Volume 54
Issue 2 *Dickinson Law Review - Volume 54, 1949-1950*

1-1-1950

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1949 AMENDMENTS TO THE UNEMPLOYMENT COMPENSATION LAW

by

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Herein is presented, in topical outline form, a resume of the changes made in the Pennsylvania Unemployment Compensation Law[1] during the year 1949. Most of these changes were made, as will be indicated, by amendment to the statute during the 1949 session of the legislature. Several other developments or trends noticed in decisions of the administrative agency and the Superior Court are also mentioned.

Amount and Rate of Benefits

Under the law as amended in 1947, financial eligibility was limited to a maximum weekly amount of $20.00 for a total of 24 weeks in any benefit year. As amended in 1949, the maximum weekly rate has been increased to $25.00, without change in the number of weeks (Section 404; 43 P. S. 804).

Appeals

1. *Benefit Payments Pending Appeal*

Under Section 501 (43 P. S. 821), a decision of the Pennsylvania Bureau of Employment and Unemployment Compensation of the Department of Labor and Industry on an application or claim for benefits may be appealed within ten days, and heard and determined by a referee of the board of review. From the decision of the referee a further appeal, within ten days, lies to the board of review proper. Prior to 1949, if either a referee or the board of review affirmed a decision of the bureau allowing benefits, the claims were paid notwithstanding any further appeal. As amended in 1949, benefits are paid pending an appeal when the board affirms a decision of a referee or of the bureau allowing compensation, or when a referee affirms a decision of the bureau allowing compensation and, although a further appeal is taken to the board, the board has failed to render a decision thereon within 30 days.[2]

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1 Act of December 5, 1936 (P. L. of 1937) as amended in every subsequent session of the legislature. (43 P. S. 751, et seq.)

2 Under section 509 a decision or order of the board on appeal "shall become final 10 days after the date thereof" and under section 510 an appeal lies to the Superior Court "within 30 days after the decision of the . . . board becomes final." Section 511 provides: "No appeal to the Superior Court shall act as a supersedeas." Even though benefits have been paid, the employer may be interested in appealing in order to avoid a "charge" for contribution liability, on the ground that the employe was not legally entitled to compensation.

2. *Filing Fees Required of Appealing Employers*

Section 502 (43 P.S. 822) has been amended to require any employer appealing from a decision of the bureau or a referee "to pay a filing fee in an amount which, under rules and regulations adopted by the board of review, shall be determined to be reasonably representative of the costs incident to such appeal." If, on appeal, the employe is finally denied benefits, or if the amount of the award is reduced, the fee is refunded.

Experience Rating

The Pennsylvania Law contains an "experience rating" provision under which an employer can reduce his contribution rate by limiting the amount of unemployment in his establishment. Prior to the 1949 amendment, the experience rating system was based upon the "benefit wage ratio" plan. Under this plan the employer's rate was determined in part by the ratio between the wages which he paid to all of his employes and the wages paid to those employes who drew unemployment compensation. The 1949 amendment substituted for this plan a "reserve ratio" system under which the employer's rate is determined in part by the ratio between the employer's average annual payroll and the balance in his reserve contribution account.

The advantages to employers under the new method of rate determination are apparent in the following comparison. Under the prior law, as soon as an employe received benefits for three weeks, all of the basic wages upon which the benefits were paid were "charged" against the employer for the purpose of rate fixing, regardless of whether or not the employe drew any more benefits during the existing benefit year. Thus, an employer who laid off an employe for 3 weeks received the same "charge" as an employer who laid off his employe for 24 weeks. Under the present system an employer's account is charged only with the benefits actually paid to his employe. Also, no consideration previously was given to the amount of contributions which the employer paid into the fund, while under the 1949 amendment it is possible for employers, during "good times" of regular employment, to build up a reserve of contributions tending to lighten their tax rate during slack periods when their employes are drawing benefits.

Fraud as Disqualification

Although a claimant who secured benefits through fraud was liable under the law for restitution and might also be prosecuted criminally, prior to the 1949 amendments there was no statutory provision for the disqualification of a claimant for future benefits based upon the filing of fradulent claims. Section 402 of the law (43 P.S. 802) has now been amended to withhold benefits for a period of one year immediately following the date on which a claimant is finally convicted of the illegal receipt of benefits.

Labor Disputes; Benefits During "Lock-outs"

In 1947, Section 402 of the Act (43 P. S. 802) was amended to disqualify, with certain exceptions, any employe whose unemployment was due to a stoppage of work because of a labor dispute[3] in the employment establishment. The administrative agency construed the term "stoppage of work" as meaning "strike" by employes and held the disqualification to be inapplicable where the stoppage was a "lock-out" by the employer.[4] On appeal, however, the Superior Court reversed the board of review and held that the disqualification was applicable irrespective of whether or not the employer or the employes were at fault in bringing about the stoppage at the plant.[5] While the appeal was pending the legislature amended the labor dispute clause so that it now reads as follows:

> "An employee shall be ineligible for compensation for any week—
> (a) In which his unemployment is due to a stoppage of work, which exists because of a labor dispute (other than a lock-out) . . . ."[6]

Penalty for Failure to File Complete Wage Reports

Under Section 206 (43 P.S. 766) an employer who neglected or refused to file with the bureau a complete report of the wages paid to his employes was required to pay a penalty of $5.00. In some instances the amount of the pentaly was greater than the amount of the contributions due. In order to avoid this unreasonable result, the section has been amended to provide for a penalty of 100% of the amount of contributions due on the report, but in no event more than $5.00 or less than $1.00.

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[3] For the meaning of "Labor Dispute" in this statute, see case note on page 205 of this volume.

[4] See "Unemployment Benefits in Labor Disputes," DICKINSON LAW REVIEW, Vol. 53 p. 187 (1949).

[5] The Midvale Company v. U. C. Board of Review, 165 Pa. Super. 359 (1949). Allocatur denied by the Supreme Court, September 23, 1949.

[6] Does the term "lock-out" mean only an unconditional withholding of work by the employer, i.e., some act comparable to an actual lay-off or physical closing of the plant, or may it also include a conditional withholding of work? If, for example, the employer offers work only on condition that the employes accept drastic or onerous changes in the terms of their employment, is this a "lock-out"? Or suppose the conditions imposed by the employer are in violation of some law pertaining to wages, hours or working conditions, or in violation of an existing contract? If employes engaged in a labor dispute request the employer to settle the dispute by arbitration, and offer to continue working on existing terms pending the arbitration, and the employer refuses, is their resulting unemployment due to a "lock-out"? (The board of review regarded the latter situation as a "lock-out" when, on the assumption that "lock-outs" were impliedly excluded from disqualification prior to the 1949 amendment, they allowed benefits in the Midvale case, supra, Decision Nos. B-17097 to B-19124.) A basic question would seem to be whether the insertion of the term "lock-out" in the labor dispute clause has not reopened the determination of eligibility under this section to the fundamental test of "fault," stated in section 3, the "Declaration of Public Policy." For the effect given to section 3 in construing subsequent provisions of the Law, see article, "Unemployment Benefits in Labor Disputes," supra, footnote No. 3. For the meaning of the term "fault," see Department of Labor and Industry v. U. C. Board of Review (Mills U. C. Case), 164 Pa. Super. 421, 426 (1949). This decision was reversed by the Pennsylvania Supreme Court at 362 Pa. 342 (1949), but for procedural reasons not affecting this subject.

Pensions, Benefits While Drawing

The board of review has been plagued with a number of appeals involving the benefit eligibility of unemployed miners while drawing pensions from their union. In some cases the claimants were obviously ineligible because they voluntarily left their work to become pensioners, or because they were not able to work or had withdrawn from the labor market and were unavailable for work. In two cases, however,[7] the board found that the claimants had involuntarily left their employment because their work was too difficult, after unsuccessfully seeking lighter work with their employer. The board also found that while unable to perform the same kind of work in which they were last engaged, they were capable of doing many other types of work ordinarily available in the labor market to which they looked for livelihood. Finally, the board found that the claimants were ready and willing to accept suitable employment. The board concluded that under these circumstances there was no basis for disqualifying the claimants and allowed compensation. The fact that they had applied for or were drawing pensions from their union did not disqualify them from receiving unemployment benefits, since eligibility for unemployment compensation is not predicated upon the claimant's need for financial assistance.

Statutes of Limitations

1. Effective January 1, 1950, Section 309.2 of the Law establishes a four year limitation on an employer's liability for contributions, interest and penalties. The period commences to run at the end of the calendar year in which the wages, (upon which the contributions were based) were paid. The running of the statute is tolled if (1) an assessment proceeding has been instituted, or (2) an action for collection has been initiated, or (3) a lien has been entered pursuant to the provisions of the Law. The limitation is not applicable "where an employer by willful failure or refusal to file a report with the department or to include in any report all wages which he has paid, or otherwise has attempted to avoid or reduce liability for the payment of contributions."

2. A new section, Section 408, has been added establishing a two year limitation on the validity of benefit claims. The section provides that benefits shall not be paid on any weekly claim later than two years from the last day of the week in question, where failure to pay within the two-year period was due to certain enumerated circumstances.

Vacations, Benefits During

In the *Mattey U. C. Case*[8] the Superior Court affirmed the board's denial of benefits to a miner during the customary annual vacation at the mine, the vacation being in accordance with the provisions of a collective bargaining agreement

[7] Board decision No. B-18980. This decision has been appealed by the employer to the Superior Court at Nos. 29 and 30 February Term, 1950.

[8] 164 Pa. Super. 36.

between the claimant's employer and his union. (Claimant had not worked in the mines long enough to qualify for vacation pay.) The denial was based on the ground that claimant's unemployment was voluntary and without good cause within the meaning of Section 402 (b) of the Law, since the vacation was initiated by claimant's union representatives acting as his agents. It was also held that claimant was not available for work within the meaning of Section 401 (d), but this conclusion was based in part upon the fact that in this case the claimant had not registered for work at the local employment office, as required by law, until near the end of the period for which he claimed benefits. The court's further suggestion that claimant was not "unemployed" within the meaning of the law because the "relationship of employer and employe was not terminated and there was no suspension of that relationship," seems unsound. No one has ever suggested that an employe laid off temporarily because of lack of work is ineligible for benefits. If such employes were considered ineligible, many individuals presently drawing compensation would be disqualified and the purpose of the law, viz., to alleviate the evil effects of unemployment, would be partially defeated. Moreover, to hold that a temporarily laid off employe is not "unemployed" would be in the teeth of the definition of "unemployment" in section 4 (u) of the Law, which states: "An individual shall be deemed unemployed with respect to any week during which he performs no services and with respect to which no remuneration was paid or payable to him . . ." It is suggested that in stating that claimant was "not unemployed" the court was using these words in a general sense to mean "not compensably unemployed" because the unemployment was voluntary and claimant was not available for work, rather than in the special sense that claimant did not meet the specific eligibility test of "unemployment."

Wages in Excess of $3000

The definition of the term "wages" in Section 4 (x) (1) of the Act excludes therefrom that part of the wages which an employer pays to an employe in excess of $3000 during any calendar year. Prior to the 1949 amendment, this $3000 ceiling could be computed only on the basis of wages paid in employment subject to the Pennsylvania statute. The section has been amended to permit the employer to take credit for wages upon which he has paid contributions under an unemployment compensation law of another state. Remuneration in excess of $3000 is excluded from the definition of wages both in determining the employer's liability for contributions and the employe's benefit rights. In determining the employe's benefit rights, the first $3000 of his remuneration is allocated to the calendar quarter or quarters in which the amount is paid, rather than allocated pro rata, over the entire calendar year.