether the claimant believes he or she is eligible. Even without specific legislative provisions for a domestic violence situation, claimants may receive benefits based on other provisions of the unemployment compensation statute.<sup>260</sup> In fact, at least one ESD

---

259. See *Gilbert v. Dep't of Corrections*, 696 So. 2d 416 (Fla. Dist. Ct. App. 1997); *Saenz v. Unemployment Appeals Comm'n*, 647 So. 2d 283 (Fla. 1994).

260. See, e.g., *Middleton v. Empl. Sec. Dept.*, No. 95-2-02078-7 (Wash. Employment Sec. Dep't Office of Admin. Hearings, July 1, 1996) (finding a claimant could be eligible for benefits under "illness" or "disability" provision of WASH. REV. CODE § 50.20.050(2)(b) (1998) after she quit employment because her abusive partner followed her to work and threatened to kill her); but see *In re R.R.*, Docket No. 1-06815 (Wash. Employment Sec. Dep't, commissioner's decision 1981) (holding that a claimant who left work to flee abusive husband with small child did not leave work due to work related conditions and thus did not have good cause to voluntarily quit). See also Catherine K. Ruckelshaus, *Unemployment Compensation for Victims of Domestic Violence*, 30 CLEARINGHOUSE REV. 209 (1996). Ruckelshaus provides a good overview of methods attorneys could use to help claimants obtain benefits absent a statutory provision.

commissioner's decision indicates that a stalking situation at work might be good cause to quit employment.<sup>261</sup>

The solution for advocates is far from easy. If the current legislation does not pass, decisions regarding eligibility for unemployment benefits depends upon the individual ALJ who hears the case. Legislation remains the most appropriate solution. The innovative approach used by New Hampshire might be instructive for future legislative attempts. In 1996 New Hampshire Legal Assistance (NHCLA), which had tried to pass similar legislation for years, used a new two-step approach.

First, NHCLA proposed a study bill on the contingent workforce.<sup>262</sup> Because the bill did not cost anything, it had little difficulty passing. An advisory council was appointed and directed by the legislature to study, take public testimony, and make recommendations on various unemployment insurance issues, including domestic reasons for leaving work.<sup>263</sup> At the domestic violence and unemployment insurance public hearing, compelling testimony was presented from actual victims of domestic violence who had lost jobs due to their situations.<sup>264</sup> The advisory council made several recommendations regarding New Hampshire's unemployment compensation program; among them was the recommendation that domestic violence be good cause to leave work and remain eligible for unemployment insurance.<sup>265</sup>

Second, armed with these recommendations and bolstered by the credibility garnered by the studies, NHCLA proposed legislation tailored to the recommendations. NHCLA built contacts with the business community during the hearings process and encountered little difficulty in passing the legislation.<sup>266</sup> This sort of approach is desirable because an advisory council can examine many different issues

---

261. See *In re B.J.*, Docket No. 9-09554, Docket No 1-571 (Wash. Employment Sec. Dep't, commissioner's decision 1982) (affirming the ALJ's determination that the claimant was eligible for benefits under RCW 50.20.050(3) and had good cause to leave work because the claimant quit to prevent the unwanted attentions of a supervisor); see also *In re A.S.*, Docket No. 01-1998-81296 (Wash. Employment Sec. Dep't, commissioner's decision 1999) (finding that a claimant had good cause to leave employment when a customer which claimant had briefly talked to, presented the claimant with a "gift" of an evening gown and lace thong underpants and his phone number because requiring the claimant to continue employment at her workplace would constitute an "unreasonable hardship" since the customer worked across the street and had easy access to the claimant).

262. Memorandum from New Hampshire Legal Assistance to Employment Law Task Force (June 11, 1998) (on file with the *Seattle University Law Review*).

263. Memorandum, *supra* note 262, at 4-5.

264. *Id.* at 5.

265. *Id.*

266. *Id.* at 6.

relating to unemployment insurance, including domestic violence and the needs of the current labor force.