A STUDY OF UNEMPLOYMENT

INSURANCE IN TEXAS

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A STUDY OF UNEMPLOYMENT INSURANCE IN TEXAS

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CHAPTER I

INTRODUCTION

Purpose of the Study

For three decades unemployment insurance has been a social institution in Texas. Thousands of Texas workers receive benefits under the program each year, benefits that help to bridge the gap between jobs. By providing regular, if reduced, income during times of joblessness, the program does much to maintain the self-respect and morale of workers, while serving as a modest "automatic stabilizer" of the economy.

Yet the program has not operated without criticism. Employers were generally opposed to its creation and still oppose efforts to increase its coverage and benefits, while workers usually complain of its inadequacies. In addition, the press has periodically carried critical articles usually calling attention to abuses in the system or representing the program as a gigantic dole.

Prior to the establishment of unemployment insurance in the United States, there was serious question as to whether a nationwide program was constitutional. This fundamental issue was resolved when Congress established a federally sponsored, state-administered program in the Social Security

Act. Congress utilized an effective method of encouraging all the states to establish their own programs called the "tax offset incentive."

This mechanism called for the levy of a 3.0 percent federal payroll tax on employers throughout the nation with the provision that these employers would receive a credit of 2.7 percent against this tax if they participated in an approved state program. Broad guidelines were written into the federal law to direct the states in establishing acceptable programs; however, several basic issues were left to be resolved by each state as its legislative body saw fit. These issues involved some of the following questions. Which workers should be covered? In what amounts and for how long should benefits be paid? How easily should one be able to qualify for benefits? How large should the reserve fund from which benefits are paid be? Under what conditions should benefits be postponed or cancelled?

Uniform resolutions of these issues undoubtedly have been made impossible by the fact that under our federal-state system, the United States now has not one, but fifty-three different unemployment insurance programs.[1] This

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[1]Included in the federal-state system of unemployment insurance established in the Social Security Act are the programs of the fifty-states, and the Commonwealth of Puerto Rico. Outside the federal-state system are programs established in the Virgin Islands and a special program for railraod workers established under the Railroad Unemployment Insurance Act.

situation has brought about the emergence of significant differences among states, especially with respect to what are now termed "desirable" standards of adequacy in benefits and coverage and of financial solvency.

Complete understanding of unemployment insurance in Texas cannot be obtained from a study of the individual state program alone, nor can sufficient knowledge be derived from a study of the fundamentals of unemployment insurance found in general texts on social insurance. A broadly-based examination of unemployment insurance on a national scale along with a detailed study of the Texas program is necessary if adequate understanding of the current status of the program is to be acquired.

This study, then, is an attempt to provide a comprehensive review of the evolution of the Texas program; a review that, hopefully, will yield a greater understanding of the factors that have brought the program to its present position and will give some insight into what can be done to improve the system.

In attempting to accomplish this general purpose, this paper will specifically attempt to

1. present a survey of the background of unemployment compensation in the United States and in Texas to establish a basis for relating the Texas experience to that of the nation as a whole;

2. investigate, in some detail, the evolution of the major provisions of the Texas law, with special emphasis on the experience resulting from these statutory enactments as a basis for evaluating the established program; and

3. present documented information that will allow a meaningful comparison of Texas unemployment compensation experience with that of other states and with accepted standards of adequacy.

What Is Unemployment Insurance?

Most observers of American life are quite conscious of the problems of economic insecurity in modern America, and most have been conditioned to an awareness of the fact that unemployment is one of the more unpleasant of the several distasteful side effects that have resulted from the industrialization of today's society. Since the program in question has been in existence for over thirty years, most also realize that unemployment insurance has been established to combat the inconvenience and hardship caused by loss of income due to unemployment. Beyond this point, however, there seems to exist some diversity of opinion as to the actual nature and purpose of the program.

Unemployment insurance is only one of several techniques that have been devised by nations to deal with the problem of income loss due to unemployment. At one time or another measures such as expanded public works, various forms of work relief, and varieties of public assistance have been

utilized to deal with this problem. Different approaches have been tried because unemployment has proved to be a many-faceted social problem with no simple direct cure.

There are, in one sense, as many immediate causes of unemployment as there are people involved. Attempts to find some meaningful grouping of these causes have been made to make easier the design of policies and programs necessary to cope with the problem. This classification has been somewhat arbitrary in some respects. However, since the duration of a worker's spell of unemployment is of primary importance to the effectiveness of his unemployment insurance benefit, for unemployment insurance purposes the classification of unemployment in terms of the duration of joblessness becomes convenient.

Although the problem of long-term unemployment is serious, most unemployment since 1947 has been of short duration. The proportion has varied with business conditions, but about three fourths of the unemployed in any year have been out of work for less than fifteen weeks, and from forty to fifty percent have been unemployed less than five weeks.[2] This grouping by duration, then, begins with a discussion of short-term unemployment.

It is possible to identify short-term unemployment due to so-called frictional factors in the economy. Frictional

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[2]Council of Economic Advisers, Annual Report (Washington, 1966), Table C-23, p. 236.

unemployment--short-term joblessness occurring because of the time lag in the match between people and jobs--is thought to be unavoidable in a large economy like that of the United States, where there are numerous, diverse labor areas and where workers are free to change jobs and employers are free to hire and fire. The bulk of frictional unemployment consists of people who are changing from one job to another or who are entering or leaving the labor market. Such labor mobility usually causes unemployment that takes the form of short lay offs after which workers take new jobs or return to their former jobs and is considered a necessary ingredient in a healthy, dynamic economy.

Another major type of short-term unemployment, seasonal unemployment, is due to changes in employment resulting from weather conditions or seasonal changes in consumer demand. This type of unemployment may occur in such trades as building construction and clothing manufacture, where the working period usually far exceeds the period of unemployment. Seasonal factors also exert influence on employment levels in such industries as food processing and Christmas retailing, where a spell of unemployment can easily far exceed a period of employment.

Although most short-term unemployment is of a frictional or seasonal nature, there are other types of identifiable unemployment of short duration. Twice since 1940 the United States has seen temporary rises in unemployment as its indus-

to peace again. Short-term job displacement can also be due to labor disputes, natural disasters, failures of specific business enterprises, and other miscellaneous causes.

Unemployment of long duration that is nationwide in scope and caused primarily by business recessions is called cyclical unemployment. Business recessions since World War II have been relatively short and unemployment of the cyclical variety has been concentrated largely in the durable-goods manufacturing industries.

The term structural unemployment applies to long-term joblessness generated by deep-seated changes in the organization or construction of the economy. Significant amounts of long-term unemployment have been brought on by the changing geography of American industry stimulated by permanent industrial and occupational changes. Firms in some geographical areas and in some industries have experienced difficulty in making readjustment in a dynamic economy.

Production material changes such as the shift from coal to oil, steel to aluminum, wood to fiberglass, and the widespread substitution of plastics for other materials have created "depressed" industries and displaced workers. The last few decades have witnessed mass shutdowns in some sections of the country. Although new industries have developed rapidly to replace obsolescent industries, they have normally emerged in different geographic areas and have demanded different labor skills. Large-scale geographical movements of industries have been common in the economy. The shift of the meat packing industry from Chicago throughout the western states, the movement of furniture production from Michigan

to the South, and the exodus of the textile industry from the Northeast to the South have all resulted in the reduction of employment on a regional basis.

Also behind these geographical shifts in industry has been the constantly changing posture of defense activities ranging from the granting of contracts in some areas to the closing of military installations in other areas. Likewise, the opening of new markets associated with population shifts and the depletion of natural resources are significant events leading to substantial change in the maps of job opportunities in the United States.

In terms of employment, limited growth in some industries has seen the service-producing industries (trade, finance, transportation, government) overtake the goods-producing industries (manufacturing, mining, construction, agriculture). After World War I, about two-thirds of all wage and salary jobs were in the goods sector while today over three-fifths of such jobs are service producing. Corresponding to these changes has been a shift in the occupational structure, away from the manual trades or blue collar jobs to the white-collar service field.[3]

These factors have interacted to bring about a very uneven distribution of employment growth. During the period 1945-1965 employment increased at twice the national average in California, Texas, and Florida and at only half the national average in Massachusetts, New York, and Illinois. Actual employment drops were experienced in Rhode Island and West Virginia over the same period. Persistent, substantial

[3]Seymour L. Wolfbein, Employment, Unemployment, and Public Policy (New York, 1965), p. 11.

unemployment occurred in major regions such as Appalachia and in urban areas like San Diego.[4] This geographic concentration of structural unemployment has dictated regional approaches in the various programs designed to solve this problem.

Increased attention is now being focused on technological unemployment--unemployment related to reduced manpower needs associated with the improved productivity of labor that stems from the practical application of advanced knowledge in the production of goods and services. Technological improvement in industry as it relates to labor requirements has been most dramatic because of automation--the application of the electronic computer and related instrumentation, automatic controls, and numerical controls to the production and distribution of goods. While computer operated machine tools and automatic control mechanisms do much of the work of production, computer operated long-distance data transmission equipment and materials-handling equipment make possible the automatic handling of customer orders, inventory control, and warehouse shipping. At the same time data processing equipment has greatly reduced clerical labor requirements. On the other hand, the manufacture, operation, and maintenance of computers and other instruments of automation has created thousands of new jobs and the facilitation of research and development through the

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[4] Ibid., p. 14.

use of these new tools is contributing to the creation of new products and even new industries. The net effect upon long-term unemployment of our advanced technology, particularly automation, is not yet known, but it is certain that the trend toward major changes in employment induced by technological improvements will continue.

Technological unemployment and structural unemployment are in some respects inseparable because of the strong relation between technologically stimulated increases in labor productivity and the industrial and occupational changes affiliated with structural unemployment. For example, industrial changes that require new labor skills that the unemployed cannot meet are often brought about by technological advances. The two are discussed separately in much of the literature on the subject because the specific remedies that have been used for each differ. While structural unemployment has been attacked by programs designed to mold a labor force more adaptable to the new organization of the economy, the principal means of combating technological unemployment has been an attempt to foster enough economic growth to create jobs to offset those jobs eliminated by technological advance.

Long-term unemployment also involves the "hard core" unemployed or quasi-unemployable. These workers have certain characteristics that make them unacceptable to employers. Such people may lack adequate basic education or skills

called for by industry, as is the case with many long-term unemployed youth; or such people may be too old, or they may be unable to obtain work because of race or sex.

It is doubtful whether any single procedure or social technique can ever be devised that will cope with all types of involuntary joblessness.[5] Unemployment insurance has, however, played an important role in combating some aspects of the problem. The program has evolved into a rather unique income-security mechanism for contending with the discomforts of income loss, clearly differentiated from other institutions that have been employed to provide for the jobless.

The essential features of the program in the United States, as well as other countries, are (1) it is operated by the government; (2) it provides payments to certain types of unemployed individuals according to defined conditions; (3) it pays temporary benefits that are considerably less than standard wage levels; (4) it is financed by compulsory taxes on employers with variable rates based on the employers' experience with unemployment; and (5) it differs significantly from both private insurance and other welfare programs. A brief discussion of these characteristics should establish a suitable basis from which an adequate definition of unemployment insurance can be formulated.

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[5]Eveline M. Burns, "New Guidelines for Unemployment Insurance," Employment Security Review, XXIX (August, 1962), 6.

First, unemployment insurance is insurance established and administered by governments rather than private insurers mainly because it was thought that the costs of replacing income loss due to unemployment were so enormous and unpredictable that private insurers could not cope with it. In fact, it has been pointed out that unemployment insurance is more exclusively limited to government than any other form of wage loss program that has been established in America. Private underwriters offer life insurance, health and accident insurance, or workmen's compensation insurance, but not insurance against unemployment.[6]

Second, eligibility for unemployment benefits is determined largely on the basis of previous labor force attachment along with a demonstrated desire to become re-employed. This attachment is most often measured in terms of previous earnings or accumulated weeks of work, and the desire to remain attached must be exhibited by periodic visits to the public employment office and willingness to accept job referrals. Unlike public assistance applicants, an unemployment insurance claimant does not have to prove that he is in need. This feature established a certain "right" to benefits that can be established by sufficient employment over a defined period.

Third, benefits are paid at only a fraction of previous earnings and are typically paid over a period of less than

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[6] Ibid.

six months, making unemployment insurance a short-term, fractional wage replacement program designed not to interfere with the incentive to seek work.

Fourth, employer contributions have been regarded as the major source of revenue for the program since its beginning in the United States. While many have advocated employee contributions, the more widely accepted principle has been that employers, being able to pass the cost of unemployment compensation on to the consumer as a cost of production, should bear the cost. The variable rate structure, called "experience rating" emerged mainly because President Roosevelt insisted that legislation proposed for unemployment insurance must promote the stabilization of employment.[7] Roosevelt's belief stemmed from the inclusion of experience rating in the Wisconsin Act, the only state law in effect at the time, plus the fact that the principle of employment stabilization was to some influential early American experts, led by John R. Commons, the most important function of the unemployment compensation system. Under the assumption that employers had within their grasp the power to adjust their operations so as to reduce unemployment, Commons and his followers envisioned a tax schedule that rewarded employers by reducing the tax rates of those with low rates of unemployment. According to this viewpoint--a

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[7]Edwin E. Witte, The Development of the Social Security Act (Madison, Wisconsin, 1962), p. 127.

viewpoint that prevailed in the Federal Act--employers would receive ample incentive to try to stabilize their employment practices.

Finally, unemployment insurance differs from both commercial insurance and welfare principles. It is like private insurance programs in that resources are pooled to meet a widespread hazard. It is also similar to other forms of insurance in that benefits are paid from the pooled resources of many to the relatively few who actually experience the insured risk (unemployment). In all of the states, statewide pooled funds have been established from which benefits are paid, thus spreading the cost of the programs through virtually all areas and most industries within a state. Benefits and premiums are loosely related, benefits are received as a matter of right, solvency is protected, and favorable risks (employers with little unemployment) receive preferential treatment.

All the above characteristics point out the insurance character of the program, but the following are a few aspects in which the program does not follow the more traditional insurance principles: (1) the insured under unemployment insurance do not normally pay the premiums; (2) the costs of the program are largely unpredictable; (3) the duration of benefit payments is indefinite and premium payments are variable; (4) the needs test principle is implicit in those programs offering additional benefits for dependents;

and (5) contributions have been made from an outside source at various times to supplement the program.

Questions concerning the insurance character of the program have been raised since its inception. The dominant issue in the early years had to do with whether or not the system was really a form of insurance or just a disguised New Deal "dole."[8] With the general acceptance of all forms of social insurance into the nation's ever expanding family of insurances, concern has shifted more recently to whether or not unemployment insurance is losing its insurance character. The fact that the system is a social security mechanism means that welfare features are more prominent among its provisions than they are in private programs. But, some feel that such practices as the extension of benefit duration during times of economic recession, the introduction of features or administrative practices designed to protect the program from abuse, the furnishing of extra benefit allowances for dependents, and the making of federal loans to bolster heavily drained state pooled funds constitute features that place the system in the position of becoming more welfare oriented. They contend that such features tend to destroy one of the chief values of unemployment insurance--that unemployment compensation can be claimed as a matter of right with no loss of self-respect to the claimant.

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[8]U. S. Department of Labor, Bureau of Employment Security, "Twenty Years of Unemployment Insurance in the U.S.A., 1935-1955," Employment Security Review, XXII (August, 1955), 1.

Harry Malisoff of the Upjohn Institute for Employment Research addressed himself to this issue in a fairly recent monograph.[9] According to Professor Malisoff most of the above program modifications do not necessarily indicate that unemployment compensation is becoming imbalanced in the welfare direction. Rather, he points out that the principles governing all insurances have undergone constant modification and that it is these developing principles--and not merely the classical insurance theories--which unemployment insurance should reflect. For example, extended duration of benefits during recessions can be likened to the relatively new forms of "catastrophic" insurance. However, he does not de-emphasize the importance of maintaining the insurance character of the program as far as is possible in order to protect the contractual nature of workers benefit rights.

The above characteristics present a picture of unemployment insurance in the United States that has evolved into what one noted authority has called "a measure providing income security for the relatively short-period unemployed."[10] This definition approaches adequacy when viewed in terms of the characteristics of the program as it has evolved. However, the program does serve more specific functions for both

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[9]Harry Malisoff, The Insurance Character of Unemployment Insurance (Kalamazoo, Michigan, 1961), p. 42.

[10]Eveline M. Burns, The American Social Security System (New York, 1949), p. 125.

the employer, the employed, and the economy as a whole. From the worker's standpoint, besides the obvious benefits of cash payments during periods of joblessness, benefit payments help to conserve skills. When he loses a job, the insured worker is not compelled immediately to take a job below his skill level. In some states benefit payments also help sustain him if he is forced to change jobs because of compelling personal reasons, such as when a working wife must move because her husband is transferred. Also, the existence of the program adds a feeling of added security while he is working. From the employer's standpoint, the program helps maintain a stable labor force so that labor requirements can be met efficiently and quickly. Also, unemployment compensation serves a significant role in the economy as a whole by partially maintaining purchasing power in areas where workers have been laid off, thus helping to lessen "secondary unemployment".

Unemployment insurance, then, is a government sponsored program intended to protect the regularly employed who are idle because of a lack of suitable work but who are able and willing to accept suitable employment. It provides income as a matter of right in the form of benefit payments intended to cover the worker's essential living expenses without reducing work incentives. Benefits are provided to tide workers over short spells of unemployment and to partially maintain their purchasing power to lessen the spread of

secondary unemployment. In general, the program should temporarily contribute to the well being of unemployed workers and their families while bolstering confidence and purchasing power in the economy as a whole.

Scope of the Study

This treatment of unemployment insurance is intended as both a survey and an evaluation of the program as it has developed in Texas. Most of the major topics of the program are investigated at some length, but there are several important aspects which are referred to only casually. These topics include partial unemployment, penalities for fraud or non-payment of taxes, appeals, and administrative procedures. These subjects are neglected somewhat only because of the necessity of narrowing the scope of the study in order to make it more manageable.

CHAPTER II

BACKGROUND: THE DEVELOPMENT OF UNEMPLOYMENT COMPENSATION IN THE UNITED STATES

Inaugural Programs

With the foregoing definitional introduction in mind this discussion of unemployment insurance in the United States is introduced with a brief historical treatment of the antecedents of the American system.

Early Foreign Programs

Unemployment benefits were first provided by European trade unions for their members in the late 1800's. The first attempts at governmental action were in the form of subsidies to these trade union plans. Belgium led the way in government action in 1920 by consolidating many of its trade union funds into a national system that loosely resembled the operations of today. By 1935, when the United States entered the field, ten European countries had established unemployment insurance programs under which government subsidies were paid to voluntary plans. Great Britain was the first country to establish a compulsory national system in 1911. Prior to 1935, nine other foreign countries followed

suit and established similar insurance programs.[1] By 1935 amendments had extended coverage to nearly all wage earners in England between sixteen and sixty-five years of age. The program provided flat rate benefits and was financed by flat-rate contributions from employers, employees, and the national government. Waiting period, availability, disqualification, and benefit receipt conditions were much the same as those incorporated into the first state laws.

Early State Proposals

Although unemployment compensation did not become a part of federal statutes in the United States until 1935, the basic concepts of the program were discussed years earlier in works by distinguished American social scientists such as Henry R. Seager, Richard Ely, I. M. Rubinow, and John R. Commons.[2] Proposals for state unemployment insurance laws were placed before the Massachusetts Legislature in 1911 and before the New York Assembly in 1921. These

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[1]Accounts of the foreign antecedents of American programs can be found in E. C. Buehler, Compulsory Unemployment Insurance, Vol. VII, No. 6 of The Reference Shelf (New York, 1931), pp. 68-75; John B. Ewing, Job Insurance (Norman, Oklahoma, 1933), pp. 13-22; Dominico Gagliardo, American Social Insurance (New York, 1949), pp. 232-234; and Industrial Relations Counselors, An Historical Basis for Unemployment Insurance (Minneapolis, 1934), pp. 3-63.

[2]These works include John R. Commons, Labor and Administration (New York, 1913); I. M. Rubinow, Social Insurance (New York, 1913); Richard T. Ely, Studies in the Evolution of Industrial Society (New York, 1903); and Henry Seager, Social Insurance (New York, 1910) cited in Gagliardo, op. cit., p. 234.

bills did not pass, nor did bills in other states during the 1920's.[3] Effort was quite pronounced in Wisconsin where there was consistent effort between 1921 and 1931 to pass an unemployment compensation act. The Wisconsin plan was primarily the creation of John R. Commons. His plan was uniquely American and represented a break from the earlier European plans. It was said concerning the difference between Common's system and the European system:

> These theories and practices in Europe have been based upon the idea, first, that unemployment is something inevitable and that this being the case, a philanthropic system to aid people when they are out of work should be established; second, that the state should both contribute to the fund and operate the insurance business, "the fallacy of these doctrines," he held "was that they placed the responsibility upon the state instead of solely upon employers, who could prevent unemployment, whereas the former could only partly relieve it.[4]

According to Commons, unemployment is caused largely by unwise actions of employers during periods of prosperity, and the purpose of the Wisconsin law was to eliminate the causes of unemployment. By taxing businesses according to the amount of unemployment they created, incentives would be given to businesses to stablize employment. It was hoped that these incentives would be sufficient to encourage a more stable employment situation.

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[3]U. S. Department of Labor, Bureau of Employment Security, "Twenty Years of Unemployment Insurance in the U.S.A., 1935-1955," Employment Security Review, XXII (August, 1955), p. 6.

[4]John R. Commons quoted from Harry Malisoff, "The Emergence of Unemployment Compensation," Political Science Quarterly, LIV, No. 2 (September, 1939), 242.

The plan was introduced in the Wisconsin Legislature first in 1921 and reintroduced at every session of the legislature until it was passed in 1931 and approved into law in 1932. This act extended coverage to workers in firms with ten or more employees. The primary exceptions to the coverage were workers engaged in agricultural, domestic, and government work; and funds were obtained by the taxing of the employer according to his record of unemployment. The contributions were accumulated in separate reserve funds for each employer and from these were paid unemployment benefits. The employers' contribution rates were to be varied in accordance with the payments from their reserves to their workers; and when the reserve per employee reached a certain level, the employers contribution would be suspended. To be eligible to receive benefits, the unemployed worker must have been a Wisconsin resident for six months, willing and able to work, and have worked in "covered" employment for at least forty weeks prior to his layoff. Benefits ranged between five and ten dollars a week, and the duration of these benefits was limited by a reserve ratio related to the current amount of money in the employer's reserve fund.[5]

The Wisconsin Act is generally recognized as the first concrete step taken in the field of unemployment compensation in the United States. However, not all advocates of

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[5]The history of the Wisconsin Act is sufficiently recorded in Ewing, op. cit., pp. 23-34.

unemployment compensation agreed with the principles set forth by the Wisconsin Act. Such noted economists as Paul Douglas and I.M. Rubinow attacked the plan, particularly the principles of employer responsibility and the manner of financing the program.[6] Douglas was of the opinion that business could stabilize only one form of unemployment, seasonal.[7] He insisted that business had little control over unemployment caused by technological change, structural maladjustment, or by serious drops in economic activity. These conditions were due to serious flaws within the economy, and it was society's job to correct them. This mode of thought was incorporated into a plan recommended by the Ohio Commission on Unemployment Insurance in 1932 in its "Report on Unemployment." The basic premise of the report was that unemployment compensation should be intended to provide relief from unemployment rather than attempt to motivate employers to eliminate unemployment, as the Wisconsin plan attempted to do. The Ohio plan held that the cost of unemployment compensation should be shared by worker and

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[6]These opinions are set forth in Paul H. Douglas, Standards of Unemployment Insurance (Chicago, 1932), and I. M. Rubinow, The Quest for Security (New York, 1934).

[7]Douglas, op. cit., pp. 137-142. The term "seasonal unemployment" refers to unemployment occurring as a result of seasonal fluctuations in production. Coal mining, construction, the manufacture of automobiles, and agriculture may be offered as examples of industries that experience such fluctuations in production.

employer alike.[8] Since unemployment was the fault of the institutions of society, all members of society should contribute to its alleviation.

The method of pooling funds constituted another major issue. The Ohio Commission recommended the formation of one governmentally managed fund into which all contributions would be pooled. The reserve fund method established by Wisconsin was, in the opinion of advocates of the Ohio plan, not an insurance program. Under the Wisconsin plan, if the employer's reserve was depleted, payments to his unemployed workers would stop. The Ohio plan introduced more traditional risk sharing provisions. As in the case of traditional insurance, benefits were treated as contractual in nature, and if the pooled benefit fund were drained excessively, then contribution rates were to be raised to meet the obligations of the fund. If no resources were available, then funds were to be borrowed to meet benefit obligations.[9]

Especially during the early years of the Depression there was widespread discussion in several states concerning the merits of unemployment insurance. In the three years 1931-1933 one hundred sixty-one unemployment compensation bills were introduced in state legislatures. Groups such as the American Association for Labor Legislation and the American Association for Social Security played a vital role

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[8]Rubinow, Quest for Security, p. 441.

[9]Ibid., p. 442.

in this phase of the creation of our system as they made legislative recommendations to state governments and endorsed unemployment compensation bills.[10]

Early Federal Proposals

While the philosophical controversy continued, the realities of the Great Depression gave impetus to the creation of a federal system. The inability of the states to pass needed legislation emphasized the need for federal measures. One resolution and four bills had been introduced in Congress between 1916 and 1934, but the resolution did not pass and the bills never came to a vote.[11] In 1934 President Roosevelt appointed a committee headed by Frances Perkins, Secretary of Labor, to study the problem of economic security and devise a program to combat economic insecurity in the United States. In its official report[12] the committee recommended a program that included unemployment compensation. The committee offered the opinion that the primary purpose of an unemployment compensation program should be to provide adequate recovery of wage losses due to unemployment and that the benefits of the program should be paid to the worker as a

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[10]Industrial Relations Counselors, op. cit., p. 177.

[11]Gagliardo, op. cit., pp. 235-238.

[12]U. S. Department of Labor, Bureau of Labor Statistics, Report to the President of the Committee on Economic Security, Labor Information Bulletin, II, No. 1 (Washington, 1935).

matter of contractual right with employers bearing the cost of the program.[13]

During 1934 and 1935 the Committee on Economic Security and Congressional Committees concerned with the drafting and passage of the Social Security Act had the perplexing problem of trying to fit unemployment insurance into a federal-state political system. Of course, the "states rights" Congressmen were strongly in favor of local control and were very much against a totally federal program. In addition there was the justifiable fear that a purely federal program might be declared unconstitutional. Although there was general agreement that the causes of unemployment were not contained within state borders--that they are often of national or international character, the power of "states rights" sentiment was such that, as a matter of expediency rather than principle, it was decided that the states should be allowed to establish and administer their own programs under broad federal standards.[14]

In order to put such a program into effect, a method had to be found which would induce the states quickly to formulate legislation that would provide similar unemployment insurance programs throughout the United States. The method used was the so-called "tax credit" or "tax offset" plan

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[13] Ibid., pp. 1-4.

[14] U. S. Department of Labor, "Twenty Years of Unemployment Insurance," p. 7.

which had proven effective in the field of inheritance taxation. The plan which was eventually incorporated into the Social Security Act involved a levy of a federal tax of three percent on the payrolls of employers of eight or more workers in at least twenty weeks in a calendar year. It provided that when a state had an approved unemployment compensation law, its employers could credit taxes paid under the state law against 90 percent of the federal tax, thereby allowing the states to retain 2.7 percent of the 3.0 percent federal tax. If a state did not have an approved program, its employers faced the real prospect that their tax payments into the federal fund would be used to pay benefits to the unemployed in other states while their employees remained unprotected.[15] Furthermore with the idea of providing incentive to employers to stabilize their employment practices, the federal law also encouraged states to adopt experience rating--the variation of tax rates in relation to individual employer "experience with employment." Partly because of President Roosevelt's insistence that unemployment insurance legislation promote the stabilization of employment and partly through employer pressure on Congress for variable state rates, provision for experience rating was incorporated into the federal act.[16] Lower state tax rates were permitted

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[15]Malisoff, op. cit., pp. 251-52.

[16]See Edwin E. Witte, The Development of the Social Security Act (Madison, Wisconsin, 1962), p. 11.

through the allowance of an "additional credit" against the federal tax, such additional credit to be the difference between an employer's actual contribution and 90 percent of the federal tax. This arrangement assured that an employer who paid his state contribution at an experience rate less than 90 percent of the 3.0 percent federal tax, say 1.0 percent, would receive an additional credit of 1.7 percent and thus would receive a total credit of 2.7 percent, or the full 90 percent tax credit against the federal tax.

The federal program of unemployment insurance was originated under Title III, "Grants to the States for Unemployment Compensation Administration," and Title IX, "Tax on Employers of Eight of More," of the Social Security Act.[17] These parts of the act contained broad federal guidelines for the state program and gave great latitude to the states in framing their respective laws. Under the guidelines all the states were to provide a minimum protection of benefit rights including an "impartial tribunal" for claimants who were denied benefits. Further, eligible claimants were assured of non-denial of compensation if they refused to accept employment if the job offered was open due to a lockout, strike or labor dispute; or if the wages, hours, or working conditions were below prevailing standards; or if as a condition of employment, he would be required to join a company union or resign from a labor union. These

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[17] U. S. Statutes at Large, XIL, Part I, 639 (1935).

protections against unfair benefit denial and wage depression were vitally important during the Depression years.

In order to qualify for the tax offset, state programs were to provide (1) that compensation be paid through public employment offices; (2) that all money collected into its unemployment fund should be turned over to the Secretary of the Treasury for deposit in the Federal Unemployment Trust Fund; and (3) that all money withdrawn by the state from the fund be used solely for the payment of benefits. As stated before, only the employers of eight or more in each of twenty weeks in a calendar year were covered by the federal law. It also exempted agricultural labor, domestic service, and family employment because it was deemed to be administratively impracticable and politically inexpedient to include them. Powerful farmers' organizations did not want farm workers covered and were successful in obtaining their exclusion. State and local government employees were exempted because they worked for instrumentalities that were felt to be beyond the federal government's taxing power. For other reasons the employees of employers operating on the navigable waters of the United States and the employees of non-profit organizations were excluded from covered employment.[18]

Once the federal law was enacted all states quickly responded to the tax incentive by enacting legislation. By 1937,

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[18]John J. Corson, "Unemployment Insurance: An Appraisal 30 Years After Establishment," Unemployment Insurance Review

all states had unemployment insurance laws. Even though the Social Security Board (which had been given the task of coordinating the establishment of the federal-state system) drafted model bills[19] for use by state legislatures in forming their own laws, each state had the latitude to write its own law specifying who was to be covered, what taxes were to be paid, the scope and duration of benefits to be paid, and the requirements of the receipt of such benefits, providing the law met minimum federal standards.

Evolution of Federal Legislation

The rate of passage of state laws was affected by questions concerning the constitutionality of the federal and state laws. The Supreme Court set the fears to rest by confirming the constitutionality of the tax by rendering in May, 1937, two decisions on cases originating in Alabama.[20] In the first decision Justice Cardozo, in offering the majority opinion, held that the federal tax was within the taxing power of Congress and that it was uniform and not arbitrary, even though it exempted certain employers and occupations. He stated that the federal tax was not an

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[19]Social Security Board, Draft Bills for State Unemployment Compensation Laws of Pooled Fund and Employer Reserve Accounts (Mimeograph, Social Security Board, Washington, 1936).

[20]Steward Machine Company vs. Davis, 57 U.S., 883 (1937) Carmichael vs. Southern Coal and Coke, 57 U.S., 868 (1937). An excellent discussion of these two cases can be found in The Dallas Craftsman, June 4, 1937, p. 2.

attempt at coercion, but was an attempt to find a method by which states could enact insurance laws without fear of placing their employers in a position of competitive disadvantage. In the other decision the court ruled that the compensation law of Alabama was constitutional. Justice Stone, in the majority opinion, held against the objections of Alabama employers who had contended that the law violated the due process and equal protection clauses of the Fourteenth Amendment. He ruled that the state tax was within the taxing power of the state, that the tax was not arbitrary, and that Alabama had not been coerced by federal law. Most importantly, the Court recognized that the relief of unemployment was a valid public purpose for which states could make provision.

During the years that have passed since its enactment the federal law has been changed very little. In 1939 the unemployment tax provisions were removed from the Social Security Act and transferred to the Internal Revenue Code as the Federal Unemployment Tax act.[21] The freedom of the states in regard to unemployment insurance has not been restricted by changes in federal legislation. Not since 1939 when the adoption of a personnel merit system was added as a condition for the receipt of federal administrative grants, has a federal law been passed restricting the original

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[21] U. S. Statutes at Large, LIII, Part II, 1396 (1939).

freedom of the states. However, the scope of the federal-state program has been increased by amendments to the federal law. In 1946 the crews of American vessels were removed from coverage exclusion. In 1954 the Social Security Act was amended to provide for federal civilian employees through state employment agencies, and coverage under the federal tax was extended to include firms employing four or more workers.[22] Similarly, unemployment benefits were extended to ex-servicemen in 1958.

Although, as seen above, the primary influence of federal legislative changes has been to induce expansion of coverage, federal laws have launched five temporary federal benefit programs to meet special needs since 1944. Three of these programs were products of war: Servicemen's Readjustment Allowances, provided to unemployed World War II veterans by the 1944 GI Bill of Rights; Reconversion Unemployment Benefits for Seamen, established in 1946 for unemployed members of the merchant marine; and Unemployment Compensation for Veterans, adopted in 1952 for unemployed veterans of the Korean Conflict.

The other two programs were motivated by recession and enacted during the only times in which the federal-state program has really been tested. In 1958 the Temporary Unemployment Compensation Act gave states an option whether or not to elect to extend benefits to employees who had exhausted their

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[22]Corson, op. cit., p. 10.

benefits without finding new employment. Money could be borrowed from the federal government to cover the cost of benefit extensions to be repaid later by an increase in employer taxes. Few states responded to this program; therefore, in 1961, another recession year, the more compulsory Federal Temporary Extended Unemployment Compensation Act was passed: it was applicable throughout the nation and was financed by an increase in Federal Unemployment Tax rate. These temporary programs illustrate the fact that the nation has recognized the obligation of the federal government to provide benefits under certain circumstances and has devised certain means of meeting the obligation. Also the two recessional programs have served to stimulate legislation in several states to provide for similar programs of extended benefits.[23]

Evolution of State Legislation

In most respects the legislative progress of unemployment insurance has been the result of state action stimulated by the federal government. All state laws have similar coverage provisions, benefit level and duration provisions, eligibility and disqualification provisions, and provisions for

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[23] Ibid., p. 11. In California, Connecticut, Idaho, Illinois, North Carolina, Pennsylvania, and Vermont, benefits are extended to claimants who exhaust their regular benefits in times of high unemployment. These extended benefits are "triggered" into effect when unemployment within these states reaches specified levels.

financing. The legislative trend in the evolution of these provisions is discussed below.

Coverage

The coverage provisions of state laws have been strongly influenced by the taxing provisions of the Federal Unemployment Tax Act. As was the case in the original federal law, the laws of most states covered employers who employed eight or more in each of twenty weeks during a calendar year. After the federal law was altered in 1954 to provide for coverage of employers of four or more, the states quickly followed suit. All the states now cover at least the employers of four or more; and as of August, 1967, three states covered firms with 3 or more workers and twenty-four states covered firms of one or more workers.[24]

Benefit Levels and Duration

The federal law made no specific provisions concerning the amount or duration of benefits. As a result, the states have developed several different methods of determining benefit levels and duration. Under all state laws a worker's benefits depend upon the length of time he has been employed in covered employment and his total earnings during a specified period known as the "base period." The maximum benefit that an unemployed worker may receive during his benefit year

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[24]U. S. Department of Labor, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967),

is usually expressed in a dollar total which is the product of the number of weeks of benefits for which he is eligible multiplied by the weekly benefit amount for which he is eligible. Most state benefit formulas were originally established in a manner so that the maximum weekly benefit (dollar maximum) was over 50 percent of the state's average weekly wage. In 1939 the dollar maximum provided in the laws of twenty-two states permitted weekly benefit payments amounting to more than two-thirds of the state's average weekly wage. State legislatures have failed to revise their compensation laws sufficiently to keep pace with rising average wages; and by 1959, in only nine states were weekly benefits equal to or greater than 50 percent of the average weekly wage. The situation has improved somewhat since that time. In December, 1967, nineteen states paid maximum weekly benefits that were as much as 50 percent of the average weekly wage in those states.[25]

There has been significant progress in the extension of the number of weeks for which benefit amounts are payable. The draft bills of the Social Security Board suggested maximum duration of benefits of from twelve to sixteen weeks. The most common maximum duration has moved from sixteen weeks in 1937, to twenty weeks in 1945, and twenty-six weeks

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[25]Figures derived from Corson, op. cit., p. 12 and from unpublished data compiled for U. S. Department of Labor, Bureau of Employment Security, Summary Tables for Evaluation of State Unemployment Insurance Laws (Washington, 1968).

in 1967; but only two states had durations of less than twenty-six weeks while ten states had durations that exceeded twenty-six weeks. The time that benefits last, however, does not tell the complete story. In most states duration is variable depending on the wages a worker earned in his base period. In other words, not all claimants qualify for the maximum number of weeks of benefits. So the measurement of the average potential duration of benefits has greater meaning. This measurement was 19.8 weeks in 1946 and 24.2 weeks in 1966.[26]

Financing

As stated before, states finance unemployment benefits mainly by contributions from employers subject to their respective laws. Presently only three states collect any employee contributions.[27] The employer pays a tax on wages paid to a covered worker, up to a defined level, in any calendar year. The upper level, or taxable wage base, provided by federal law is $3,000. The federal unemployment tax was raised from 3.0 percent to 3.1 percent in 1961, but the maximum tax credit is still 2.7 percent. States have generally set their "standard" or maximum tax rate at 2.7

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[26]Figures derived from Corson, op. cit., p. 2 and from U. S. Department of Labor, Bureau of Employment Security, Significant Provisions of State Unemployment Insurance Laws, January 1, 1968 (Washington, 1968).

[27]U. S. Department of Labor, Comparison of State Laws (August, 1966), p. T-4. The states are Alabama, Alaska, and New Jersey.

percent, the maximum federal tax offset. Also, in most states, the taxable wage base is $3,000 as it is for the federal tax.

Following the theory that the risk of unemployment should be spread among all employers, all states have enacted "pooled funds." A separate bookkeeping account is maintained for each employer, but his workers have no special claim to the funds he has paid. Tax collections are held for the states in the Unemployment Trust Fund in the United States Treasury.

As was mentioned previously, the federal law provides that employers can get credit on the federal unemployment tax not only for the contributions they pay under a state law but also for the contributions they are excused from paying under their state experience rating system. All states except Puerto Rico now have in effect some system of experience rating. The experience rating provisions in state laws differ greatly in detail. The most common variations stem from differences in the actual formula used to determine the individual employer's tax rate. All the formulas attempt to establish the relative incidence of unemployment among the workers of different employers and thus establish a justification for differing tax rates. Presently there are five common methods employing different formulas. These systems are usually identified as the reserve-ratio, benefit ratio, benefit-wage-ratio, compensable separations,

and payroll decline formulas, with a few states having combinations of these. A detailed description of these systems will not be attempted at this point. It is sufficient to point out that the formulas all establish a factor that relates the individual employer's actual unemployment experience to his exposure to the risk, usually total payrolls, in order to establish his relative experience.[28]

Experience rating itself has received both wide criticism and acclaim. Early supporters of experience rating obviously based much of their argument on the basic principle that variable taxes would provide incentive for employers to reduce the incidence of unemployment. Modern advocates, while admitting that the ability of individual employers to reduce unemployment has proven to be somewhat limited, continue to insist that the incentive to lower taxes should not be eliminated. They also argue that, since under the "free enterprise system" the costs of production should be reflected in the price of the product and since unemployment is ultimately a production cost under experience rating, a flat tax rate would provide a subsidy for relatively unstable employment industries at the expense of stable employment industries. Or in other words, flat tax rates cause improper allocation of the costs of production. Also it is claimed that the lower tax incentive provided by experience

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[28] Ibid., p. T-7.

rating will encourage employers to help the state administrative agencies combat fraud in the collection of benefits.[29]

Critics of experience rating doubt the ability of employers to stabilize unemployment and question the effects of prospective added insurance costs upon an employer's decision to lay men off. They argue that the employer actually has little influence on the amount of unemployment, that experience rating has had the effect of shifting the costs of the program to the durable goods industries where layoffs for style changes, re-tooling, and the like are more frequent. They hold that the effect of experience rating has been to stimulate employers to minimize compensation rather than unemployment.

Experience rating is also criticized because it violates the principles of counter-cyclical fiscal policy. Instead of accumulating funds in relatively increasing amounts during prosperity and decreasing collections during recession, experience rating causes unemployment tax policy to accomplish just the opposite. Finally opponents argue that experience rating causes influential employer groups to demand more rigorous disqualification provisions.[30]

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[29]The substance of arguments in favor of experience rating can be found in Roger Stanley Rector, "The Frailty of the Fallacy of Experience Rating," Labor Law Journal, II, No. 5 (May, 1951), 340-348, and in Emerson P. Schmidt, "Experience Rating and Unemployment Compensation," Yale Law Journal (December, 1945), pp. 244-246.

[30]P. L. Rainwater, "The Fallacy of Experience Rating," Labor Law Journal, II, No. 2 (February, 1951), 98-104.

Eligibility and Disqualification

All state laws, as they have evolved, provide that in order to receive benefits a claimant must definitely be in the labor force, be able to work, and be available for work. All state laws also provide that a claimant can be denied benefits for voluntarily leaving his last job without good cause, for refusal of suitable work, and for discharge for misconduct connected with his work. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic conditions.

Prior experience in covered employment is used to determine relative attachment to the covered labor force. State laws require a minimum amount of covered employment or wages in a specified prior period, usually called the base period. The formula used to determine qualification usually is related to the benefit formula used by the state. The high quarter benefit formulas frequently require a specified multiple of the weekly benefit amount or of high-quarter earnings. Some states have used flat minimum qualifying amounts, and a few states have required a minimum number of weeks of base-period employment.[31]

In practically every state the able-and-available-for work requirements have been made more specific. Currently there are thirty state statutes that require that claimants

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[31]U. S. Department of Labor, Comparison of State Laws, pp. E3-E5.

must show proof that they have been "actively seeking" work. Other state laws, lacking such provisions, have been interpreted to mean the same thing. Also there has been a proliferation of "special class" disqualifications, involving such people as pregnant women, students, and pensioners, that tend to eliminate those of questionable labor force attachment. A few states have specific provisions that deny benefits when unemployment is due to marital obligation.[32] These provisions cannot help but remove some of the claims from the adjustor's discretion, creating a tendency toward mechanical classification of claimants rather than the evaluation of each case on its own individual merits.

There has been a general tendency over the years to make disqualification provisions more explicit, to apply them to more circumstances, and to increase the consequences of disqualification. The voluntary quit disqualification has been expanded to include specific periods of time for leaving jobs for family reasons. Also there has been a tendency to deny benefits to an unemployed worker who previously voluntarily left a job in order to take the job from which he has just been laid off.[33] The consequences of disqualification have been increased significantly. Most early laws tended to limit disqualification for voluntary leaving

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[32] Ibid., pp. E4-E5, E18-E21, and Corson, op. cit., p. 13.

[33] Ibid., pp. E9-E11.

or refusal of suitable work to six weeks or less, and the range of disqualification for discharge for misconduct was most frequently one to nine weeks.[34] In 1967 only eleven states had such short maximum periods of disqualification for voluntary leaving, and only sixteen states had maximum disqualifications of six weeks or less for refusal of suitable work. Only fourteen states still have maximum disqualitifcations for discharge for misconduct of nine weeks or less. Also, eighteen states have added more severe disqualifications for acts of "gross misconduct" such as dishonest or criminal acts.[35]

The Original Texas Law

The Texas Unemployment Compensation Act was passed during what has been termed "the greatest period of expansion in reform in Texas history."[36] The administration of James V. Allred, who along with James Hogg has been called Texas' most liberal governor,[37] held sway in Austin in 1936 and was in the midst of the implementation of its reform

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[34]U. S. Department of Labor, "Twenty Years of Unemployment Insurance," p. 44.

[35]From Table ET-3 in U. S. Department of Labor, Comparison of State Laws, p. ET-6.

[36]Fred Gantt, The Chief Executive in Texas (Austin, Texas, 1964), p. 325, citing Robb K. Burlage, "James V. Allred--Texas' Liberal Governor," unpublished research paper, University of Texas, Austin, Texas, 1959, pp. 146-147.

[37]Ibid.

program. In 1935 Allred had challenged the 44th Legislature by presenting the Democratic State Platform for insertion into the legislative journals of its regular session. Among other things, the platform included proposals calling for reduced public utility rates, conservation of natural resources, increased support for primary and higher education, regulation of lobbyists, repeal of race track gambling, and repeal of constitutional prohibition.[38] In its regular session the 44th Legislature considered a record amount of legislation and presented thirteen reform-oriented constitutional amendments to the voters for approval. Seven proposals were approved by the electorate, including measures calling for establishment of an old age pension system and repeal of constitutional prohibition.[39] Among all this reform activity, however, one finds no official mention of unemployment insurance. Prior to the passage of the Federal Social Security Act and even in two special sessions of the 44th Legislature which met immediately after its passage, no legislation concerning unemployment insurance was introduced.[40]

In the Spring of 1936, anticipating the need to enact legislation in response to Title II and Title IX of the Social

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[38]Senate Journal, 44th Leg., Reg. Sess., 1935, p. 84ff.

[39]Seth McKay, Texas Politics, 1906-1904, (Lubbock, 1952), p. 293-294.

[40]Carey Thompson, "Unemployment Insurance in Texas," Southwestern Social Science Quarterly, XXXV (September, 1954), p. 92.

Security Act, Allred appointed a committee to study the unemployment compensation provisions of the Social Security Act and make recommendations to the legislature.[41] In its official report, the committee reviewed the unemployment compensation provisions of the federal act and discussed the court cases pertinent to the constitutionality of the Social Security Act then being adjudicated. The committee,

> recognizing that if the Federal Social Security Act is constitutional, employers in Texas covered by Title IX of the Social Security Act will be required to pay a tax of one percent on their annual payroll. . . and realizing that none of the money so paid may be retained for the benefit of the State of Texas unless the state should pass an unemployment compensation act. . .,

whole-heartedly recommended that the legislature consider unemployment compensation.[42] No mention was made, either in the body of the report or in the final recommendation, of the benefits that might accrue to the well-being of the workers of Texas as the result of such legislation. Retention of the tax money in Texas seems to have been the primary, if not the only, motivation behind the committee's recommendation. This indicates the effectiveness of the tax-offset as a motivator of state legislatures.

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[41]The committee members included: R. B. Anderson, State Tax Commissioner who was chairman; H. Grady Chandler, Assistant Attorney General; Tom King, Assistant State Auditor; George Davisson, Representative from Eastland; Allan Shivers, Senator from Port Arthur; Zeta Gossett, State Banking Commissioner; Marlin Sandlin, Assistant Secretary of State; and Fred Nichols, Commissioner of Labor. The official report of the committee is recorded in Senate Journal, 44th Leg., 3rd Called Session, 1936, pp. 17-29.

[42]Ibid., pp. 28-29.

A bill was drafted by Senator Allan Shivers of Port Arthur and Representative George Davisson of Eastland with substantial help from Walter Reilly, then Executive-Secretary of the State Federation of Labor, Tax Commissioner Bob Anderson, and Wichita Falls businessman Charles Miller.[43] Shivers and Davisson sponsored the bill as it passed through both houses with a minimum of dispute. One labor newspaper commented editorially that representatives of industry were not waging a fight against the Davisson Bill because "they are satisfied they have to pay the tax. . . and are perfectly willing to help get the money back to the state. . . ."[44] The Austin correspondent of the Dallas Morning News did detect some lack of unanimity of opinion over the bill:

> Some of the Senators said unkind things about the bill then voted for it. . . . The protesting Senators vociferously objected to the Federal Government "ramming this thing down our throats," but the bill's proponents answered that it was a case of take it or leave it and miss the federal dollars that would come to Texas by taking it. They took it.[45]

The bill was signed into law by Allred on October 27, 1936. In its final form it was an almost exact copy of a Social Security Board bill drafted to aid state legislatures in passing approved legislation. Irwin Wood, a representative

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[43]Information from interview with Walter Reilly, August 27, 1967.

[44]Dallas Craftsman, October 2, 1936, p. 1.

[45]Ibid., October 30, 1936, p. 1.

of the Social Security Board who had been sent to Texas to aid the Legislature in the passage of approved legislation, commented at that time that the Texas bill was "the best that had been passed by any of the eighteen states now coming under the unemployment insurance provisions of the Social Security Act."[46] All things considered, there seems to be little doubt that the federal Social Security Act was totally responsible for the initiation of unemployment insurance in Texas in 1936.

The original law[47] was quite general and relatively brief compared to the amended version of today. The purpose of the legislation, as set out in section one of the law, was "to provide an orderly system of contributions for the care of the justifiably unemployed during times of economic difficulty, thereby preserving and establishing self-respect, reliance and good leadership." Dissatisfaction with the untimely cost of public relief payments is singled out in the initial clauses of the law as a chief justification for the passage of such legislation. Section two discloses that the two revelations that prompted the legislation were (1) the recognition of the "economic unsoundness" of large relief payments during periods of "economic difficulty," when the

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[46] Dallas Morning News, October 26, 1936, Section 1, p. 1, cited in Thompson, op. cit., p. 92.

[47] The General and Special Laws of the State of Texas, 44th Leg., 3rd Called Session, 1993 (1936). Henceforth this source will be designated simply as Acts, followed by the appropriate date and session.

cost could be covered by contributions during periods of "economic well-being" plus (2) the recognition that "it is detrimental to the moral, civil and physical well-being of individuals to be sustained by charities and public grants."

The original version consisted of twenty-four sections in which provision was made (1) for the imposition and collection of the tax on employers of eight or more; (2) for the payment of benefits; (3) for the requirements precedent to the receipt of benefits; (4) for the organization of the administrative agency; (5) for the creation of a State Employment Service; (6) for the severability of certain sections of the law; and (7) for the termination of the law if the Social Security Act was declared unconstitutional.

The major provisions of the law are those concerning coverage, the amount and duration of benefits, the requirements for receiving benefits, and taxation. These provisions determine, to a great extent, the cost of the program and what effect the program has in alleviating the discomfort of involuntary unemployment. The evolution of these provisions and the Texas experience under them provides the real essence of the unemployment insurance program in Texas. In following chapters these subjects will be discussed in some detail in the hope of illuminating the Texas experience under its law.

Summary

Unemployment insurance in the United States is a program of social insurance established with foreign antecedents but

with definitely unique traits. It is intended to protect regular members of the work force who are unemployed because of a lack of work and are able and willing to accept suitable employment. It provides income as a matter of right in the form of weekly benefits related to former wages and is intended to cover nondeferrable expenses without reducing the incentive to work.

Wisconsin enacted the first unemployment compensation law, but the total system as is known today was initiated by the federal government in the Social Security Act of 1935. The federal law established minimum standards and furnished incentive to the states by providing a "tax offset" system that encouraged states to pass approved laws that would enable employers to secure credit against the Federal Unemployment Tax.

Federal legislation has extended coverage to additional employees since the inception of the program and has increased coverage and benefits to meet certain temporary situations, but the bulk of evolutionary influence has been provided by the states as they have attempted to modify their laws to meet political pressures. Coverage under the system has been increased steadily over the years as more employment groups have been included and as size of firm limitations have been liberalized. Expansion has been most adequate in the area of benefit duration while benefit amounts have failed to keep pace with average wage rates. The

problems of fund solvency and equitable taxation under experience rating have characterized the financial evolution of the system while eligibility and disqualification provisions of the program have generally become more restrictive.

Although the Texas law was passed during the period of legislative reform, there is little to indicate that there was much, if any, interest in the payment of benefits to the unemployed in Texas prior to the passage of the Federal Social Security Act. The original law itself emerged as a virtual duplicate of one of the draft bills of the Social Security Board, assuring the approval of the Board and the consequent retention of taxes for the specific benefit of the State of Texas and assuring the possibility of reduced tax rates for Texas employers.

CHAPTER III

DEVELOPMENTS IN COVERAGE IN TEXAS

Even though unemployment insurance has been in force for over thirty years, there is still a very common misconception that all workers are covered by the program. The truth, however, is that unemployment compensation laws cover only a very complexly defined portion of the labor force. The Texas law uses definitions of the terms "employer," "employing unit," and "employment" to restrict its coverage provisions. The "employing unit" is a term used to specify any individual or legal organization employing one or more individuals within the state. All employing units could be subject to the Texas law. An "employer" is an employing unit that meets certain requirements resulting in compulsory coverage under the Texas law. "Employment" is simply service done for hire under the direct control of the person who contracts for the service as opposed to service done for hire without direct control of the person doing the hiring, such as in the case of a subcontractor.[1]

Relying on the above definitions the coverage provisions of the law determine (1) the employers who are liable for

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[1]These definitions are found in Sections 19(e) and 19(f) of Texas Employment Commission, Unemployment Compensation Act (Austin, 1967), p. 50, cited henceforth as Texas Employment Commission, TUC Act.

contributions and (2) the workers who accrue rights to benefits under the law. Coverage is defined in terms of the size of the employing firm, the contractual relationship of the workers to the employer, and the place where the workers are employed. For the most part, however, coverage is defined in terms of who is not covered rather than who is covered. In the case of workers, the ones who are to be covered are not specifically pointed out; instead, those who are to be excluded from coverage are denoted as not performing services included within the law's definition of employment. By the same token, only employers in employment not specifically excluded are liable for contributions. Obviously this method was used to avoid the listing of hundreds of different employments to be covered; and as a result the exclusions from coverage have become the crux of the coverage provisions. Each of the phases of the coverage provisions are discussed below with emphasis on the changes that have occurred in the terminology of the law concerning each of them.

Size-of-Firm Limitation

The coverage provisions of the original Texas law were almost a direct copy of those found in the original federal act. Both laws covered only those employers who hired eight or more workers in each of twenty weeks during the calendar

year.[2] As previously noted, the federal law does not prescribe just what types of employments must be covered by a state law. However, the tax credit afforded under the national act to employers covered by approved state laws has acted to, in effect, set minimum size-of-firm coverage standards for state laws. For example, if the Texas Legislature had not extended coverage to employers of four or more in response to the national extension of coverage to employers of four or more in 1954[3] those employers hiring four, five, six, or seven workers would not be entitled to the federal tax credit.

The states have the option of extending coverage beyond this minimum level; but Texas has thus far chosen to cover only the federal minimum throughout the history of its act. Although the original laws of twenty states covered firms with fewer than eight employees, Texas was among those adopting the federal size-of-firm limitations; and in 1954, when Congress lowered the federal limitation so that all employers of four or more were covered, Texas followed suit.

The rationale of the size-of-firm limitations has little justification by modern standards. One can easily understand the apprehension that plagued the framers of early laws over

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[2]U. S. Statutes at Large, XIL, Part I, 639 (1935), and The General and Special Laws of the State of Texas, 44th Leg., 3rd Called Sess., 1994 (1936), Henceforth cited as Acts, followed by the appropriate date and session.

[3]Acts, 54th Leg., Reg. Sess., 399 (1955).

the administrative problem of keeping track of the employment records of small employers. Just as easily, one can comprehend the argument that an additional payroll tax could further intensify the already precarious competitive position of many small businesses. However, the argument based on administrative difficulty has been disproved by the experience of the several states that have covered employers of one or more for years with no evident problems. The legislative protection of small businesses from the tax standpoint may have definite sociological and philosophical attributes, but it is generally considered to be a barrier to the efficient allocation of resources in a market system. Furthermore, while serious doubts exist about the justification of small firm tax protection, there can be little doubt about the justifiability of the coverage of the employees of such businesses. The principle of short-term income protection for unemployed workers is equally valid whether they work for a small firm or a large firm.

With the evident reluctance of the Texas Legislature to extend coverage to small employing units, one might be led to think that there has been little or no desire expressed in Texas for such extensions. However, organized labor has supported the coverage of employers of one or more ever since the early years of the program;[4] and, more significantly, the

[4]Dallas Craftsman, January 13, 1939, Sect. 1, p. 1.

Texas Employment Commission itself recommended the extension of coverage to employers of four or more seven years before the federal law was altered to that effect.[5]

A few other points should be made concerning the size-of-firm provisions at this point. First, there are provisions within the law that prevent the splitting of an employing unit into two or more separate entities in order to avoid tax liabilities.[6] Under these provisions the coverage of workers in some small establishments is brought about if the establishments are maintained separately by an employing unit and perform service for a single employing unit. Second, in 1945 the definition of "employer" was changed to provide for the automatic coverage of an employing unit when it becomes subject to the federal tax.[7] This provision was added to furnish coverage for employees of a multi-state employer who is required to pay the federal tax because he employs four or more in the United States but is not liable for the state tax because he employs fewer than four in Texas. Third, the Texas law has always had a provision that permits voluntary election of coverage by any employing unit that is excluded by any provision of the law.

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[5]Texas Employment Commission, Annual Report (1947), p. 1.

[6]Section 19(e) of Texas Employment Commission, TUC Act, p. 50.

[7]Vernon's Annotated Civil Statutes of the State of Texas, XV, 487 (1962),

The Employer-Employee Relationship

The relation of a worker to the person for whom he performs services influences whether his employer must count him in determining liability under the law. The Texas law applied a rather broad concept for determining the employer-employee relationship, holding that service for pay is considered employment and subject to taxation unless the worker is "free from control or direction in the performance of his work under his contract of service in fact." This concept was inserted into the law in 1941 and has not been altered since.[8]

Location of Employment Relationship

With each state operating a separate unemployment compensation system it became evident after the initial stages of development that some means would have to be devised that would prevent claimants who worked in more than one state from obtaining benefits from more than one state for the same spell of unemployment. Also some means had to be developed so that working in more than one state for short intervals would not prevent a person from qualifying for benefits in any state. Changes in the definition of the term "employment" had to be made to handle these problems, and the multi-state nature of the problems required that states adopt a

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[8]Acts, 47th Leg., Reg. Sess., 1380 (1941).

uniform definition of employment in terms of the location of the work.

In modern literature on unemployment insurance this definition has become known as the "localization" provision of the law. Furthermore, under this provision, when it is determined under which state law a multi-state worker is covered, his services are said to have been "localized." The Texas Legislature adopted localization provisions for the Texas law in 1937 to meet the need.[9] Under the uniform definition that was formulated a salesman who lives in Texas and travels for an Oklahoma firm would be considered to have his services localized in Texas and be covered in Texas, if all or most of his work outside Texas was incidental. Also, if his services cannot be localized in any one state, the entire service can arbitrarily be covered in the state of his residence or in the state of his employer's base of operations. Also included in the 1937 amendment was a provision that permitted employers to elect the coverage of workers who live in Texas and perform their services entirely outside Texas if they are not covered by any other state or federal law. This provision makes it possible, for example, for a Texas employer of twenty to cover a portion of his employees who work for him in Louisiana who are not covered under the Louisiana law because of its "four or more" provision.

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[9]Acts, 45th Leg., Reg. Sess., 129 (1937).

In 1941 the final alteration needed to efficiently cover multi-state workers was incorporated into the law. In order to provide continuous coverage for individuals working in different states successively for one employer, a stipulation was added that enabled the Texas Employment Commission to enter into reciprocal arrangements with employment security agencies in other states under which such services can be covered by the law of only one state.[10] Such arrangements permit an employer to cover all the services of such an employee in any state in which any part of the service is performed, or in the state in which the employee lives, or in the state in which his employer operates a business. Reciprocal arrangements typically cover services by individuals who by the nature of their livelihood are required to contract by the job in various parts of the country.

Excluded Groups

As stated above, the basic framework of the coverage provisions is supplied by those clauses that point out the specific employments that are to be excluded from coverage under the law. The provisions under the original Texas act were almost an exact copy of those in Title IX of the Social Security Act which excluded (1) agricultural labor; (2) private and domestic service; (3) services by officers and men on the navigable waters of the United States; (4) family

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[10] Acts, 47th Leg., Reg. Sess., 129 (1937).

service; (5) employment in federal, state, and local government; (6) services for certain non-profit, religious, and charitable organizations and (7) service for insurance companies done on a commission basis.[11]

The reasons for these exemptions have been mentioned, but a brief review at this point should be helpful. Agricultural and domestic labor were excluded for administrative and political reasons, governmental employment for constitutional reasons, maritime employment for jurisdictional reasons, and non-profit and charitable employment because of custom. Insurance agents on commission were specifically excluded although they probably could have been excluded on the basis of the employer-employee relationship.[12]

In 1939 the federal tax law was amended adding several more specific exclusions and providing that federal instrumentalities not wholly owned by the federal government, such as national banks, were to be brought under coverage unless another law exempted them. The additional specific exclusions included (1) part-time employment for certain non-profit organizations exempt from the federal income tax; (2) state instrumentalities exempt from taxation; (3) service for private and federal voluntary beneficiaries; (4) service by

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[11] Acts, 44th Leg., 3rd Called Sess., 2016 (1936).

[12] Edwin E. Witte, The Development of the Social Security Act (Madison, Wisconsin, 1963), pp. 131-132.

certain student employees of educational institutions not exempt from the federal income tax; (5) service for foreign government; and (6) services performed as a student nurse or intern.[13] The Texas law was amended in 1941 adding exactly the same excluded employments as were added in 1939 to the federal law.[14]

In 1943 Texas followed the federal government by adding newsboys under eighteen to the list of excluded workers, and in 1945 removed its maritime exclusion in anticipation of the removal of the same exclusion from the federal statute which was to come in 1946.[15] An amendment to the federal act in 1960 with respect to service after 1961, permitted states to cover the employees of Federal Reserve Banks and other privately owned instrumentalities of the federal government which were not exempt from the federal income tax. The Texas act was amended in 1961 to conform to this change in federal law, extending coverage to such services.[16] The most recent change involving coverage occurred in 1965 when legislation was passed removing the exclusion of certain student employees of non-tax exempt schools and colleges.[17]

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[13] U. S. Statutes at Large, LIII, Part II, 1384 (1939).

[14] Acts, 47th Leg., Reg. Sess., 1381 (1941).

[15] Vernon's, XV, 487 (1962).

[16] Acts, 57th Leg., Reg. Sess., 1135 (1961).

[17] Acts, 59th Leg., Reg. Sess., 321 (1965).

Table I illustrates the fact that the exclusion provisions have created serious gaps in coverage of the labor force in Texas.

TABLE I

COVERAGE UNDER UNEMPLOYMENT INSURANCE IN TEXAS, MARCH, 1967*

(Employment Figures in Thousands)

	Number Employed	Percent of Employment
Number With UI Protection		
State Law Coverage	2,231	
Federal Employees	160	
Railroad Workers**	32	
Total	2,423	59.7
Number Without UI Protection		
Small Firms***	182	4.5
Agriculture	291	7.2
State and Local Governments	447	11.0
Other****	714	17.5
Total	1,634	40.3
Total Employment	4,057	100.00

*Source: Texas Employment Commission, Texas Manpower Trends, April, 1968, p. 4, data furnished by the Bureau of Employment Security from Bureau of Labor Statistics, Employment and Earnings and Monthly Report of the Labor Force, and unpublished Social Security data.

**Covered by the Railroad Unemployment Insurance Law.

***Unpublished Social Security data.

****Comprised mainly of employees of non-profit organizations, employees in private households, unpaid family workers, the self-employed, and others specifically excluded from coverage.

With over 40 per cent of the Texas Labor Force uncovered by any unemployment insurance program, how can it be said that unemployment is an insured risk in Texas?

Until recent years the exclusion of agricultural labor was the major reason for the coverage gap in Texas.[18] The rationale for the original exclusion of farm workers was much the same as it was for the size-of-firm exclusions. There is little doubt that coverage of agricultural workers would have been difficult during the years of the Depression, both for the Commission and for farmers who would have been taxed. But there is much less evidence today to support the contention that the coverage of unemployed farm workers would be an insurmountable problem. In fact, Hawaii and Puerto Rico have launched apparently successful programs of limited coverage in agricultural employment with little loss of administrative efficiency.[19] Likewise, there is little doubt that an additional payroll tax would work a hardship on some farm employers, but this fact has little to do with the need for protection against the risk of unemployment; and there is little reason to suspect that the hardships of

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[18]Not until 1951 did agricultural employment account for less than 15 percent of the Texas Labor Force, "Population and Labor Force Estimates for Texas, 1950-1966," unpublished mimeograph of the Texas Employment Commission.

[19]Department of Labor, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967), p. C-8.

income loss are any less harsh for the families of farm workers than they are for any other class of workers.

Employees in state and local government are now the most numerous of the excluded groups. Of course, the federal law cannot cover these groups because of the constitutional prohibitions against federal taxation of state and local subdivisions; but there is no prohibition against the states themselves providing for these workers. The popular conception that government employment is stable is generally correct, but there are circumstances that can create temporary unemployment in government work.[20] Technological improvements make certain government jobs obsolete just as they do in many other types of employment. In fact, the advances in computerized data processing equipment have caused a virtual "paperwork revolution" in all levels of government, making obsolete many of the repetitive operations that formerly required manpower. Economy minded administrations can cut appropriations thereby reducing the number of jobs for certain types of personnel. Nationwide, more has been done to provide coverage for state and local government workers than has been done in the case of any of the other remaining major types of excluded employment. As of August, 1967, thirty-five states had made some provision for the coverage of their own or local

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[20]For example, during 1947 sharp drops occurred in unemployment insurance claims. The Commission reduced its staff as a result by 29 percent. Again in 1948, another 20 percent of the staff members of the Commission were laid off. Texas Employment Commission, Annual Report (Austin, 1949), p. 8.

government workers.[21] Texas has no provision for mandatory coverage of state and local government employees, but the law has been interpreted to mean that coverage may be provided by the election of the individual instrumentality.[22] As of August, 1967, no governmental unit in Texas had elected to do so.

The other significant statutorily excluded groups are employees of non-profit organizations and insurance agents on commission. The exemption from taxation of non-profit organizations is traditional in our country, and even though the work done by most of these organizations is quite valuable, it does not preclude the risk of unemployment for its employees. The main difficulty in covering insurance agents arises from an inability to determine in just what weeks an agent might be employed. For this reason it is unlikely that coverage of such employment could ever be implemented.

"Employment," for the purposes of unemployment insurance, has been limited to work under the control of others remunerated by wages. This, of course, excludes the self-employed. Although there is much more doubt today over the degree of control that the self-employed have over their own employment, it is generally accepted that the coverage of the self-employed is unfeasible under the program as it is now constituted.

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[21]U. S. Department of Labor, Comparison of State Laws, p. C-10.

[22]From Table CT-6 in ibid., p. CT-11.

Only one state, California, makes any provision for the self-employed whatsoever, and under its law the employer's election must be approved and the wages that will apply toward benefits are set by law.[23]

Concluding Remarks Concerning Coverage in Texas

Coverage under the Texas law always has been largely a duplicate of the federal law. The original law and every alteration in it has derived largely, if not totally, from federal leadership. Texas has made little or no individual effort to improve the coverage provisions of its program except for the interpretation concerning the election of coverage for state and local government employees. The policy of following minimum federal standards is obviously strongly influenced by a desire to limit the incidence and amount of the tax that supports the program. Such a policy is not uncommon among the states, as a brief comparison of Texas coverage provisions with those of other states will show, but many of the states have elected to be more generous in coverage.

For example, as of August, 1967, twenty-five states and other jurisdictions were using the federal minimum size-of-firm exclusion (employers of four or more only), as was Texas. Three states covered workers in firms of three or more and twenty-four states covered firms with one or more. Whereas in 1937, soon after laws had been adopted in all

[23]From Table CT-5 in ibid., p. CT-9.

states, thirty-two covered the same size firms as did the national act, while the remaining nineteen states covered firms with fewer workers than that prescribed in federal law. Presently, the size-of-firm limitation excludes about nine percent of the Texas labor force from coverage while in the nation as a whole the same limitations exclude about seven percent.[24]

As to the relative restrictiveness of the Texas exclusions it can hardly be said that Texas is among the most liberal of the states. Nearly all states exclude agricultural labor, domestic labor, service for relatives, and service for non-profit organizations. Texas is one of the twenty-eight states that provide for the voluntary election of coverage by state and local government units, and option which has not been exercised, and is not among the thirty-three states that exempt part-time service for non-profit organizations; and is among the twenty-seven states that exclude student nurses and interns.[25]

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[24]Comparison made from Department of Labor, Bureau of Employment Security, "Twenty Years of Unemployment Insurance," Employment Security Review (August, 1955), p. 21, and from Table CT-5 in Department of Labor, Comparison of State Laws, p. CT-9.

[25]Figures from Table CT-1, CT-3, CT-4, CT-5 in U. S. Department of Labor, Comparison of State Laws (August, 1967), pp. CT1, CT5, CT7, CT9 respectively.

CHAPTER IV

BENEFIT DEVELOPMENTS IN TEXAS

The payment of weekly benefits to involuntarily idle workers is the paramount reason for the existence of unemployment insurance programs. The provisions of the Texas law that set forth the nature and extent of claimant's rights to benefits are of primary importance and usually receive much attention in literature that has been published concerning unemployment insurance.

In Texas, as in other states, the claimant's benefit rights depend on his experience in covered employment during a past period of time called his "base period". Benefit payments are made in a sum called the "benefit amount", and benefit rights remain fixed for a one year period, called the "benefit year", after a worker files a valid claim for benefits.

In order to qualify for benefits, the claimant must have earned enough during his base period in covered employment to establish that he is genuinely "attached" to the labor force. He must also be free from disqualification for any of several causes and must serve a waiting period before his unemployment becomes compensable. The qualifying wage requirements, waiting period requirements, and the disqualification provisions of the Texas law have particular

significance and will be discussed in detail in Chapter VI, while this chapter will deal mostly with benefit levels and duration. Also, trends in benefit experience in Texas will be examined, and certain measures of benefit adequacy will be applied to Texas and other states for the purpose of disclosing the relative adequacy of benefits in Texas as compared with other states.

Wage records are maintained on each employee in covered employment in Texas for the dual purpose of (1) determining if a worker has accumulated sufficient wages during his base period to qualify him for benefits and (2) for determining the amount and duration of his weekly payment. The wages earned during the calendar quarter of a worker's base period in which his earnings were highest are used as a basis for calculating the weekly benefit amount. The high-earnings calendar quarter is used because it is the period which most adequately represents full time work. A formula is used that attempts to provide a weekly benefit amount that approximates fifty percent of the worker's average weekly wage within certain maximum and minimum limits. Also, provisions are made limiting the total amount of benefits that a worker can receive in his benefit year.[1]

The provisions of the Texas law that deal specifically with benefits have gone through various changes during the

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[1]A brief summary of benefit provisions can be found in Vernon's Annotated Civil Statutes of The State of Texas, XV, 406ff (1962).

thirty-one year history of the law, changes that reveal much about the basic character of the legislative climate in Texas.

Benefit Year and Base Period

The definition of benefit year, originally incorporated into the language of the Texas law in 1937,[2] is a one-year period beginning with the filing of a valid claim in which an unemployed individual can receive his annual benefit. A person cannot receive benefits after he exhausts his benefit total for that year until he establishes a new benefit year (i.e., one year after filing a valid claim). Prior to 1937 the benefit year was expressed in the terms of a "fifty-two week period" beginning with the first day of the week in which benefits were first payable.[3]

Nearly all states, including Texas, use what is called the "individual" base period in that the date establishing the beginning and ending of the base period depends on the date of the worker's first application for benefits, that is, the beginning of the benefit year.[4] Initially the base

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[2]The General and Special Laws of the State of Texas, 45th Leg., Reg. Sess., 128 (1937). Henceforth this source will be cited as Acts followed by the appropriate date and session.

[3]Vernon's XV, 487 (1962).

[4]New Hampshire and Washington use the "uniform" base period in which the beginning and ending dates of the base period are fixed by law and are the same for all workers. These two states also have "uniform" calendar-year benefit years which are the same for all workers. Table BT-1 in U.S. Department of Labor, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967), p. BT-1.

period was the first eight calendar quarters of the last nine completed calendar quarters immediately preceding an individual's benefit year.[5] In 1955 this definition was changed making the base period the first four of the last five completed calendar quarters immediately preceding the occurrence of unemployment.[6]

Although these definitions are straightforward, more discussion is necessary for complete understanding. For example, the relationship between the beginning of an individual's base period and the beginning of his benefit year can have significant effects upon his benefit rights if he suffers a long period of unemployment. Examination of the definitions reveal that the law creates a maximum possible lag of six months between the first day of an individual's benefit year and the last day of his base period. As a result, it has been possible for a person to qualify for benefits in a succeeding benefit year based on wages earned during the lag period of the original base period with little or no employment during the original benefit year. To prevent claimants from recuring a "second benefit year," twenty-four states have either removed their base period lags from the language of their laws, instituted very short lags, or adopted special qualifying requirements for the second

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[5] Acts, 45th Leg., Reg. Sess., 128 (1937).

[6] Vernon's, XV, 487 (1962).

benefit year.[7] Texas had no special stipulations concerning the second benefit year until the 1967 session of its legislature when a bill was passed requiring that a claimant must earn a minimum of 250 dollars subsequent to the beginning of a second benefit year in order to qualify for benefits based on lag period wages.[8] In the past, the receipt of such benefits was controlled by close scrutiny of the regular qualification and disqualification conditions. Even though the Texas law has tightened its second benefit year provisions, it is still not among those states that have removed the possibility of a second benefit year from the provisions of the law for those claimants who are having difficulty in obtaining lasting employment.

The Benefit Amount

The benefit amount was originally computed and paid on a weekly basis. A 1939 study of the payroll policies of covered employers revealed that 70 percent of covered workers received their checks twice a month. The Commission decided that benefit payments should be made on the same basis.[9] This policy endured until 1949, when, in an attempt to conform

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[7]U. S. Department of Labor, Comparison of State Laws (August, 1967), p. B-9.

[8]House Bill 90, 51st Leg., Reg. Sess., 1967.

[9]Texas Employment Commission, Annual Report (Austin, 1939), p. 7.

the Texas law to other state laws, the amendment of that year reconverted the payment policy back to a weekly basis.[10]

Since 1961 Texas has been paying benefits on the basis of a "flexible week," which is a period of seven consecutive days beginning with the first day for which the claimant becomes eligible for the payment of unemployment benefits.[11] Prior to that date benefits were paid on the basis of the calendar week.

The partially employed in Texas are provided benefits when their underemployment reaches a certain stage. Presently, under Texas law benefits are not reduced if a worker is receiving less than the greater of five dollars or twenty-five percent of his weekly benefit amount. Otherwise, his weekly benefit amount will be reduced by the amount of wages he receives in excess of five dollars or twenty-five percent of his weekly benefit amount whichever is the greater.[12]

The original Texas law, like other state laws passed at that time, provided that weekly benefits should be related

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[10] Acts, 51st Leg., Reg. Sess., 296 (1949). The terminology resulting from this change in the benefit period affects the discussion of benefits and the later discussion of disqualifications. In order to prevent unnecessary confusion, this study will discuss the various aspects of the program in terms of a benefit period of one week. For example, the maximum benefit amount from 1939 to 1945 was thirty dollars, but this amount will be discussed as a fifteen dollar payment for two weeks. Where this convention is not pointed out, it is to be assumed.

[11] Vernon's, XV, 413 (1962). [12] Ibid., p. 406.

to the weekly wages of the individual covered workers. The early draft bills of the Social Security Board recommended benefits based on full time weekly wages because weekly benefits based on intermittent employment might result in unreasonably low amounts. The draft bills recommended benefits equal to fifty percent of each claimant's full-time weekly wages up to a maximum of fifteen dollars a week.[13] The original Texas law exactly followed these recommendations, calling for the benefit amount for total unemployment to be computed as fifty percent of the full time weekly wage but not to exceed fifteen dollars.[14]

In 1939 the full time weekly wage formula was abandoned and replaced by a "high quarter" formula. The benefit amount, which was to be paid bi-weekly, was set at one-thirteenth of the claimant's high quarter earnings.[15] This substitution was, in effect, a liberalization of the law in that it recognized the highest quarterly earnings of the claimant as being his average wages. The fifty percent wage principle was retained by this formula inasmuch as the one-thirteenth fraction was paid every two weeks. In 1949, when benefits again became payable every week, the fraction was

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[13]U. S. Department of Labor, Bureau of Employment Security, "Twenty Years of Unemployment Insurance in the U.S.A., 1935-1955," Employment Security Review, XXII (August, 1955), p. 31.

[14]Acts, 44th Leg., 3rd Called Sess., 1994 (1936).

[15]Acts, 46th Leg., Reg. Sess., 436 (1939).

converted to one-twenty-sixth.[16] Of course, the fraction would not yield fifty percent wage replacement unless the claimant was employed the full thirteen weeks during the high quarter, and recognition of the fact that many workers are not employed every week, even during their quarters of highest earnings, led the Texas Legislature to raise the fraction to its present level of one-twenty-fifth.[17]

The range of possible benefit amounts that can be derived from the application of the one-twenty-fifth fraction to high quarter wages is limited by statutory maximum and minimum amounts. All states have such limitations in differing magnitudes. In principle, the minima have been provided to avoid the payment of insignificant amounts, and the maxima have been provided to keep benefits from being so high as to discourage beneficiaries from seeking suitable work. Likewise, maximums are used to protect funds from being depleted by unnecessarily high benefits to high wage earners who do not require fifty percent wage replacement in order to purchase short-term necessities for their families. Of course since low employer taxes go hand in hand with low fund drainage, the institution of low maxima has always received the support of employer groups.

The 1936 Act restricted weekly benefits between a minimum of five dollars or three-fourths of full time weekly

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[16] Acts, 51st Leg., Reg. Sess., 282 (1949).

[17] Acts, 57th Leg., 1st Called Sess., 43 (1961).

wage, whichever was the lesser, and a maximum of fifteen dollars.[18] The 1939 conversion to bi-weekly payments called for the doubling of the limits to ten dollars and thirty dollars with, of course, no change in the actual weekly amounts that a claimant could receive.[19] In 1945 the upper limit was raised to eighteen dollars per week (thirty-six dollars in a two week period), and in 1949 both limits were raised to seven and twenty dollars respectively. In 1955 the upper limit was raised to twenty-eight dollars and the 57th Legislature set the limits at ten and thirty-seven dollars in 1961.[20] The 60th Legislature made the most liberal change in the history of the law in 1967, raising the upper limit by twenty-two percent to forty-five dollars and the lower limit by fifty percent to fifteen dollars.[21] The degree to which these changes have compared with rising wage rates and the rising cost of living will be discussed later.

Duration of Benefits

Along with limitations on the amount of the weekly benefit, a maximum has been placed on the total amount of benefits that a claimant can receive during his benefit year. This

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[18] Acts, 44th Leg., 3rd Called Sess., 1944 (1936).

[19] Acts, 46th Leg., Reg. Sess., 139 (1939).

[20] Vernon's, XV, 407 (1962).

[21] Section 3(b) in Texas Employment Commission, Texas Unemployment Compensation Act (Austin, 1967), p. 2. Henceforth this source is cited as Texas Employment Commission, TUC Act.

limit supposedly assures that unemployment insurance maintains the principle of temporary wage replacement and does not act as a deterrent to the rapid return of workers to suitable work. Following the suggestions of the Social Security Board draft bill, the original law restricted payments not by a specific dollar amount, but by a provision that limited the duration of weekly payments. This provision limited benefit payments to a period of fifteen weeks,[22] thus the maximum total benefit per benefit year could not exceed fifteen dollars per week for fifteen weeks, or two hundred twenty-five dollars.

In 1937, a flat amount limitation on benefits in a benefit year was added to the duration provision insuring that total benefits bore a close relation to base period wages just as did employer tax rates. This close relationship was provided to assure constant solvency of the Texas unemployment fund. The 1937 amendment called for "variable duration" providing for an increase in the maximum duration to sixteen times the weekly benefit amount or one-sixth of base period wage credits, whichever was the lesser.[23] However, employee wage credits were limited to three hundred ninety dollars per quarter. Thus, the maximum total benefits became two hundred forty dollars because it was the lesser of $(\frac{390 \times 4}{6})$ and (15×16). The 1939 amendment allowed the beneficiary

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[22]Acts, 44th Leg., 3rd Called Sess., 1994 (1936).

[23]Vernon's, XV, 408 (1962).

to draw a maximum of one-fifth instead of one-sixth of his base period wage credits. The wage credit ceiling was raised from three hundred ninety to four hundred dollars, but the maximum total amount receivable during a benefit year remained at two hundred forty dollars because the bi-weekly benefit amount maximum was set at thirty dollars and duration was still eight times the benefit amount.[24]

The maximum amount payable rose to three hundred twenty-four dollars in 1945 as duration was raised to the lesser of nine times the benefit amount and one-fifth base period wage credits. Also the wage credit ceiling was raised to sixteen hundred twenty dollars and the benefit amount to eighteen dollars. In 1949 the 51st Legislature raised the ceiling to twenty-four hundred dollars and extended maximum duration to twenty-four weeks. When combined with an increase of the maximum benefit amount to twenty dollars per week, the new provisions increased the yearly benefits to four hundred eighty dollars. In 1955 the wage credit fraction was raised to one-fourth and in 1957 the stated ceiling was removed.[25]

The removal of the wage credit ceiling significantly liberalized the benefit structure of the law. Prior to its elimination the stated maximum had the effect of preventing a claimant who qualified for high weekly benefits from receiving the maximum amount otherwise payable during his benefit year. For example in 1956 the maximum wage credit that

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[24] Ibid. [25] Ibid.

a claimant could accumulate was twenty-four hundred dollars. At that time benefits could be credited against the lesser of one-fourth of his wage credits or twenty-four times the weekly benefit amount of which twenty-eight dollars was the maximum. In other words no claimant could draw more than six hundred dollars, the lesser of (28 x 24) and $(\frac{2400}{4})$ in a benefit year. Therefore, any claimant who had sufficient high-quarter earnings to qualify for more than twenty-five dollars could not receive the maximum twenty-four weeks of payments.

In 1961 the maximum potential benefit was increased to the lesser of twenty-seven percent of base period wage credits and twenty-six times the weekly benefit amount. The maximum benefit amount was raised to thirty-seven dollars per week pushing the maximum benefits per year up to nine hundred sixty-two dollars.[26] The 1967 increase of the maximum weekly benefit amount to forty-five dollars raised the maximum yearly benefit to eleven hundred seventy-five dollars.[27]

Major changes in the benefit provisions of the Texas law are summarized in Table II. The table reveals that statutory changes have lagged behind the constantly rising

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[26] Ibid.

[27] Texas Employment Commission, TUC Act (1967), p. 2.

TABLE II

PERTINENT CHANGES IN BENEFIT PROVISIONS 1936-1967*

Year	High Quarter Fraction	Benefit Amount (Dollars) Per Week	Benefit Period (Days)	Base Period Earnings (Percent)**	Maximum Total Benefits (Dollars)	Maximum Duration (Weeks)	Consumer Price Index
1936	---	5-15	7	--	240	15	48.3
1937	1/26	5-15	7	20	240	16	50.0
1939	1/13***	5-15	14	20	240	16	48.4
1941	1/13***	5-15	14	20	240	16	51.3
1945	1/13***	5-18	14	20	324	18	62.7
1949	1/26	7-20	7	20	480	24	83.0
1955	1/26	7-28	7	25	600	24	93.3
1957	1/26	7-28	7	25	672	24	98.0
1961	1/25	10-37	7	27	962	26	104.2
1967	1/25	15-45	7	27	1175	26	116.3

*Source: Texas Unemployment Compensation Act, 1936-1967.

**Prior to 1961, this proportion was expressed as a fraction.

***Benefit period 14 days.

cost of living. For example, before the first upward adjustment of the maximum benefit amount in 1945, the cost of living index rose 14.4 points or 40 percent. Before the next change in 1949, living costs rose another 32 percent, another 12 percent more before the change of 1955, and another 5 percent before the change of 1961. Between 1961 and 1967 when the maximum was raised to 45 dollars, living costs again rose another 18 percent.

Comparison of Benefit Provisions

The major aspects of the Texas law which now affect the amount and duration of benefits are (1) the high quarter fraction used to determine the benefit amount; (2) the maximum and minimum limits of the weekly benefit amount; (3) the proportion of base period wage credits used to determine potential duration; (4) the maximum weeks of benefit allowed; and (5) the maximum amount of benefits that can be received during a benefit year. All states use similar tools to determine benefits, and a comparison of state laws can reveal much about the relative liberality of the Texas law.

As of January, 1968, of the thirty-three other states using a high quarter formula, nine were using smaller high quarter fractions than Texas, eleven were using the same fraction, and thirteen were using larger fractions. The proportion of base period wages used to calculate potential duration (now 27 percent in Texas) is higher in twenty-six of the twenty-eight other states that have similar "variable" duration provisions. All other states either have uniform durations, a weighted fractional schedule, or base potential benefits on weeks worked.[28]

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[28]Figures from an unpublished circular of the Department of Labor, Bureau of Employment Security, titled Significant Provisions of State Unemployment Insurance Laws as of January 1, 1968.

The remaining aspects are compared in Table III which contrasts benefit provisions under the Texas law with similar provisions in other state laws before and after the 1967 revision of the law.

TABLE III

COMPARISON OF BENEFIT PROVISIONS UNDER TEXAS LAW WITH OTHER STATES BEFORE AND AFTER 1967 REVISION*

	Minimum Weekly Benefit for Total Unemployment		Maximum Weekly Benefit for Total Unemployment		Maximum Potential Benefits		Maximum Duration (Weeks)
	Before Revision	After Revision	Before Revision	After Revision	Before Revision	After Revision	
Texas	$10	$15	$37	$45	$962	$1170	26
No. States Higher	20	9	48	33	42	39	10
No. States Lower	8	37	3	14	9	10	2
No. States Same	23	5	0	4	0	2	39

*Source: Table BT-4 and BT-8 in U. S. Department of Labor, Bureau of Employment Security, Comparisons of State Laws (August, 1967), pp. BT7, BT17 and U. S. Department of Labor Bureau of Employment Security, Significant Provisions of State Unemployment Insurance Laws (January 1, 1968).

The comparisons made above illustrate that even after the revision of 1967 the Texas law is among the more generous in the nation only with respect to its minimum weekly benefit.

However, insofar as the maximum weekly benefit and the maximum potential benefit are concerned the revision did create some improvement in Texas's comparative position. Texas's maximum weekly benefit ranked forty-ninth before the law change and thirty-fourth after, and its maximum potential benefit moved from forty-third to fortieth. Even these meager improvements will undoubtedly be surpassed by other states if these limits are not revised upward frequently in future legislative sessions.

Benefit Adequacy

When taken at face value, the record of change in benefit provisions shows some improvement. The real essence of the benefit aspect of the program, however, involves the adequacy of the benefits provided in the law. If the law has been altered wisely and with the goal of providing adequate benefits constantly in mind, the benefits available to unemployed workers in Texas should compare well with those provided in the other states of the Union, especially with other similar industrial states. In order to gauge the adequacy of benefits under the Texas law, standard measures of benefit adequacy may be utilized, and the result of the measurement of the Texas benefit experience may be compared with similar results in other states.

The idea that benefits should approximate fifty per cent of wages was accepted as generally feasible when the program started and is still the most commonly recommended

objective.[29] As can be seen easily, the statutory limits on the weekly benefit amount have great bearing on whether or not the worker actually receives a benefit payment that is near fifty percent his weekly wage. Meaningful facts concerning the adequacy of benefit payments in Texas can be derived from an examination of the maximum weekly benefit as a percent of the average wage in covered employment. The information given in Table IV reveals that the maximum

TABLE IV

MAXIMUM WEEKLY BENEFIT AND AVERAGE WEEKLY BENEFIT AS PERCENT OF AVERAGE WEEKLY WAGE IN COVERED EMPLOYMENT, TEXAS 1938-1967*

Year	Maximum Weekly Benefit as Percent of Average Weekly Wage	Average Weekly Benefit as Percent of Average Weekly Wage	Year	Maximum Weekly Benefit as Percent of Average Weekly Wage	Average Weekly Benefit as Percent of Average Weekly Wage
1938	64.3%	39.5%	1953	29.2%	25.8%
1939	65.2	36.6	1954	28.2	25.3
1940	63.0	33.9	1955	38.2	24.7
1941	58.4	31.6	1956	37.2	29.0
1942	49.2	29.1	1957	25.7	29.4
1943	41.6	28.0	1958	34.8	30.5
1944	38.0	29.2	1959	38.8	28.7
1945	44.6	38.2	1960	33.1	28.2
1946	43.0	37.4	1961	42.2	27.0
1947	38.4	29.3	1962	41.1	30.4
1948	34.7	26.9	1963	39.9	31.2
1949	37.3	28.5	1964	38.4	30.1
1950	35.5	29.3	1965	37.1	29.4
1951	32.7	26.4	1966	35.4	28.4
1952	30.5	26.0			

*Source: Texas Employment Commission, Annual Report (1967), Appendix A, Table 4.

[29]U. S. Department of Labor, Bureau of Employment Security, Unemployment Insurance State Laws and Experience (Washington, 1965), Discussion of Chapters 6, 7, and 8.

benefit in covered employment is much smaller relative to the average weekly wage than it was when the program began. Also disclosed is that not since 1941 has even the maximum benefit payable been as much as fifty percent of the average weekly wage. In other words, since 1941 no eligible Texas claimant who has earned weekly wages equal to or in excess of the average has been able to obtain fifty percent wage replacement. The statutory limit has likewise prevented a considerable number of those making below the average wage from realizing fifty percent wage replacement. In fact in 1955 only those eligible claimants who were making at least thirty dollars per week below the average could receive a payment that represented one-half their weekly wage loss due to unemployment.

The Texas experience also points out one of the defects of fixed maximum weekly benefit amounts--they soon become less adequate because of continuing rising wage levels and rising costs of living, and become even more inadequate as the period between increases in the maximum becomes longer. The discussion of Table II pointed out the substantial increases in the cost of living that have occurred while the maximum benefit has remained unchanged in Texas. Furthermore, as Table IV shows since 1950 even in the years that it has been raised, the maximum has never been greater than 42.2 percent of the average weekly wage in covered employment.

The determination of a proper maximum is at best a difficult project. Few, if any, would deny that the maximum should be high enough to permit the fifty percent wage loss principle to operate satisfactorily.[30] It is easy for some to conclude from this that there should be no maximum--so long as each worker gets his fifty percent. Many have said, however, that there must be a maximum so that individuals with unusually high wages will not draw a disproportionate share of the available funds. Additional support for the maximum comes from the fact that a high-wage worker need devote a smaller proportion of his earnings to the basic necessities than does the lower paid worker. In fact, the maximum does operate to provide progressively lower proportions of payments to workers in the highest wage brackets. This is in accordance with sound principles,[31] but in Texas the maximum has been set at levels which offer the minimum fifty percent wage maintenance only to claimants with far below average wages.

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[30]The Bureau of Employment Security has stated that if the maximum were set at two-thirds the average weekly wage in covered employment for the preceding year, most claimants would receive fifty percent wage replacement. U. S. Department of Labor, Bureau of Employment Security, Unemployment Insurance Legislative Policy--Recommendations for State Legislation, 1962 (Washington, 1962), p. 11.

[31]U. S. Department of Labor, Bureau of Employment Security, Adequacy of Benefits Under Unemployment Insurance (Washington, 1958), p. 13.

Another useful measure that provides some meaningful indication as to the adequacy of benefits is the ratio of average weekly benefits to the average wage in covered jobs. The sixth column of Table IV shows that the average weekly benefit is much less than the average weekly wage, percentagewise, than it was when the program began. The average weekly benefit as a percent of average weekly wages dropped from 39.5 percent in 1938 to 28.4 percent in 1966, with the ratio reaching the all time low in 1955 of 24.7 percent. With each increase in the maximum benefit payable the percentage level has risen, as would be expected, but never to a point equal to its original position. Since 1946, the average weekly benefit has never exceeded 30.5 percent of average weekly wages with levels consistently near 25 percent in the mid 1950's.[32]

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[32]Two points must be made concerning the use of the ratio of average weekly benefits to average weekly wages. First, it would be much more desirable to compare average payments with the average wage of the beneficiaries only, but the latter figure has not been recorded down through the years. Furthermore, it would be difficult to make estimates of the average total wages of claimants because of the 4,800 dollar maximum limitation on wages reported each year. Secondly, there is considerable uncertainty over the relationship between the average wage of claimants and the average wage in covered employment. Because this relationship is reactive to variations in economic conditions, it varies over time thereby limiting the usefulness of the ratio of average benefits to average wage in covered employment. However, since Texas has had a rather stable low unemployment experience since the beginning of World War II, this ratio can give a more valid picture of the trend in benefit adequacy than it might give in a state such as Michigan or Pennsylvania where economic conditions have caused greater fluctuations in unemployment levels.

If the wage base and the proportion of wage loss that is to be replaced has been meaningfully set, the number of claimants that qualify for the maximum should be small. Otherwise, if a substantial number of claimants initially qualify for the maximum benefit amount, the program does not operate on a wage related basis, but more nearly resembles a flat-rate system. For this reason, of all the measures of benefit adequacy, perhaps the most useful is the proportion of insured claimants eligible for the maximum weekly benefit amount. Table V illustrates the Texas experience with respect to this measure between 1946 and 1967.

TABLE V

PROPORTION OF NEWLY INSURED CLAIMANTS ELIGIBLE FOR THE MAXIMUM WEEKLY BENEFIT AMOUNT IN TEXAS, 1946-1967*

Year	Percent Eligible for Maximum Weekly Benefit Amount	Year	Percent Eligible for Maximum Weekly Benefit Amount
1946	63.6	1957	53.2
1947	43.8**	1958	60.3
1948	58.0	1959	57.6
1949	55.7**	1960	59.1
1950	51.5	1961	57.4**
1951	62.9	1962	43.8
1952	68.5	1963	44.3
1953	68.6	1964	45.0
1954	65.6	1965	47.7
1955	65.8**	1966	50.0
1956	46.6	1967	52.1***

*Source: Data compiled by the Texas Employment Commission for Report of Benefit Rights and Experience (ES 218) made periodically to the Bureau of Employment Security. Based on number of claimants establishing benefit year.

**Based on data for three quarters only due to changes

In its recommendations for state programs the Bureau of Employment Security has stated that if fewer than 25 percent of the claimants are eligible for the maximum weekly benefit amount, and the weekly benefit amount below the maximum is constructed so that it bears the proper relationship to wages, it can be concluded with validity that a majority of the beneficiaries are receiving benefits equal to at least one-half their average weekly wage.[33] Table V shows that 43.8 to 68.6 percent of qualifying claimants have qualified for the maximum benefit during the twenty-two years covered, and that there has been no effective measure taken to lower the percent qualifying for that level.

Weekly Benefits and Essential Family Expenses

If the Texas program is to accomplish the goals of providing real security against unemployment, the weekly benefit should be sufficient to purchase the basic necessities of most claimants and their families for a short period of unemployment. Items which must be met, whether or not a worker is employed, are food, housing, and medical care. For short periods clothing purchases can probably be deferred, but claimants should not have to move into less expensive housing, spend substantially less on food, or neglect illness, while they are temporarily out of work. The information

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[33]U. S. Department of Labor, State Laws and Experience, discussion pertaining to Chart 5.

contained in Table VI should provide some indication of how the Texas benefit structure would affect the family of a city worker in Dallas with a moderate standard of living.

TABLE VI

ESTIMATED BUDGET FOR A FOUR-PERSON CITY WORKER'S FAMILY IN DALLAS, TEXAS, AT A MODERATE STANDARD OF LIVING, 1966*

	Total Family Consumption**	Food	Housing	Medical	Transportation	Clothing	Other	Total Income
Yearly	$6,861	$2,021	$1,891	$ 478	$ 821	$ 702	$ 734	$8,257
Average Weekly	$ 132	$ 39	$ 36	$ 9	$ 16	$ 14	$ 18	$ 158+

*Source: U. S. Department of Labor, Bureau of Labor Statistics, City Workers Family Budget for a Moderate Standard of Living, Bulletin No. 1570-1, Table III, p. 26.

**Ibid., pp. 16-21. For the method of estimating and data sources.

This illustration provides vivid evidence of the inadequacy of unemployment benefits in Texas. The maximum weekly benefit in 1966, 37 dollars, would not have been enough to pay for food for the family much less the housing and medical expenses. Even though the maximum benefit is now 45 dollars it would pay for only about fifty-three percent of the

family's essential needs at 1966 prices. Noting that the average weekly benefit in Texas in 1967 was about 29 dollars, the benefit structure seems even more inadequate.

Duration of Benefits

The duration provisions of state laws can be divided into two main groups: those that provide uniform potential duration for all claimants, and those that limit duration by the amount of wage credits or weeks of employment the claimant has had during his base period. As has been noted, Texas is of the latter group, providing what is called "variable duration". Columns six and seven of Table II have previously shown that there has been some increase in the fraction of base period earnings used to compute potential duration and that there has been some increase in the maximum number of weeks for which a claimant can qualify for payments. The effect that these changes have had on the actual potential duration of benefits for those claimants who have qualified for first payments is illustrated in Table VII.

TABLE VII

AVERAGE WEEKS OF POTENTIAL DURATION FOR CLAIMANTS ESTABLISHING BENEFIT YEAR, TEXAS AND ALL STATES, 1946-1967*

Year	Texas	All States	Year	Texas	All States
1946	13.6	19.8**	1957	18.7	23.4
1947	12.8	19.5	1958	19.8	23.5
1948	12.9	21.1	1959	19.2	23.6
1949	14.2	21.4	1960	19.5	24.0
1950	16.0	21.1	1961	19.4	23.9
1951	15.5	21.4	1962	19.6	23.9
1952	16.6	22.0	1963	20.1	24.1
1953	17.2	22.1	1964	20.2	24.2
1954	17.2	22.4	1965	20.4	24.1
1955	17.3	22.7	1966	20.7	24.2
1956	17.5	23.0	1967	20.8	24.5

*Source: Data compiled by Texas Employment Commission for U. S. Department of Labor, Bureau of Employment Security, Handbook of Unemployment Insurance Data.

**Based on data for two quarters.

Since 1946, potential duration for Texas beneficiaries compared to beneficiares in all states has improved somewhat. As late as 1967, however, the potential duration of the average Texas claimant was still almost four weeks less than that of the average claimant in all states.

Without doubt a most important measure of the adequacy of the duration provisions of the law is the proportion of beneficiaries who are still unemployed when they receive their last benefit check--the "exhaustion ratio." Table VIII illustrates the yearly number of exhaustees in Texas along with the corresponding yearly exhaustion ratios since 1939 for Texas and for all states since 1948.

TABLE VIII

NUMBER OF CLAIMANTS EXHAUSTING BENEFIT RIGHTS AND EXHAUSTIONS AS PERCENT OF FIRST PAYMENTS IN TEXAS AND ALL STATES, 1939-1965*

Year	Number of Exhaustions	Percent of First Payments		Year	Number of Exhaustions	Percent of First Payments	
		Texas	All States			Texas	All States
1939	96,093	**	***	1953	23,798	36.0	19.2
1940	90,593	63.3	---	1954	50,324	40.7	28.8
1941	49,897	54.8	---	1955	37,389	38.6	23.9
1942	30,610	45.6	---	1956	32,269	34.9	22.9
1943	4,855	43.1	---	1957	44,199	38.2	23.8
1944	2,416	51.2	---	1958	90,762	39.7	33.3
1945	6,978	56.3	---	1959	72,689	40.3	28.2
1946	60,469	70.4	---	1960	77,299	40.6	26.1
1947	38,286	65.6	---	1961	97,359	42.1	30.4
1948	22,573	59.2	27.5	1962	73,372	41.7	27.4
1949	35,857	46.5	29.1	1963	78,139	41.3	25.4
1950	35,803	43.8	30.1	1964	65,024	39.4	23.8
1951	15,701	36.5	20.4	1965	52,241	36.1	21.5
1952	18,195	35.9	20.3	1966	------	30.0	18.0
				1967	------	28.6	19.3

*Source: Data compiled by the Texas Employment Commission for the Bureau of Employment Security.

**No record of first payments in 1939.

***Information not available.

As can be seen from the table some general improvement has been realized in the percentage of claimants exhausting benefits in Texas. However, since 1948, Texas' exhaustion ratio has ranged from a low of 19 percent above the national average to a high of 118 percent above the national average. During these years the Texas ratio has been among the very highest in the nation.

The exhaustion ratio has more meaning, however, when it is compared to some accepted limit on the proportion that has been deemed proper. An exhaustion ratio of twenty-five percent has been most often taken as the upper permissible limit in periods other than severe depression.[34] This limit is at best an arbitrary one. It merely is an expression of the general feeling that a majortiy of claimants in a good program should not exhaust benefits during periods of "normal" economic activity, and that seventy-five percent is an acceptable majority. Obviously, the historical examination contained in Table VIII reveals that exhaustions as a percent of first payments have consistently been well above the recommended twenty-five percent level in Texas.

The table also discloses the close relation between the number of workers exhausting benefits and prevailing economic conditions. Exhaustions went from a pre-war level of 90,593 in 1940 to 2,416 during the height of war production in 1944. Exhaustions jumped to 60,469 during the reconversion year of 1946 but dwindled to 18,195 during the war year of 1952. During the recession years of 1954, 1958 and 1961 exhaustions jumped substantially while during the more prosperous years of the 1950's and 1960's exhaustions receded.

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[34]U. S. Department of Labor, Adequacy of Benefits, p. 19.

Although the influence of economic conditions upon the level of exhaustions tends to limit its accuracy for the purpose of comparing state programs, the exhaustion ratio is the most frequently used measure for comparing the effectiveness of the duration provisions of state laws. If the exhaustion ratio is a good criterion, however, then it can be said that the Texas law with regards to benefit duration is somewhat inferior to most other state laws.

Some insight into the possible cause of Texas' high exhaustion rate can be gained from Table IX which shows the

TABLE IX

AVERAGE ACTUAL DURATION FOR BENEFICIARIES EXHAUSTING BENEFIT RIGHTS, TEXAS AND ALL STATES, 1941-1965 (WEEKS)*

Year	Texas	Average of All States**	Year	Texas	Average of All States
1941	9.8	12.1	1954	14.3	20.0
1942	9.4	12.6	1955	14.1	20.3
1943	8.3	14.3	1956	15.5	20.0
1944	--	13.8	1957	15.5	20.5
1945	10.9	14.5	1958	17.2	21.7
1946	14.3	18.5	1959	17.4	21.7
1947	12.4	17.8	1960	16.6	21.4
1948	11.2	18.0	1961	16.6	21.8
1949	11.9	18.7	1962	16.5	21.6
1950	13.1	19.3	1963	16.8	21.6
1951	12.4	17.9	1964	17.1	21.7
1952	12.5	19.3	1965	17.0	21.3
1953	13.2	19.2	1966	16.4	21.1
			1967	16.4	20.9

*Source: Data compiled by Texas Employment Commission for Department of Labor, Handbook of Unemployment Insurance Data.

**Excludes Wisconsin--comparable data unavailable.

average actual benefit duration of those who exhausted benefits in Texas and in the United States over a fourteen year period.

This experience indicates that the average exhaustee in Texas has as a rule qualified for substantially fewer weeks of benefits than has the average exhaustee in all states. This experience could possibly indicate that the duration formula of the Texas law is comparatively restrictive or that an unusually large proportion of those claiming benefits in Texas are intermittently employed and accumulate limited earnings during their base periods. There is little or no factual evidence to indicate that those who exhaust unemployment benefits in Texas are excessively subject to intermittent employment. Therefore, the reason for Texas high benefit exhaustion ratio must lie within the operation of the law.

The individual potential benefit in Texas is now 27 percent of the claimant's base period earnings. The duration of this benefit is calculated by dividing the claimant's weekly benefit amount into this potential benefit. For example, if a worker's base period earnings are 2,000 dollars, then his maximum payable benefit is 27 percent of 2,000 dollars or 540 dollars. If his weekly benefit amount is 36 dollars, then his duration of benefits would be 15 weeks. If the potential benefit fraction were raised to 33 percent, the same calculation shows that potential duration

for the same worker would become 22 weeks. As has been noted, only two states now use smaller percentages to calculate total benefits. The use of such a small fraction is even more striking if exhaustees in all states with variable duration formulas similar to Texas are distributed by the duration of benefits they received. Such a distribution is given in Table X (See page 95) which shows the percentage distribution of claimants who exhausted benefits in 1966 grouped by those receiving less than 15 weeks of benefits, 15 to 25 weeks, and 26 weeks or more.

Compare, for example, the experience of exhaustees under the Texas law with that of exhaustees in California, where the maximum potential benefit fraction is one-half (or 50 percent). In 1966, 43.4 percent of Texas exhaustees received benefits for less than 15 weeks while in California only 10.7 percent received benefits for less than 15 weeks. Furthermore, with the exception of Iowa, every state with a potential benefit fraction smaller than Texas had a smaller percentage of its exhaustees qualifying for less than 15 weeks of benefits.

It appears, then, that a major reduction in Texas's high exhaustion ratio could certainly be realized if the proportion of base period earnings beyond which benefits cannot extend were made greater than the present 27 percent, say 33 percent or even 50 percent. Better yet, if benefits were extended for a uniform duration of 26 weeks then the

TABLE X

DISTRIBUTION OF EXHAUSTEES BY DURATION OF BENEFITS RECEIVED IN STATES PROVIDING VARIABLE DURATION SIMILAR TO TEXAS IN 1966*

State	Total	Percent Receiving Benefits for		
		Less Than 15 Weeks	15-25 Weeks	26 or More Weeks
Alabama	100	15.4	39.3	45.3
Alaska	100	0	22.9	77.1
Arizona	100	33.9	32.0	34.1
Arkansas	100	28.4	47.6	24.0
California	100	10.7	38.2	51.1
Colorado	100	37.6	39.0	23.4
Connecticutt	100	20.1	36.0	43.9
Delaware	100	14.5	48.1	37.4
Dist. of Columbia	100	4.1	35.1	60.8
Georgia	100	50.7	42.2	7.1
Idaho	100	61.6	33.1	5.3
Illinois	100	29.0	43.0	28.0
Indiana	100	53.8	37.2	9.0
Iowa	100	56.2	34.3	9.5
Kansas	100	20.2	38.3	41.5
Kentucky	100	0	64.7	35.3
Louisiana	100	26.6	41.6	31.8
Massachusetts	100	18.0	36.4	45.6
Mississippi	100	15.7	50.8	33.5
Nebraska	100	35.0	47.2	17.8
Nevada	100	16.9	39.7	43.9
New Mexico	100	4.9	45.2	49.9
Oklahoma	100	9.5	51.1	39.4
Oregon	100	2.4	23.2	74.4
Pennsylvania	100	0	37.3	62.7
South Carolina	100	8.8	91.2	0
South Dakota	100	35.8	64.2	0
Tennessee	100	13.1	49.9	37.0
Texas	100	43.4	45.2	11.4
Virginia	100	49.7	41.4	8.9
Washington	100	0	47.7	52.3
Wyoming	100	5.8	56.9	37.3

*Source: U. S. Department of Labor, Bureau of Employment Security, Summary Tables for Evaluation of Coverage and Benefit Provisions of State Unemployment Insurance Laws (Washington, 1966), Table 12.

exhaustion ratio would undoubtedly be even more dramatically reduced. In 1966 the exhaustion ratios in the seven states now providing uniform duration of 26 weeks were all less than 14.6 percent with extremely low ratios in New Hampshire (2.2 percent) and Maryland (8.8 percent). While the exhaustion ratio in Texas was 29.9 percent in 1966, uniform duration had produced an exhaustion ratio of only 11.4 percent in West Virginia a state with a chronic unemployment problem far exceeding that of Texas.[35]

Recent Benefit Experience Compared to Other States

Table XI (see page 97) permits a comparison of Texas with fourteen other leading industrial states in the United States on four measures of benefit adequacy in the year 1965.

Texas ranks well down the list in all four categories and at or near the bottom in two. With respect to maximum benefits as a percent of average weekly wages and the percent of claimants eligible for the maximum benefit amount, measures which compare the relative adequacy of weekly benefit amounts, Texas ranked rather poorly. In the two measures that compare the adequacy of duration provisions, average potential duration and the exhaustion ratio, Texas fared even more poorly ranking last and next to last. On all

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[35]U. S. Department of Labor, Bureau of Employment Security, Summary Tables for Evaluation of Coverage and Benefit Provisions of State Unemployment Insurance Laws (Washington, July, 1967), Table II.

TABLE XI

THE LEADING FIFTEEN INDUSTRIAL STATES RANKED ON SELECTED MEASURES OF UNEMPLOYMENT INSURANCE ADEQUACY, 1966*

State**	Maximum Benefit as Percent of Average Weekly Wage in Covered Employment--1967		Percent of New Insured Claimants Eligible for Maximum Benefits 1966		Average Potential Duration of Benefits for New Claimants 1966		Exhaustions of Benefits as a Percent of First Payments 1966	
	Percent	Rank***	Percent	Rank***	Weeks	Rank***	Percent	Rank***
New York	44.0	9	34	3	26.0	3	13.6	5
California	50.0	3	35	4	23.9	7	22.2	13
Ohio	34.0	12	67	14	25.1	6	9.4	1
Illinois	33.0	15	57	12	22.9	12	18.3	9
Pennsylvania	40.0	11	45	8	28.8	2	9.6	2
Michigan	34.0	12	73	15	23.8	8	12.4	4
New Jersey	50.0	3	39	6	23.4	9	21.3	12
Indiana	33.0	15	65	13	19.1	15	21.1	11
TEXAS	43.0	10	50	10	20.7	14	29.9	15
Massachusetts	49.0	5	27	2	25.9	5	19.9	10
Wisconsin	52.5	2	41	7	29.4	1	10.9	3
North Carolina	47.0	6	10	1	26.0	3	15.1	6
Connecticut	60.0	1	45	8	22.9	12	16.7	7
Missouri	47.0	6	52	11	23.0	11	13.6	5
Tennessee	45.0	8	35	4	23.4	9	17.9	8

*Source: Tables 1, 6, 11, and 12 in U. S. Department of Labor, Bureau of Economic Security, Summary Tables for Evaluations of Coverage and Benefit Provisions (July, 1967).

**The states selected are the fifteen leading states in value added by manufacturing as ranked in Chart Number 3 in U. S. Department of Commerce, Bureau of the Census, Area Statistics, Vol. III of 1963 Census of Manufactures (Washington, 1966), p. 39.

***Ranks are according to the adequacy of benefits, a rank of one signifying the most adequate state. In the first column, a high ratio is more adequate; in the second column, a low ratio; in the third, a high duration; and in the fourth, a low percent is most adequate.

measures combined with equal weights by adding the rankings on each measure for each state, Texas was barely nosed out by Indiana in a close race for the least adequate program. It must be noted also that in view of the improvement of Texas's benefit structure in recent years, this comparison ignores 27 previous years of even more substandard benefits.

While Texas does not compare favorably with the other leading industrial states in the relative adequacy of benefits, as Table XII shows, its program compares more favorably with the average of all the states.

TABLE XII

TEXAS COMPARED TO ALL STATES ON SELECTED MEASURES OF BENEFIT ADEQUACY, 1966*

	Maximum Benefit as Percent of Average Weekly Wage	Percent of New Insured Claimants Eligible for Maximum Benefit	Average Potential Duration of Benefits for New Claimants (Weeks)	Exhaustions of Benefits as a Percent of First Payments
Texas	31	48	20.4	30.0
All States**	35	45	24.1	18.0

*Source: Tables 1, 6, 11, and 12, in U. S. Department of Labor, Bureau of Employment Security, Summary Tables for Evaluation of Coverage and Benefit Provisions (1966).

**Yearly percentages might differ from those in other tables because of slightly different methods of calculation between state and federal agencies.

CHAPTER V

CONDITIONS FOR THE RECEIPT OF BENEFITS

In Texas, not only have benefit amounts and duration lagged behind other states, but the conditions for the receipt of benefits have been made more restrictive. Included as conditions for the receipt of benefits are (1) eligibility requirements that establish claimant benefit rights and (2) disqualification provisions that deny benefits under certain circumstances to claimants who would otherwise be eligible. These requirements are legitimate and are found in all state laws but they may be so restrictive in a state that workers may be disqualified in that state that would qualify in several other states.

The reasons for the existence of these conditions are not difficult to pinpoint. Basically, all state laws require that to receive benefits a worker must establish some significant attachment to the labor force by satisfying either previous employment requirements or previous earnings requirements, or both. Having done this, he must be able to demonstrate that he is able to work, available for work, and that he is free from disqualification for such acts as leaving work without good cause, job-related misconduct, or refusal of suitable work. Qualifying wage and employment requirements seek to insure that only those

who have had substantial labor force attachment in the past are allowed to participate in the benefits of the program. The able and available tests and the disqualification provisions attempt to limit payments as much as is possible to workers who are unemployed because of non-personal, economic causes.

Eligibility

The eligibility phase of the unemployment insurance system in the United States was left almost entirely to the states. With the exception of the "labor standard" provisions, federal law has never offered a guide, and the states were left only with the draft bills to direct them when the program was formulated.

Prior Labor Force Attachment

In the original Texas law prior labor force attachment was determined by the requirement that a claimant must have worked at least thirteen weeks during the immediately preceding fifty-two week period before he could become eligible for benefits.[1] An amendment in 1937 dropped the previous employment requirements in favor of a previous earnings requirement.[2] The ease with which employers can report

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[1]The General and Special Laws of the State of Texas, 44th Leg., 3rd Called Sess., 1996 (1936). Henceforth this source will be cited as Acts with proper date and session.

[2]Acts, 45th Leg., Reg. Sess., 123 (1937).

wages paid to an employee rather than the number of days he worked makes the earnings requirement more attractive to the employer. Also, the use of the earnings requirements naturally simplifies the accounting task of the Commission.

The first earnings requirement was expressed in terms of a multiple of the claimant's weekly benefit amount. He must have earned, in the first three of the four completed calendar quarters preceding the filing of an initial claim, wages equal to at least sixteen times his weekly benefit amount. In other words, if his weekly benefit amount was ten dollars, he must have earned one hundred sixty dollars during the first three of the preceding four completed calendar quarters. The multiple was changed from sixteen to eight when the benefit period was made two weeks instead of one in 1939. The multiple was raised from eight to nine in 1945,[3] before being discarded altogether in 1949.

Texas incorporated a flat minimum wage requirement into its 1949 amendment. The new requirement actually combined the prior earnings principle and the prior employment principle. According to the provision, a claimant could qualify if he

> . . . has within his base period received wages from employment by employers equal to not less than two hundred dollars ($200) and he has received a portion of such wages in at least two (2) of the calendar quarters within the base period.[4]

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[3]Acts, 49th Leg., Reg. Sess., 490 (1945).

[4]Acts, 51st Leg., Reg. Sess., 283 (1949).

The stipulation that the wages be earned in at least two quarters was a somewhat token employment requirement, but it at least was an attempt to insure that the claimant's wages had been spread over a sufficient period so that the time element could be considered without entailing the laborious task of keeping track of days worked.

In 1955, as the average weekly wage in covered employment had risen to over seventy-three dollars, the qualifying wage requirement was concurrently altered. The earnings requirement was raised, and the employment provision was made more flexible. A claimant could qualify if he had

> . . . (1) Within his base period received wages for employment by employers in an amount equal to not less than Two Hundred Fifty Dollars ($250) in one quarter and not less than One Hundred Twenty-five Dollars ($125) in some other quarter of his base period; or
>
> (2) Within at least one quarter of his base period received wages for employment by employers in an amount equal to or exceeding One Thousand Dollars ($1,000); or
>
> (3) Within his base period received wages for employment by employers in an amount equal to or exceeding Four Hundred Fifty Dollars ($450) provided that he has received wages equal to or in excess of Fifty Dollars ($50) in each of three (3) or more of the quarters in his base period.[5]

In 1967 Texas joined the ranks of states that use a multiple of the high-quarter wages in the base period to measure prior labor force attachment. As of October 1, 1967, in order to qualify for benefits, a claimant must

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[5]Acts, 54th Leg., Reg. Sess., 1311 (1955).

have earned in covered employment during his base period at least one and one-half times his high-quarter earnings and must have accumulated at least 500 dollars in total base period earnings.[6]

Adequacy of the Texas Qualifying Wage Proviso

How much wages or employment represents substantial attachment to the labor force? A proper answer to this question should be based on as much knowledge as is available about the employment experience of workers covered by the program. Based on such information, a qualifying requirement of twenty weeks of covered employment in the base period, or the equivalent of such weeks stated in terms of a multiple of high quarter wages or a multiple of the weekly benefit amount, has been accepted by most authorities plus the Bureau of Employment Security as representing sufficient attachment to the labor force to qualify a worker for benefits.[7]

It is also important from the standpoint of social policy that the qualifying requirement be equitable to all

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[6]Section 4(3) in Texas Employment Commission, Texas Unemployment Compensation Act (Austin, 1967), p. 3. Henceforth this source will be cited as Texas Employment Commission, TUC Act.

[7]See U. S. Department of Laobr, Bureau of Employment Security, Unemployment Insurance Legislative Policy--Recommendations for State Legislation, 1962 (Washington, 1962), p. 53, and William Haber and Merril G. Murray, Unemployment Insurance in the American Economy, An Historical Review and Analysis (Homewood, Illinois, 1966), p. 264.

claimants. Rate of pay or the fact that some workers work at different rates of pay should not affect the operation of the qualifying requirements. The flat dollar amount requirement utilized in Texas prior to October 1, 1967, although having provisions requiring specified amounts of wages in more than one quarter of the base period, was inequitable as between low-wage and high-wage claimants who met the minimum requirement. Under the system a low paid worker had to work substantially more weeks than the high paid worker to qualify for benefits at all benefit levels. The present requirement, with the proviso that base period earning at any benefit level be equal to one and one-half high quarter wages, should require approximately the same number of weeks of employment to qualify the low wage earner and the high wage earner alike. The one and one-half multiple also obviously requires substantial employment in more than one quarter and prevents claimants with employment in only one quarter from qualifying.

In principle, then, the current Texas requirement seems to be sound. The requirement places the emphasis on weeks worked and not on total wages earned as the proper criterion of labor force attachment. In fact, it is now possible for a claimant to qualify for benefits with high quarter earnings of only 125 dollars if he has worked steadily enough to accumulate 500 dollars in his base period.

The new requirements received the enthusiastic support of the Texas Manufacturers Association not because they placed emphasis upon weeks worked as the proper attachment criterion, but because they offered the possibility of denying benefits to many intermittently employed workers. In an official bulletin the TMA stated that the new requirements should ". . . eliminate many marginal workers from qualifying for benefits."[8] But whether the 500 dollar minimum is proper is still subject to some question.

Qualifying requirements, at their best, are rough measures for determining the worker's attachment to the labor force. Only a few states have seriously analyzed the problem of selecting an effective qualifying requirement, and as of this writing, no such study has been completed in Texas. The Texas requirements have been based largely on legislative bargaining or on precedents set by other states.

The determination of just how much wages or employment represents substantial attachment to the labor force involves a value judgment, a value judgment that has been made more difficult by recent trends in the work experience of the labor force as a whole. Two such trends were brought out in a study of the work experience of the labor force of the United States in 1962.[9] Although the data for the study

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[8]Texas Manufacturer's Association, Executive Digest, III, No. 18 (May 4, 1967), 1.

[9]Samuel Saben, "Work Experience of the Population in 1962," Monthly Labor Review, LXXXVII, No. 1 (January, 1964), 18-27, cited in Haber and Murray, op. cit., p. 257.

includes all the work force in the United States for 1962, not just the covered labor force, it is reasonable to suspect that the trends in that portion covered by unemployment insurance are relatively similar.

The study disclosed that of the 82,057,000 workers in the labor force in 1962 only a little more than half were employed on a full-time basis for fifty weeks of more. Another 21 million (25.8 percent) worked full time, but were either unemployed or out of the labor force for other reasons part of the year. Of these, over 9 million worked for only twenty-six weeks or less.

A third important group in 1962 consisting of 16.7 million workers, or 20.4 percent of the work force, worked at part-time jobs only. Of those who worked part-time, about half worked for more than twenty-seven weeks and about a third worked for fifty weeks or more. In 1962 part-time work was particularly prevalent among youths under twenty and among workers over sixty-five. Of the 2.9 million part-time male workers in 1962, 39.6 percent were sixty-five or older. Of all women workers, 9.6 million, or 31.8 percent of those working in 1962, were on part-time jobs. The large number of part-time workers raises ticklish questions as to what amount of labor or wages should be required for benefit qualifications. Should the part-time worker have to work more weeks to qualify? If so, how many? Should the amount of earnings or weeks worked

be set so high that all or a substantial percent of part-time workers are excluded; or should more reliance be placed on testing the availability for work of the part-time worker who is unemployed?

With reference to the matter of the proportion of the covered labor force that should be excluded by the qualifying wage requirement, even such authorities on unemployment insurance as William Haber and Merril G. Murray rely upon a "rule of thumb" criterion.[10] These experts have expressed the opinion that, based on what is currently known about the work experience of the labor force, the qualifying requirement should probably eliminate about 25 percent of covered workers. In 1966 only 17 percent of those who filed claims for benefits in Texas failed to meet the qualifying wage requirement that was in effect at that time.[11] With the 25 percent criterion as a guiding principle, then, the Texas qualifying wage requirements seem to have been rather low. Assuming the reliability of the 25 percent criterion, if careful periodic analysis of the wage earnings and work experience of Texas's covered labor force could be initiated, the effects of the new requirements might be more accurately

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[10]Haber and Murray, op. cit., p. 259.

[11]Texas Employment Commission, Annual Report (1966) (Austin, 1966), p. 25.

determined.[12] If such analysis at any time indicates that the proportion of covered workers excluded by the wage requirements varies significantly either up or down at any time from the 25 percent level, then the requirement should be adjusted.

The 500 dollar minimum earnings requirement does represent a 125 dollar increase in the flat qualifying requirement, and it is near the mid-point in the range of minimum earnings requirements that have been established by states with similar provisions;[13] but there is little other evidence to show that a 500 dollar minimum is not still too low or, for that matter, too high.

Ability and Availability to Work

The Texas law states simply that a worker must be able to work. No qualification of the term is contained in the law and the determination of ability is left entirely to the discretion of the claims examiner involved with each case.

Ability and availability are so closely related that they quite often are not separated in unemployment insurance literature. Availability is usually evidenced by registration for work at a public employment office. Non-availability

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[12] A study of the qualifying wage requirements in Texas is at present being conducted by the Commission.

[13] U. S. Department of Labor, Bureau of Employment Security, Significant Provisions of State Unemployment Insurance Laws as of January 1, 1968 (Washington, 1968).

is evidenced by excessive restrictions made by the claimant on the kinds of work that he is available to do. A refusal of a referral to suitable work or of an offer of suitable work can also be interpreted as evidence of unavailability. A determination by the Commission that a claimant is unable or unavailable results in the postponement of benefits for which he is otherwise eligible until the reason for inability or unavailability is resolved.

Although the language of Texas's able and available provisions has never been altered, most states have made their laws more specific, especially as to availability. Some state laws restrict availability to "suitable work"; others incorporate the concept of availability for the individual in terms of work in his usual occupation or to work for which he has been trained. Georgia, Nebraska, New Jersey, and New York have special provisions that specify conditions under which individuals on vacation are deemed unavailable. Forty-two states now have extended their laws by amendments which deny benefits because of pregnancy or marital obligations.[14] Although these provisions make laws more definitive and limit administrative prerogative, they also can have the effect of removing the individual claims examiner's discretion to allow benefits in cases where claimants are otherwise eligible.

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[14]U. S. Department of Labor, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967), pp. E-4, E-5

Availability has changed little in Texas statutorily, changes that have occurred coming within the realm of administrative interpretation. In the early years of the Texas program, claimants could meet the availability requirement by satisfying their local office that they were genuinely in the labor market. They could be directed to register with their union as well as with the public employment office, to provide their entire work history, or to do anything else that could reasonably be calculated to obtain employment. However, these actions were merely evidence that they were ready, willing, and able to take a job, and denials were not made on the basis of the claimant's compliance with them.[15]

In 1946, the Commission ruled that pregnant women would be denied benefits mandatorily on grounds of unavailability ninety days before childbirth, and nine weeks after, regardless of her ability to continue work.[16] The most significant Commission ruling concerning availability went into effect in June of 1967 when claimants were required not only to be able and available for work, but they also were required to be "actively seeking work."[17] The term "actively

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[15]An official interpretation of the Commission's position in relation to availability has never been published. This description has been derived from discussions with members of the staff of the Commission.

[16]Ruling by George Spears, Assistant Administrator, Texas Employment Commission, June 7, 1946, contained in the files of the Texas Employment Commission.

[17]By approval of the Attorney General.

seeking" work means that in addition to registering at the public employment office they must furnish evidence that they have applied to employers of their own choice, regardless of the prospect of obtaining suitable employment through such efforts. Commission rules specify no certain number of applications, but the claims examiner now must have on file a list of each claimant's personal applications and benefit payments may be suspended if regular personal applications are not made.

Waiting Period

The waiting period as a qualifying requirement was included in all original states laws as a measure to prevent payment of benefits for short periods of unemployment. Four of the original state laws had waiting requirements of four weeks, seventeen had waiting periods of three weeks, and thirty-two had requirements of two weeks.[18] Experience showed, however, that the waiting period was not needed as a means to conserve funds, and all states have shortened or eliminated their requirements. As of January, 1968, no state had a waiting period of longer than one week, and four states have completely eliminated the requirement.[19]

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[18]Haber and Murray, op. cit., p. 200.

[19]U. S. Department of Labor, Bureau of Employment Security, Significant Provisions of State Laws, 1968.

In Texas the waiting period was three weeks from 1936[20] to 1939,[21] two weeks from 1939[22] to 1949, and one week from 1949 to 1955,[23] when it was eliminated altogether. The 1961 Amendment, however, reinstated a one-week waiting period with the proviso that a benefit would be paid retroactively for the waiting period after a claimant received four times his benefit amount.[24]

Disqualifications

All state laws deny benefits to claimants who have caused their own unemployment because of such acts as voluntary leaving without good cause, refusal of suitable employment, or being discharged for misconduct. These three reasons are frequently termed the three major causes of disqualification.

State penalities imposed for these disqualifying acts vary considerably. They may involve a postponement of benefits, a reduction of benefits, or a cancellation of benefit rights. Whereas unavailability for work or

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[20]Acts, 44th Leg., 3rd Called Sess., 1996 (1936). Fourteen day waiting period.

[21]Acts, 45th Leg., Reg. Sess., 437 (1939).

[22]The waiting period after 1939 was technically one week, but since benefits were paid bi-weekly the waiting period between initial claim and first payment was two weeks.

[23]Acts, 54th Leg., 1st Called Sess., 43 (1961).

[24]Acts, 57th Leg., 1st Called Sess., 43 (1961).

inability to work results in a determination of ineligibility for benefits. Ineligibilities are terminated as soon as the worker becomes able or available, while a disqualification results in a denial of benefits for a specified period of time or for the duration of the unemployment.

Some states disqualify for fixed periods, some for variable periods, and some for the duration of the claimant's unemployment. Some require additional work or wages to requalify for benefits after the period of disqualification has passed.[25] Of course, disqualification for the duration of unemployment may be a slight or severe penalty, depending on the duration of the claimant's unemployment. The imposition of disqualifications for specific periods is based on the idea that, after time, unemployment is due more to the general conditions of the labor market than to the disqualifying act of the claimant. There can be, and are, differing opinions as to the length of time that a disqualifying act should be held responsible for causing the unemployment. As a result, imposed periods of disqualification vary among states and among the causes of disqualification. At present, maximum disqualifications vary from three weeks, in addition to the week of occurrence, in Puerto Rico to one to twenty-six weeks in Texas, and can be longer in states that disqualify for the period of unemployment.[26]

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[25]U. S. Department of Labor, Comparison of State Laws (August, 1967), p. E-7.

[26]Ibid., p. E-8.

Voluntary Leaving

In a system designed to benefit those unemployed due to lack of work, leaving a job without good cause is an obvious reason for the denial of benefits. The first Texas law, as did most laws, allowed benefits to a worker who quit work for general "good cause," provided he was available for work. Texas was one of the first states to extend restrictively the voluntary quit disqualification when the amendment of 1941 altered the law, providing that a claimant would be disqualified for leaving work unless his reason for leaving was not only "good" but also "connected with the work."[27]

Since 1941, good cause has been restricted to job-connected acts of the employer such as abusive language, drastic reduction or addition of workers hours, excessive reduction of wages, dangerous work that the claimant was unaware of when he took the job, or the existence of unhealthy working conditions. In many states[28] good cause for leaving still appears as a general term, thus permitting interpretation to include good personal cause not necessarily connected with work or attributable to the employer. Also, several of the states that restrict "good cause" to "good cause connected with work" modify the job connection

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[27] Acts, 47th Leg., Reg. Sess., 1384 (1941).

[28] U. S. Department of Labor, Comparison of State Laws (August, 1967), p. E-11.

requirement by providing specific exceptions. The most common of these are those provided for separations because of claimant illness and those provided for accepting other work or to enter the Armed Forces. Four of these states also make exceptions under specified conditions for separations for compelling personal reasons.[29] None of these exceptions apply in Texas either statutorily or by interpretation.

Refusal of Suitable Work

In Texas the disqualification for refusal of suitable work is imposed most commonly for a failure, without good cause, to apply for available suitable work when so directed by the public employment office or to accept suitable work when offered by an employer. The term "refusal" includes, as well, a claimant's failure to return to his customary self-employment when so directed by the Commission.[30] As is the case with all other state laws, the Texas statute lists the criteria by which the suitability of work is tested by the administrative authority. Degree of risk to the claimant's health, safety, and morals, his prior training, the distance of available work from his residence, his previous earnings, length of unemployment, and his prospects of

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[29]Twenty-seven states as of August, 1961. Table ET-2 in ibid., p. ET-3.

[30]Section 5(c) of Texas Employment Commission, TUC Act (1967), p. 6.

sustaining employment are all considered before a determination is made as to the suitability of a particular job.

To protect labor standards, the Federal Unemployment Tax Act provides that no state law will be approved, so that employers may credit their state contributions against the federal tax, unless the state law provides that

> Compensation shall not be denied in such a state to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.[31]

When the program was inaugurated these "labor standards" were included because it was felt that unemployment insurance might be "used" to the disadvantage of employees by denying benefits to eligible claimants who reject jobs with substandard wages or working conditions, who refuse to act as strike breakers, or refuse to join an employer-dominated union or sign a "yellow-dog" contract as a condition of employment. All state laws contain such provisions.

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[31]Section 3304 (3) (5) of the Internal Revenue Code of 1954.

Discharge for Misconduct Connected With the Work

The Texas provision for disqualification because of a discharge for misconduct is similar to the voluntary quit disqualification in that the disqualification is for a variable period depending on the seriousness of the misconduct. "Misconduct" is regarded by the Commission as "an act of wanton disregard of the employer's interests, a deliberate violation of his rules, or a disregard of standards of behavior which the employer has the right to expect of his employee." Also, it is ". . . negligence in such a degree or recurrence as to show an intentional and substantial disregard of the employee's duties and obligations to the employer."[32]

Misconduct as it is interpreted in Texas does not necessarily have to be directly connected with the employment. Any action by an employee that may "inflict damage and injury to the employer's interest and reputation in the community,"[33] regardless of whether or not the action actually took place on the job, can result in disqualification for misconduct. Such actions usually include heavy

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[32]Definition contained in Unemployment Insurance, Information for Claimants, a general information pamphlet published by the Texas Employment Commission.

[33]Quotation is from the Commission's decision in an appeals case in which the Commission upheld the disqualification of an employee who had been arrested for arson. Case is cited under "Misconduct" in Appeals Policy and Precendent Manual. Ref. MC-490.05, an unpublished manual of the Texas Employment Commission.

drinking, immoral conduct, involvement in criminal acts, or very commonly the loss of driver's licenses.

Special Disqualification for Students

In 1963[34] the Texas Legislature took action to clarify the eligibility status of students who leave covered employment to attend school by inserting the provision that such claimants are to be disqualified for the duration of unemployment. This is not an unusual provision as sixteen other states now have seen fit to institute similar provisions. The student disqualification is the only disqualification in Texas that carries the penalty of benefit denial for the entire duration of the unemployment.

Penalties Imposed Under Texas' Disqualification Provisions

The point should be made that prior to the passage of the amendment of 1939,[35] benefit denials in Texas based on misconduct, voluntary leaving, and refusal of suitable work carried the penalty of benefit postponement for a specified period of time. Since that year, when one is disqualified for one of these reasons for a period of, for example, six weeks, his payments are not merely postponed for six weeks but six weeks of benefits are reduced permanently. If his previous earnings had qualified him for a benefit amount of, say, thirty-five dollars for a duration of twenty weeks, and he

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[34] Acts, 58th Leg., Reg. Sess., (1963).

[35] Acts, 46th Leg., Reg. Sess., 439 (1939).

is then disqualified for six weeks, he does not receive the entire 700 dollars to which he had established rights. The 210 dollar penalty (6 x 35 dollars) is subtracted and after a period of six weeks he can receive a total of four hundred ninety dollars over a 14 week period.

According to the original Texas Act, a claimant who voluntarily quit was disqualified for the week in which he left work plus three additional weeks. For work-connected misconduct the claimant was subject to a disqualification of from one to nine weeks plus the week in which he was dismissed. For failure to accept or apply for suitable work, he was subject to a postponement of from one to five weeks.[36]

In 1939 major alterations were made in the disqualification provisions. As mentioned above, disqualification came to mean cancellation instead of postponement. Also the Commission was given power to disqualify from two to sixteen weeks for a discharge for misconduct or a voluntary quit, and from two to eight weeks for a refusal to accept or apply for suitable work.[37]

Disqualification for the three major causes remained static until 1949 when the variable periods were raised in conjunction with the new maximum benefit duration provisions of that year. The voluntary quit and discharge for

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[36]Acts, 44th Leg., 3rd Called Sess., 1997 (1936).

[37]Acts, 46th Leg., Reg. Sess., 439 (1939).

misconduct disqualifications were raised to one to twenty-four weeks and a failure to accept or apply for suitable work resulted in a disqualification of one to twelve weeks.[38] The benefit duration provision was last raised in 1961 to twenty-six weeks and, concurrently, disqualification penalties were raised.[39] Discharge for misconduct and voluntary leaving work now carry a penalty of cancellation of from one to twenty-six weeks while work refusal now carries a penalty of cancellation of one to thirteen weeks. In reference to disqualification for discharge because of misconduct, twenty-three state laws specify heavier disqualifications for what is called gross misconduct.[40] Although the Texas law has no such special provisions, "total disqualifications" (cancellation of benefits for twenty-six weeks) are usually given in cases of discharge for such acts as theft, dishonesty, intoxication, and fighting on the job.

From the penalty standpoint, there is a rather close relationship between the availability and the voluntary quit provisions of unemployment insurance laws. In the cases of workers who leave work for personal reasons, such as family illness, a determination of unavailability could possibly be rendered. A postponement of benefits during

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[38] Acts, 51st Leg., Reg. Sess., 284 (1949).

[39] Acts, 57th Leg., 1st Called Sess., 44 (1961).

[40] U. S. Department of Labor, Comparison of State Laws, p. E-14.

the unavailability would seem to be more appropriate in such cases than a disqualification for voluntary leaving work without good cause as would be the case in Texas. In Texas such determinations are made almost automatically on the grounds that the employer did not cause the unemployment. Disqualifications, in fact, can extend the denial of benefits in some cases for considerable periods of time after the worker actually returns to the labor market. Again, although most states would declare such workers ineligible only until they were available for work, Texas imposes a disqualification for a voluntary quit. With nearly two out of every three disqualifications imposed in Texas falling into the voluntary quit category, such situations are not uncommon.[41]

In addition to the statutory extension of the upper limit to twenty-six weeks, policies of the Commission have generally reduced the voluntary quit disqualification to fixed six-week or twelve-week penalties depending on whether or not the claimant gives proper notice prior to leaving.[42]

Miscellaneous Denials

There are two other disqualification provisions that should be mentioned. First, all states except Iowa disqualify

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[41]See Table XII of this chapter, p. 99.

[42]This is not an official published ruling of the Commission. According to members of the staff of the Commission, this policy has been established by intra-agency communications within the Commission.

for fraudulent misrepresentation to obtain benefits.[43] In Texas fraud can result in a fine of not less than 100 dollars nor more than 500 dollars or by imprisonment for not less than thirty days nor more than one year in addition to the cancellation of benefits entirely for the remainder of the claimant's benefit year.[44] Secondly, Texas claimants are disqualified for any week during which they receive wages in lieu of notice and workmen's compensation for temporary partial, temporary, or total permanent disability. Also, the receipt of benefits under Title II of the Social Security Act or similar payments under any state or federal act is disqualifying. The law does provide, however, for the payment of the difference between the weekly benefit and the weekly payment under these laws.[45]

Thirty-three jurisdictions now do not disqualify because of the receipt of primary insurance benefits under old-age and survivors insurance. Payments under employer pension plans are listed as disqualifying in many state laws.[46] Although many workers who retire under retirement

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[43]Section 16 of Texas Employment Commission, TUC Act, p. 46.

[44]U. S. Department of Labor, Comparison of State Laws (August, 1967), p. E-21.

[45]Section 5 (e) of Texas Employment Commission, TUC Act, p. 8.

[46]U. S. Department of Labor, Comparison of State Laws (August, 1967), p. E-26.

plans are considered unavailable in Texas according to Commission policy, there is no specific disqualification for employer pension payments in Texas law.[47]

Mention should be made at this point also that Texas, as have forty-six other jurisdictions, has taken steps to permit supplementation from employer-financed trust funds (commonly known as supplemental unemployment benefits) without affecting unemployment insurance payments.[48] The purpose of this type of program is to provide the worker, while unemployed, with a combined unemployment insurance and supplemental unemployment benefit payment amounting to a specified proportion of his weekly earnings while employed.

Labor Dispute Denials

In an effort to place the unemployment insurance system in a position of neutrality in labor disputes, all state laws in accord with federal standards contain provisions that exclude covered participants in such disputes from obtaining unemployment benefits. Since thousands of otherwise eligible workers can be involved in strikes at the same time, the labor dispute exclusion also enables

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[47]Practically all union negotiated retirement plans call for disqualification of retirees for six weeks upon retirement.

[48]U. S. Department of Labor, Comparison of State Laws (August, 1967), p. E-27.

unemployment insurance systems to avoid costly drains on their funds. Labor dispute denial provisions define a group that is actually excluded from coverage. Such denials always apply to groups of claimants and never involve a question of whether the unemployment is incurred through fault on the part of the individual worker as do the other disqualification provisions.

The Texas provision[49] is typical of most state provisions in that it calls for a postponement of benefits only, and in that the denial applies only while there is a general "stoppage" of work due to the dispute. It contains an "escape clause" that protects workers in the same company who are not taking part in the dispute, with the restriction that they must be willing to cross a picket line as evidence of their non-involvement. However, the Texas provision is not typical in that it does not restrict benefit denials to cases in which the dispute causing the work stoppage is actually in the establishment in which the claimants were last employed.[50] The Texas provision calls for a postponement of benefits in cases of work stoppage due to labor disputes at any other place of work operated by the employer if such dispute makes it impossible for the employer to continue operations.

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[49]Section 5(d) in Texas Employment Commission, TUC Act, p. 7.

[50]Ibid.

In 1967 thirty states provided disqualifications similar to that of Texas; another 12 provide that the disqualification shall be affected only while the dispute is in "active progress"; 8 provided variations of these two concepts; and New York and Rhode Island disqualified for a specific number of weeks, avoiding the necessity of determining when a dispute is terminated.[51]

Texas Compared With Other States

Table XIII (see page 126) reveals that Texas is well above the national average in disqualifications per one thousand claimant contacts. While the rates of disqualification for refusal of suitable work and for non-availability are not comparatively excessive, major divergence in the Texas experience appears in the "voluntary quit" and "misconduct" columns, where, since 1951, the Texas rate has usually been from three to four times as great as the national average.

Since there is little reason to suspect that Texas workers are more prone to change jobs than are workers in other states, the reason for Texas' high disqualification rate for voluntarily leaving can be reasonably attributed to a more strict interpretation of the voluntary quit provision than is the case in most other states. This contention is supported by the findings of a Commission study of

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[51]U. S. Department of Labor, Comparison of State Laws, p. E-18.

TABLE XIII

DISQUALIFICATIONS IN TEXAS AND NATIONALLY
IN SELECTED YEARS, 1951-1967*

Year	Total Denials Per 1,000 Claimant Contacts		Voluntary Quit Per 1,000 Spells of Insured Unemployment		Misconduct Per 1,000 Spells of Insured Unemployment		Refusal of Suitable Work Per 1,000 Claimant Contacts		Not Able and Not Available Per 1,000 Claimant Contacts	
	Texas	States**	Texas	States**	Texas	States**	Texas	States**	Texas	States**
1951	30.8	17.5	111.8	28.5	25.2	7.9	1.6	1.5	9.5	7.5
1953	24.8	20.2	97.9	1.3	26.6	9.8	1.0	1.1	4.8	7.6
1955	21.9	22.1	84.1	32.8	22.9	10.8	1.3	1.4	4.8	9.3
1958	28.5	16.0	123.5	31.5	42.1	11.3	0.7	0.6	8.0	6.7
1960	24.5	17.1	98.9	30.7	39.8	10.7	0.7	0.6	5.3	7.1
1963	34.4	22.7	136.5	44.3	56.2	15.1	1.4	0.8	10.3	10.3
1965	39.5	25.7	161.6	52.1	64.6	17.0	2.1	1.0	9.6	11.0
1967	56.8	26.4	153.5	50.7	60.1	15.4	2.8	1.0	17.5	8.5

*Source: Data furnished by the Department of Labor, Bureau of Employment Security. Figures for years 1951 through 1961 are from data for the fourth quarter of each year. Figures for 1963, 1965 and 1967 are annual data.

**Average for All States.

disqualifications in Texas concluded in 1964. The study revealed that the percentage of disqualified Texas claimants accounted for by women was greater than the percentage of total Texas claimants accounted for by women. Approximately 39.6 percent of the disqualified claimants in the sample were women; for all claimants on the other hand, women accounted for only 23.9 percent.[52]

The study further disclosed that of the total number of disqualified female claimants in the sample, 44.1 percent left their jobs for reasons that are commonly termed as good personal causes in other states.[53] They left work to take care of family responsibilities such as moving to another city with a husband who had been transferred, caring for small children or elderly relatives, or because of family illness. In Texas such claimants are subject to disqualification for from one to twenty-six weeks. However, due to the long-standing Commission policy of modifying the voluntary quit disqualification in cases involving good personal cause not attributable to the employer, these determinations would call for lesser disqualifications. Of course, what is considered a small disqualification in each case is left to the discretion of the Commission. Nevertheless, such determinations are classified as disqualifications and contribute substantially to Texas's high ratio.

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[52]Texas Employment Commission, A Study of Uniform Disqualifications (Austin, 1964), pp. 12-13.

[53]Ibid., p. 12.

Further light on this subject can be shed by comparing Texas with the twenty-four other states which restrict good personal cause to that attributable to the employer.[54] In 1966, for example, there were 166.9 voluntary quit determinations per thousand new periods of insured unemployment in Texas. In the same year there were an average of only 78.1 such determinations per thousand new periods in the other twenty-four states mentioned.[55] While ratios are not the sole criteria of judgment, the Texas ratios are so much higher than the national average, and the average of the other states which restrict good cause, that they suggest that Texas has been overly restrictive.

While the Texas record indicates that the Commission has been over-zealous in its interpretation of the voluntary quit disqualification, sufficient data has not been compiled through the years from which a statement about the attitude of the Commission can be completely substantiated. At present there is insufficient specific knowledge of the manner in which the Commission uses its discretion to give lesser disqualifications for leaving with good personal cause within its range of one to twenty-six weeks. However,

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[54]The states with similar provisions to that of Texas are designated in Table E-2 of U. S. Department of Labor, Comparison of State Laws, p. ET-3.

[55]From Table 13 in U. S. Department of Labor, Bureau of Employment Security, Unemployment Insurance Statistics (Washington, March, 1967), p. 7.

the effect of any tendency to give smaller disqualifications for leaving work for good personal cause, if indeed there is such a tendency, has been negated to great extent by the rise in the Commission's "standard" minimum disqualification to six weeks.[56]

Disqualifications for discharge for misconduct have also exceeded the national average by from three to four times over the same period. Accounting for this phenomenon is easier than was the case regarding the voluntary quit disqualification for misconduct is essentially the same as the misconduct provision in most other state laws. The provision merely states that

> An individual shall be disqualified for benefits if the Commission finds that he has been discharged for misconduct connected with his last work. Such disqualifications shall be for not less than one (1) nor more than twenty-six benefit periods following the filing of a valid claim as determined by the Commission according to the seriousness of the misconduct.[57]

Under this provision the problems of determining whether a worker was discharged for disqualifying reasons range from relatively clear-cut decisions in cases involving dishonest or criminal acts, insubordination, or refusal to perform assigned work, to more difficult decisions in which the

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[56]See discussion preceding footnote number 41 on page 121 of this chapter.

[57]Section 5(b) in Texas Employment Commission, TUC Act, p. 6.

efficiency or ability of the worker is involved as in cases involving negligence or repeated negligence. In all cases, however, the responsibility for the decision is laid entirely in the hands of the Commission and the courts. With reference to this disqualification no unique statutory restrictions hamper interstate comparison. Disqualifications for discharge for misconduct per 1,000 spells of insured unemployment in Texas since 1951 (see Table XIII) clearly indicate that the Commission and Texas courts have been more restrictive in their rulings with reference to this disqualification than the average of other states.

Other Considerations

Any discussion of the causes of Texas's high disqualification ratio must include some statement concerning the effects of Texas's record of stable high employment since the outbreak of World War II. Until World War II began, there was so much unemployment and so many job seekers for each job that the original, rather generalized, disqualification provisions found in state laws were seldom questioned as sufficient safeguards for the prevention of payments to individuals who might prefer benefits to going to work. The war eliminated mass unemployment, and many state agencies operated under conditions of labor shortages at a time when it was important to fill defense jobs. Unemployed people were often suspected of being unwilling to work and the

phrase "rocking chair money" became almost synonymous with unemployment insurance.

In this period of adjustment from depression-born policies to conditions of full employment, various objections were raised concerning the discretion of claims examiners in deciding whether claimants were available for work or had good reason for a quit or refusal of work. Employers and the public generally became aware of individual cases in which benefits seemed to have been too easily allowed. The most publicized of these cases occurred under the Servicemen's Readjustment Act and started the jibes about the "52-20 club."[58] War time and post war full employment provided the impetus for a general tightening of disqualification provisions and policies in Texas as well as other states. Texas's continued stable levels of high employment, with the intolerant public attitudes toward the unemployed that such conditions can bring, must be considered as a probable reason for her record of high disqualification.

Secondly, the influence of experience rating must be included as an important factor in the general tightening of disqualification provisions. The financial relationship between an employer's tax rate and the payment of specific benefits carries the implication of employer responsibility

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[58]Under Title V of the Serviceman's Readjustment Act of 1944 ex-servicemen who were unemployed after discharge were eligible for 20 dollars per week for up to 52 weeks.

for the employment being compensated, and leads to the widespread belief among employers that unemployment should not be compensated if it involves no fault on the employer's part. Without doubt, experience rating provisions give employer organizations reason to press for more statutory disqualification provisions, for longer periods of benefit denial, and for the cancellation of benefit rights. It is for this reason that the "non-charge' provisions of the Texas law exist. They insure that no charges are made against an employer's experience rating record for benefits paid to former employees separated from that employer for reasons that resulted or could have resulted in a disqualification. By absolving the employer from responsibility, it is thought that non-charging of benefits reduces employer's desire to push for longer periods of benefit denial and smaller benefit payments.

CHAPTER VI

DEVELOPMENTS IN FINANCING

Economic Setting

A study of unemployment insurance, especially its financial aspects, should be conducted within the setting of the economic conditions in which the program has functioned. Since 1938 when benefits first became payable in Texas, the trend of the economy of the United States, and particularly Texas, has been almost constantly upward. Gross national product has increased from 84.7 billion dollars to over 785 billion dollars over the period.[1] Table XIV reveals that unemployment, both in the nation and in the state, was high in 1940 despite the fact that some recovery had been made from the low point of the Great Depression when 25 percent of the labor force was out of work.[2] Actually, barring complete collapse, there was no direction for the economy to go but up.

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[1] Council of Economic Advisers, Annual Report (Washington, 1968), Table B-1, p. 209.

[2] Ibid.

TABLE XIV

AVERAGE ANNUAL RATE OF UNEMPLOYMENT IN THE LABOR FORCE OF TEXAS AND OF THE UNITED STATES, 1940-1967*

Year	Percent Unemployed		Year	Percent Unemployed	
	U. S.	Texas		U. S.	Texas
1940	14.6	8.1	1959	5.5	4.6
1950	5.3	3.9	1960	5.6	5.3
1951	3.3	3.2	1961	6.7	6.0
1952	3.1	3.2	1962	5.6	5.3
1953	2.9	3.7	1963	5.7	5.4
1954	5.6	4.4	1964	5.2	4.8
1955	4.4	3.9	1965	4.6	4.2
1956	4.2	3.8	1966	3.7	3.2
1957	4.3	4.0	1967	3.6	2.9
1958	6.8	5.3			

*Source: Texas Employment Commission, Population and Labor Force Estimates for Texas, 1950-1967, unpublished Mimeograph of the Texas Employment Commission.

The high levels of unemployment of the 1930's were virtually eliminated by World War II. The large increase in production necessitated by the war effort created a labor demand that far outstripped the supply. Unemployment that prevailed during this period was of the frictional type largely and was usually of very short duration.

The period immediately following World War II brought about a rather acute change in the trend of unemployment insurance activities in Texas. In 1946, benefit payments in Texas far outstripped payments made for any of the previous six years. However, the expected post-war depression did not materialize, and the time taken to reconvert from all-out war effort to the production of peace-time goods and

services was unexpectedly short. The economy of the state and the nation steadily climbed throughout 1947, reaching "boom" proportions in Texas in 1948. Late in 1948, the post-war increase in business activity showed signs of leveling off, with scattered areas across the nation experiencing net decreases in employment. None of these weaknesses were evident in the Texas economy.[3] Not until late 1949 did Texas feel the effect of the post war "Inventory Recession." Unemployment in January of 1950 reached new high post-war levels in Texas, but almost complete recovery had been effected by the middle of the year. Texas was still influenced greatly by agriculture, and it was the agricultural states that were least affected by this the first of the post World War II recessions. In fact, employment and total wages across the state reached new highs during this downturn reflecting the magnitude of the changes in the size of the Texas labor force being wrought by the influx of workers from other states, veterans completing their G.I. Bill-financed educations, and women entering the labor force to supplement family income. In fact, the reserve balance of the unemployment trust fund continued to grow during this recessionary period.[4]

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[3]Texas Employment Commission, Annual Report (Austin, 1948), p. 1.

[4]Texas Employment Commission, Annual Report (1950), p. 3.

With the outbreak of hostilities in Korea, national unemployment again receded, though not to the minute levels of World War II. The expansion triggered by the Korean War continued until late 1954 when the second of the post-war recessions occurred. Again unemployment, employment, and the reserve level of the Texas fund reacted only slightly to the downturn. By late 1954 unemployment in Texas had returned to 1953 levels. There was not an abrupt halt in defense spending as there was in 1945, and the employment induced by the war was much smaller than it had been in World War II so the effects of the 1954 recession were again moderate as far as Texas was concerned.[5]

The years 1955 through the first half of 1957 saw the level of business activity climb although the still rather agriculturally-oriented Texas economy was plagued by one of the worst droughts of the century. 1955 saw a thirty-three percent drop in the number of claimants filing for unemployment insurance benefits and a sixteen percent drop in benefit payments from the 1954 level.[6]

The years 1958 through 1962 were characterized by two mild recessionary periods--in 1958 and in 1961--and by generally higher levels of unemployment across the nation. In

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[5]Texas Employment Commission, Annual Report (1954), p. 2.

[6]Texas Employment Commission, Annual Report (1955), p. 2.

the United States unemployment averaged 5.5 percent of the civilian labor force while it had averaged 4.2 percent over the 1955-1957 period; whereas in Texas, these respective averages were 5.5 percent and 3.8 percent. Although the Texas economy withstood these recessionary periods with comparative ease the increasing complexity of the industrial structure of the state and the continued decline of agriculture as an influencing factor seems to have made the Texas economy more readily responsive to nationwide movements in business activity.

Texas has shared in the general prosperity that has characterized the national economy since 1962. Unemployment as a percent of the civilian labor force has declined steadily throughout the period. The jobless level approached an "irreducible point" in several of the state's major employment centers in August of 1967 as the balance in its unemployment fund eclipsed the 300 million dollar level.[7]

This brief description does not include all of the aspects of the period in which unemployment insurance has been in effect in Texas, but it should serve to give a general picture of the period. Not only has there been general prosperity, but Texas has been blessed with almost constant economic growth. The nation has experienced brief periods

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[6]Texas Employment Commission, Annual Report (1955), p. 2.

[7]Texas Employment Commission, Annual Report (1967), p. 3.

of recession since 1938 but, as for Texas, the effects of these economic downturns have not been too unsettling. Particularly from the employment-unemployment standpoint, the Texas economy has demonstrated a considerable amount of stability while sharing in the substantial growth of the nation.

Introduction to Finance of the Program

All the states finance their unemployment compensation programs through contributions from employers who are subject to their laws. These contributions or taxes are based on the wages of covered workers. In addition to employer contributions three states at present collect employee contributions, and several other states have required employee contributions in the past. Texas has never required workers to contribute to its fund.[8] The funds collected are held for the states in the Unemployment Trust Fund of the United States Treasury, and interest earned on these funds may be used in the payment of benefits along with regular contributions.

The provisions of the Federal Unemployment Tax Act have influenced the financing pattern of the Taxas law heavily, particularly those aspects of the Texas law that affect the ability of employers to take advantage of the federal tax

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[8]U. S. Department of Laobr, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967), p. 1-3.

credit. The tax rate required of Texas employers, until they are qualified for a reduced rate based on experience, is 2.7 percent of taxable wages, the maximum allowable credit against the federal tax. Similarly the tax base in Texas is the first 3,000 dollars paid to a worker within a calendar year, as is the case with the federal law. The Federal law does not restrict the states to the 3,000 dollar base: in fact, in August, 1967, twenty-two states had adopted a higher tax base than that provided in the federal law.[9] Also, the Texas law follows the federal pattern in the types of remuneration that are excluded from taxable wages.

In accordance with the terms of the Social Security Act the administration of the Texas program is financed by federal grants from the Employment Security Administration Account of the Federal Unemployment Trust Fund. Receipts from the residual Federal Unemployment Tax--0.3 percent of taxable wages through 1960 and 0.4 percent since 1960[10]--are collected from the employer and are deposited in the Employment Security Account. From this account, Congress annually appropriates funds to each state to meet the total

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[9]From Table TT-1 in ibid., p. TT-1.

[10]The federal tax was raised in 1960 to finance the Temporary Extended Unemployment Compensation program and has never been lowered to its previous level. An excellent account of the reasons for the tax increase is found in Harry Malisoff, The Financing of Extended Unemployment Insurance Benefits in the United States (Kalamazoo, Michigan, 1963), pp. 10-15.

cost of "proper and efficient administration" of the state law.

In 1945 Texas set up a special administration fund made up of interest on delinquent contributions, fines, and penalties, to meet special administrative needs and to provide for the purchase of land and construction of buildings for Commission use.[11]

Development of Tax Provisions

The Original Law

The original version of the Texas law provided for a system of tax rate variation under a "reserve ratio" plan. Under this plan a separate bookkeeping account was to be maintained for each employer containing an account of his contributions and benefits paid to his employees or former employees. His state tax was to be raised from 0.9 percent in 1936 to 1.8 percent in 1937, and to 2.7 percent in 1938 through 1940. After 1940 each new employer's tax rate would remain at 2.7 percent until he had been covered for three years, after which time a relationship between his contributions and his benefit payments was to be used in the determination of his state tax rate. If his excess equalled 7.5 percent but was less than 10 percent of his average

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[11]Vernon's Annotated Civil Statutes of the State of Texas, XV, 496 (1962). This amendment was added when the Federal Unemployment Tax Act was amended to allow the fund to be established.

annual payroll, his state rate was to be 1.8 percent. If the excess was 10 percent or greater, his tax rate was to be .9 percent. For employers with benefit payments greater than contributions for all past months or for the preceding sixty months, whichever was best for the employer, the rate was to be 3.6 percent or greater. If an employer with an excess of benefit payments over contributions could prove that his experience was due to fire, an act of God, or other catastrophe, his rate could be lowered to 2.7 percent.[12]

Benefit-Wage Ratio Plan

Before 1941, when reduced rates first became payable under the "additional credit" clause of the federal tax offset scheme, the Texas act had been amended, substituting another plan for the reserve-ratio. The substitution had been made in 1939 at the recommendation of the Commission, which had found the previous plan requiring separate accounts for each employer "cumbersome, unwieldly and administratively impractical if not impossible."[13] The newly adopted benefit-wage ratio plan was not then, and never has been, commonly used in other states. Texas was the first state to adopt

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[12]The General and Special Laws of the State of Texas, 44th Leg., 3rd Called Sess., 2002-2003 (1936). Henceforth this source will be cited as Acts with appropriate date and session.

[13]Texas Employment Commission, Annual Report (1939), p. 3.

such a plan, resulting in the plan's being often referred to as the "Texas Plan."[14]

The benefit-wage ratio formula makes no attempt to measure all the benefits paid to the workers of individual employers. The relative experience of employers is measured by the number of separations of workers which results in benefit payments. Under the Texas version of the formula each claimant's wages earned in covered employment during his base period, up to a set maximum, were called "benefit wages." If a worker became unemployed and received benefits, a "charge" was made against the account of each of his base period employers. The charge, called a "chargeback" was made to each base period employer's account in the amount of the benefit-wages earned by the claimant during his base period. In 1967 the law limited the total chargeback per employee to 3,563 dollars. The charging of the claimant's entire benefit wages was based on the assumption that the unemployed individual will remain without a job for a sufficient amount of time to draw nearly all of the benefits for which he was eligible. As far as each employer's account was concerned, the duration of the beneficiaries period of unemployment made no difference. At the time of the annual computation of tax rates the total of the employer's benefit

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[14]Carey Thompson, "Experience Rating in the Texas Unemployment Compensation Program," Southwestern Social Science Quarterly, XXVII (March, 1947), 314.

wages over a thirty-six month period was related to the total taxable payrolls of that period giving a ratio called the "benefit-wage ratio" or the "employer's experience factor."[15]

Another ratio designed to measure the duration of compensable unemployment for the entire state was calculated to be used in the computation of each employer's tax rate. Called the "state experience factor," it was the ratio of the total benefit payments in the state to the total benefit-wage charges made against employers. Arithmetically, a state experience factor of, say, .22 means that in any year for each one hundred dollars of benefit wages charged to employer's accounts, twenty-two dollars of benefits were paid to claimants. For any year the two ratios were multiplied, and the product gave the approximate tax rate for each employer for the following year. The following sample tax rate computation for an employer in 1965 should aid in understanding how the system worked:

> For the sake of simplicity, let us assume an employer had ten employees, and that he paid each of them four thousand dollars per year. The employer would pay a tax on the first three thousand dollars of wages for each employee,

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[15]Texas Employment Commission, Texas Unemployment Compensation Act (Austin, 1965), pp. 12-15. Henceforth this source will be cited as Texas Employment Commission, TUC Act.

giving him taxable wages of ten times three thousand dollars, or thirty thousand dollars a year.

Suppose that in the previous thirty-six months only one employee was laid off that was eligible for benefits. The employer's account was charged with the benefit wage of that employee--$3.563, the maximum according to the law. The benefit wage ratio is found by dividing all of the benefit wages charged to the employer's account for a period of thirty-six months by his thirty-six month taxable wages. According to the law, the employer's tax rate for the calendar year 1966 was based on his benefit wage ratio for the three-year period ending September 30, 1965. Assuming only one employee had been laid off for this particular employer, the benefit wage ratio would be.

$$\frac{\text{36-month benefit wages charged}}{\text{36-month taxable wages}} = \frac{\$\ 3{,}563}{\$90{,}000} = .0396 \text{ or } 4\%.$$

Thus, the employer's benefit wage ratio was four percent.

Assume the "state experience factor" for 1965 was:

$$\frac{\text{12-months' benefit payments in the state}}{\text{12-months' total benefit wages charged in the state}} = \frac{\$\ 46{,}830{,}000}{\$218{,}863{,}600} = .22 \text{ or } 22\%.$$

The employer's tax rate was then:

Employer's benefit wage ratio	x	State experience factor	= Tax rate
.04	x	.22	= .0088 or .1%.

The calculation was facilitated by the use of a table which assigned rates which were the same as, or slightly more than, the product of the two factors of the formula. Of course, the individual tax rates and the average of all tax rates in the state were and still are strongly influenced by the maximum and minimum rates adopted and by the number of rate increments allowed between the minimum and maximum levels.[16]

This method was easy to administer because there was no need to record each benefit payment to the account of all the base period employers, as was the case in the original plan. The formula was designed to hold taxes to a minimum by preventing an "unnecessary" accumulation of idle money in the Fund by raising only that amount each year needed to replenish the fund.

The arbitary minimum set on the tax of a covered employer whether or not he actually "caused" any unemployment was, and is, part of the law so that all covered employers contribute something to the fund.

As far as the individual employer's tax rate is concerned the critical factor in the benefit-wage ratio plan was the charge made against his tax account when former employees received initial weekly benefits. Inevitably, under this system employers investigate the chargebacks made

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[16] Ibid., pp. 16-21.

against their accounts as closely as possible for the purpose of challenging their benefit claims so that their tax might be kept low. Of the chargeback reducing possibilities open to employers in Texas, the most prominent include: personnel policies geared to cut down on chargebacks;[17] active protest of all claims that offer a chance of claimant disqualification; and active support of legislative changes in the law that might cut down on the number of valid claims. Of course, under any type of experience-rated tax plan if the number of valid claims is reduced, there will be a corresponding reduction in chargebacks and benefit payments. Also, if the conditions under which chargebacks are made can be limited, then the employer's benefit wage ratio should decrease. Employers can adopt company policies that may tend to increase disqualifications and thus reduce valid

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[17]These policies include hiring workers with little or no prior wage credits; laying off workers with the lowest accumulation of wage credits; and luring or laying off workers at such times as will prevent the paying of partial benefits during a week. Such practices are listed in Clinton Spivey, Experience Rating in Unemployment Compensation, Bureau of Economic and Business Research, University of Illinois, Bulletin No. 84 (Champaign, 1958), p. 92.

claims;[18] they can exert pressure on the Legislature to adopt measures that enable employers to challenge claims made by former employees; and they can exert pressure on the Commission to adopt administrative policies that will tend to reduce chargebacks. According to advocates of experience rating, one of its chief attributes is that it encourages employers to aid employment security agencies in insuring that benefits are paid only to those claimants who are eligible according to the law.[19]

Tax Provisions Under the Benefit-Wage Formula, 1939-1967

The rating scheme of the original law was so unworkable administratively that the Commission obtained approval of the Social Security Board to refrain from trying to compute benefit wages for 1938. When the law was refashioned in 1939, providing that experience-rated tax rates would be

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[18]The Texas Manufacturers' Association advises employers to do such things as (1) assign one individual within the company to scrutinize all notices claims filed by employees to ascertain whether they might have been filed under disqualifying circumstances; (2) actively protest all claims that might possibly be unwarranted; (3) participate in the appeals procedure when the employer finds legitimate grounds for protest, especially in cases that may set a precedent; and (4) analyze the annual statement of the employer's account in the fund to find improper charges. These recommendations are made in How to Reduce Your Tax Costs on Unemployment Insurance, a brochure of the Texas Manufacturer's Association printed in 1963.

[19]This view is expressed by Emerson Schmidt, former Director, Economics Research Department, Chamber of Commerce of the United States in Emerson P. Schmidt, "Experience Rating and Unemployment Compensation," Yale Law Journal LV, No. 1 (December, 1945), 242.

computed for 1941 from the employer experience over the previous three years, there were no benefit wage totals on record for 1938. The Legislature saw fit to deal with the problem by inserting a provision in the 1939 amendment prescribing that the average of the actual rates paid in 1939 and 1940 should be treated as the rate that had been paid in 1938. Even as the bill was still being debated in 1939, the Social Security Board informed the Commission that the federal law called for facts and not assumptions and that the amendatory bill would not be accepted by the Board. The bill was passed despite the warning, and the Board continued to refuse to accept the law through 1940. As a result, early in 1941 the Commission faced its first real crisis. There was a real possibility that Texas employers would be ineligible for the federal tax offset because of the lack of an approved program in Texas. Consequently, late in 1940 a crash audit had to be performed on employers' wage records for 1938 throughout Texas. Also, an emergency amendatory act changing the law to suit the Board was pushed through the Legislature early in its 1941 session to enable Texas employers to get their earned credits against the federal tax.[20]

Two significant changes in the Taxas law with respect to experience rating occurred during World War II. The 48th

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[20]Dallas Morning News, January 9, 1941, Sec. 1, p. 7.

Legislature in 1943 lowered the upper tax limit from its 1939 level of 4.0 percent to 2.7 percent, thereby reducing the rate range from 3.5 percent to 2.2 percent.[21] In 1945, the Legislature provided that no chargeback could be made to an employer's account until the unemployed worker drew benefits in excess of his bi-weekly benefit amount for total unemployment.[22] Since Texas had a fourteen-day benefit period and a one week waiting period, the provision had the effect of delaying the period between job separation and chargeback to five weeks. Hence the possibility of the employer not being charged for benefit payments became much greater.

In 1949 several changes were made in the taxing provisions that tended to enhance the employer's chances for tax reduction. Three changes were made that directly affected tax rates. Under the tax table used for computation prior to 1949 an employer could qualify for six different tax rates ranging in increments of 0.5 percent from 0.5 percent to 2.7 percent. The amendment of 1949 lowered the minimum possible tax to 0.1 percent and provided twenty-seven different tax rates between the new minimum and maximum.[23] Also prior to 1949 there were no provisions for direct tax reductions other than those provided by standard experience rating. At that time many felt that the funds in the Texas

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[21] Vernon's, XV, 439 (1962). [22] Ibid. [23] Ibid.

account of The Unemployment Trust Fund were becoming excessive and that the tax formula should be further adjusted to prevent the "unnecessary" accumulation of funds. As a result, the Legislature amended the law to the effect that if the account were to exceed 200 million dollars and were to amount to as much as eight percent of taxable wages in covered employment in the state, all employers who were eligible for experience-rated accounts would be eligible for further reduction of their tax rate. The amendment provided that the tax rates of all eligible employers would be reduced by 0.1 percent for each 5 million dollars, or part thereof, that there was in the fund in excess of the statutory limit.[24]

Two other amendments in 1949 provided additional means by which some employers could reduce their chargebacks. Prior to 1949 only the last employer of a claimant had the opportunity to protest chargebacks and the payment of benefits when an employee left the job for a reason that might have disqualified him from benefits. Also, prior to 1949 an employer received a full chargeback when benefits were paid after a period of partial disqualification. The 1949 change provided that any base period employer, if he had furnished the Commission and all "interested parties" with notice of separation, could appeal a chargeback if he felt that the separation was of a disqualifying nature. The

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[24] Ibid., p. 440.

amendment provided that if a claimant was separated from a job for any disqualifying reason, no chargeback would be made, whether disqualification was partial or total, and that no chargeback would be made if the separation was caused by violation of federal, state, or local law.[25]

For several years employers had been voicing complaints to the Commission concerning the restrictiveness of the regulations in the law with regard to the transfer of experience ratings in cases of mergers, consolidation, and other forms of business ownership change.[26] These regulations were relaxed somewhat by the amendment of 1949.[27]

As the Commission states in its 1950 Annual Report, the 1949 alterations in the tax provisions of the law resulted in "considerable savings" to Texas employers. Taxes in 1948 had amounted to 25,169,000 dollars; for 1949 26,436,000; but in 1950, only 19,193,000. Tax collections declined in 1950 by 27 percent even though more benefit wages were paid by covered employers in 1950 than in 1949.[28]

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[25] Ibid., p. 438.

[26] Texas Employment Commission, Annual Report (1947), p. 2.

[27] Vernon's, p. 440.

[28] Texas Employment Commission, Annual Report (1950), p. 17.

In response to a Texas Supreme Court decision[29] the Commission, in 1953, made a very important revision in its regulations concerning chargebacks that was to make it much easier for an employer to keep track of the individual charge-backs made to his account. The change provided that when a valid claim was filed by an unemployed individual, the Commission was responsible (1) for notifying all interested parties (base period employers included, of course); (2) for securing information surrounding the job severance for which the claim was made; and (3) for offering any interested party an opportunity to protest payment.[30] Thus, much of the job of protecting the employer's tax rate was shifted to the Commission. This regulation was made part of the law itself in 1955.[31] Also in 1955 the period of benefit experience required of an employer before he could qualify for reduced rates based on his experience was reduced from three years to one year.[32]

The only other significant change that occurred in the tax provisions under the benefit-wage ratio plan resulted in 1961 from concern over decreasing reserves in the Texas

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[29]Todd Shipyards vs. Texas Employment Commission, 264 S.W. 2d, 709 (1953).

[30]Regulation 122 of the Texas Employment Commission discussed in "The Services Rendered Measure the Value of an Organization," Bulletin of the Texas Manufacturer's Association, 1953.

[31]Vernon's, XV, 426 (1962).

[32]Ibid., p. 440.

account of the Unemployment Trust Fund. After Fund reserves had fallen for three consecutive years, the 57th Legislature inserted a so-called "trigger device" into the law that was to insure an automatic increase in all tax rates if the fund fell below 225 million dollars. On the other hand, the same trigger would work in reverse if the fund grew beyond 300 million dollars, reducing taxes by the same proportion.[33]

Tax Experience Under the Benefit-Wage Ratio Plan

Since the first years of the use of experience rating tax schemes, the benefit-wage ratio plan has been recognized as the plan that produces the lower tax rates. Table XV (see page 155) illustrates this tendency. For a few years after experience rating went into effect all plans created drastic cuts in the tax rates. The table shows that the experience has been different since 1950, however. Although tax rates fluctuated more during the 1950's and early 1960's, the benefit-wage ratio states have continually had the lowest rates.

The nature of the benefit-wage formula has significantly contributed to the low tax experience in states in which it

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[33] Acts, 57th Leg., 1st Called Sess., 1129 (1961). According to the law the rate of each employer's rate is reduced by 0. 1 percent for each 5 million or part thereof by which the fund exceeds 300 million and is increased by 0.1 percent of each 5 million or part thereof that the fund is under 225 million. The maximum rate, set by this amendment, could be increased to 7.2 percent if the fund became exhausted.

TABLE XV

AVERAGE EMPLOYER CONTRIBUTION RATE, BY TYPE OF EXPERIENCE-RATING PLAN, 1946-1965*

Year	Rate All States	All Experience Rating States		Reserve Ratio Plan		Benefit-Wage Ratio Plan		Benefit Ratio Plan		Payroll Variation Plan		Other Plan***	
		No.	Rate	No.	Rate	No.	Rate	No.	Rate	No.	Rate	No.	Rate
1946	1.41	45	1.37	28	1.45	8	.97	5	1.34	1	1.81	3	1.98
1947	1.41	50	1.40	28	1.41	8	.98	6	1.44	4	1.97	4	2.00
1948	1.24	51	1.24	28	1.28	8	1.00	6	1.52	5	1.73	4	1.24
1949	1.31	51	1.31	29	1.19	7	1.07	6	1.39	5	2.09	4	1.76
1950	1.49	51	1.49	30	1.38	7	1.03	6	1.12	5	2.30	3	2.50
1951	1.58	51	1.58	30	1.41	7	1.34	6	1.30	5	1.92	3	2.57
1952	1.45	51	1.45	31	1.39	6	.91	6	1.25	5	1.84	3	2.28
1953	1.30	51	1.30	31	1.25	6	.77	6	1.25	5	1.82	3	1.94
1954	1.12	51	1.12	31	1.14	6	.56	6	1.00	5	1.93	3	1.51
1955	1.18	50	1.18	32	1.28	6	.66	5	.79	5	1.89	3	1.45
1956	1.32	50	1.32	32	1.39	6	.91	5	.91	4	2.01	3	1.45
1957	1.31	50	1.31	32	1.85	6	.84	5	.84	4	2.04	3	1.69
1958	1.32	50	1.32	32	1.42	6	.69	5	.88	4	2.28	3	1.53
1959	1.71	50	1.71	32	1.86	6	1.01	5	1.58	4	2.38	3	1.96
1960	1.88	51	1.88	32	1.76	6	1.49	6	2.34	4	2.36	3	2.23
1961	2.06**	51	2.06	32	1.87	6	1.55	6	2.59	4	2.36	3	2.78
1962	2.36**	51	2.36	32	2.22	6	1.69	6	2.74	4	2.35	3	3.23
1963	2.31**	51	2.31	32	2.22	6	1.61	6	2.61	4	2.51	3	3.06
1964	2.21**	51	2.21	31	2.23	6	1.48	7	2.50	4	2.38	3	2.59
1965	2.12**	51	2.12	31	2.11	6	1.17	8	2.31	3	2.47	3	2.89
1966	1.91**	41	1.90	32	2.09	6	.86	8	2.03	4	2.18	1	2.10

*Source: From Table 1 in Paschal C. Zecca, "Experience Rating Operations, 1966 Annual Summary," Unemployment Insurance Review, IV (February, 1968), 1.

**Includes Puerto Rico which has no experience-rating plan.

***Excludes war risk contributions which were collected 1943-1946.

has been used. Particularly in situations in which employment is on the rise, the benefit-wage formula, when compared to the reserve ratio formula, has the effect of "pushing" tax rates downward more quickly. In a state that uses the ratio of benefits or benefit-wages to payrolls as the index for rate variations, if no change occurs in an employer's total number of yearly job separations while his total payroll increases, then his tax ratio would become smaller and his tax rate would decrease. Under the reserve ratio plan, however, the ratio of each employer's account reserve (contributions minus benefits) to his total payroll is the "rate variation index." Rates are assigned according to a schedule of rates for specified ranges of reserve ratios with the higher ratio commanding the lowest rates. Again, with no change in the number of job separations, in a reserve ratio state if the total payroll of an employer were to increase, then his reserve ratio would become smaller but his tax rate would increase.[34] The steady growth of covered payrolls in Texas has combined with the inherent "downward push" of the benefit-wage ratio formula to play an important part in Texas' low tax rates.

Another formula-related cause for relatively low tax rates in benefit-wage states is that four of the six states that have been using the plan (including Texas) have a

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[34]Ewan Clague, "The Economics of Unemployment Compensation," Yale Law Journal, LV, No. 1 (December, 1945), 65-66.

maximum tax of 2.7 percent of taxable wages, while only eight of the forty-one states using the other major plans--reserve ratio and benefit ratio--have such a low maximum rate.[35]

No matter what type plan is used, the most important factors affecting tax rates in the various states are the general health of the economy and the benefit policy adhered to by the system. Regardless of the plan used, if unemployment is low or if benefit payments are niggardly, then the tax rate will remain relatively low. The economy of Texas has experienced a steady rate of growth since World War II began and, relative to other states, has not been adversely affected to any great extent by the periodic recessions that have occurred in the United States during the same period. As was demonstrated in Chapter IV, Texas has definitely adhered to a low benefit policy. Hence it can be said that the responsibility for Texas's low tax experience must be attributed both to its restrictive benefit payment policy and its healthy economy.

Table XVI (see page 158) depicts the very favorable tax experience Texas employers have had since the inception of experience rating. For the five year period prior to 1958, Texas employers had the lowest average tax rate in the

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[35]From Table TT-1 in Department of Labor, Comparison of State Laws, P. TT-1.

TABLE XVI

AVERAGE EMPLOYER CONTRIBUTION RATES, 1938-1966*

Year	All the States	Texas	Year	All the States	Texas
1938	3.19	3.88	1952	1.44	0.61
1939	2.90	2.89	1953	1.35	0.53
1940	2.84	2.65	1954	1.18	0.41**
1941	2.60	1.54	1955	1.19	0.36**
1942	2.29	1.42	1956	1.33	0.54**
1943	2.24	1.44	1957	1.37	0.67**
1944	2.17	1.32	1958	1.35	0.56**
1945	1.98	1.00	1959	1.70	0.75
1946	1.43	0.81	1960	1.92	0.88
1947	1.50	0.88	1961	2.05	0.94
1948	1.27	0.95	1962	2.35	0.97
1949	1.29	0.98	1963	2.33	0.92
1950	1.46	0.66	1964	2.24	0.96
1951	1.65	0.60	1965	2.12	0.92
			1966	1.91	0.84***

*Source: U. S. Department of Labor, Bureau of Employment Security, Handbook of Unemployment Insurance Data.

**Lowest in nation.

***Only three states--Iowa, Virginia, and Illinois--have lower rates.

nation.[36] Another measure of the tax burden is the average amount paid as state tax by employers for each worker covered. In 1964 employers in only three states paid lower taxes per worker than did employers in Texas.[37]

[36]Texas Employment Commission, Annual Report (1958), p. 8.

[37]From data furnished to the Texas Manufacturer's Association by Sherman Birdwell, Commissioner of Texas Employment Commission, 1965.

Not only are there wide variations in the average tax per worker paid by employers in different states, but as Table XVIII (see page 160) shows, there are differences in the percentage distribution of taxable wages against which taxes are paid at various rates. In the fifteen state sample, taxes were levied against a greater percent of taxable wages at rates less than 0.5 percent in Texas than in any other state in the sample. Pursuing this line of thought, the following table shows the percentages of eligible employers in various tax rate ranges in 1967.

TABLE XVII

PERCENTAGE OF TEXAS EMPLOYERS IN VARIOUS TAX-RATE RANGES, 1967*

Tax-Rate Ranges	Percent of Employers (Cumulative)
0.1 (minimum)	53.9
-0.5 or less	71.5
1.0 or less	82.8
2.0 or less	91.7
2.6 or less	94.0
2.7 (maximum) or less	100.0

*Source: Texas Employment Commission, Annual Report (1967), p. 28.

This table shows that 94 percent of subject employers qualified for experience rated taxes in Texas. Over half, in fact, qualified for the minimum rate.

Regardless of the yardstick used, it is apparent that the benefit-wage ratio plan of experience rating has combined

TABLE XVIII

PERCENTAGE DISTRIBUTION OF TAXABLE WAGES OF RATED ACCOUNTS BY CONTRIBUTION RATE, TOP FIFTEEN INDUSTRIAL STATES AND ALL STATES WITH EXPERIENCE RATING PLANS, 1965*

(Cumulative Less-Than)

State	Percentage Distribution of Taxable Wages by Rate										
	0.0	0.1% or Less	0.5% or Less	0.9% or Less	1.8% or Less	2.6% or Less	2.7% or Less	3.1% or Less	3.5% or Less	3.9% or Less	4.0% or Over
Indiana		18.5	49.2	49.2	82.4	86.6	100.0	100.0	100.0	100.0	
Massachusetts					16.4	51.3	56.6	64.8	87.6	100.0	
Michigan				13.5	45.7	68.2	70.2	72.8	74.0	76.1	23.9
Missouri	13.0	13.6	16.9	33.9	74.9	87.0	92.2	92.2	92.2	100.0	
New Jersey				14.1	40.5	61.6	61.6	78.3	78.3	100.0	
North Carolina			24.6	43.0	71.2	85.1	93.7	94.7	95.4	100.0	
Ohio				12.8	48.1	63.3	63.3	66.6	71.0	77.4	22.6
Tennessee				26.1	71.2	81.3	91.4	93.8	94.8	96.1	3.9
Wisconsin	11.4	11.4	28.6	28.6	62.0	81.3	81.3	87.1	89.4	89.4	10.6
Illinois		7.1	28.0	46.0	74.6	84.3	90.9	92.4	93.3	94.3	5.7
Texas		16.8	53.8	70.4	84.7	90.0	100.0	100.0	100.0	100.0	
Pennsylvania					15.6	43.7	47.1	58.3	64.9	70.7	29.3
Connecticutt					30.6	92.3	100.0				
New York						52.2	57.1	64.3	73.0	100.0	
California						26.3	38.3	67.0	100.0		
U. S.	1.1	4.3	13.2	24.9	46.4	67.2	74.3	81.6	88.6	93.1	5.9

*Source: Table 3 in Paschal C. Zecca, "Experience Rating Operations in 1965, Annual Summary," Unemployment Insurance Review, III (July, 1966), 3.

with a stable, growing economy and with a restrictive benefit policy to give Texas employers about the lowest unemployment tax rates in the United States. Furthermore, some forty percent of the firms covered under the Texas law were to receive an additional tax rate reduction of 0.4 percent in 1968 because the level of the Texas Unemployment Insurance Fund exceeded the 300 million dollar "ceiling" mentioned previously.[38]

Solvency of the Texas Fund

The year-end balance of the Texas account of the Unemployment Trust Fund is shown in Table XIX (see page 162). There was an almost three-fold increase in the size of the Texas Fund during the high employment years of World War II as benefit payments reached all time low levels. Although the rate of growth slowed down some after 1946, the Texas Fund continued to grow until 1957 when an automatic rate decline associated with that year's 301 million dollar reserve level combined with the third of the post-war recessions began to take its toll. Subsequent to that year the Fund's reserves declined in each of the next six years. Since 1963 fund reserves have climbed spectacularly, topping the 300 million mark in 1967.

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[38]Texas Employment Commission, Annual Report (1968), p. 8.

TABLE XIX

CONTRIBUTIONS COLLECTED, INTEREST CREDITED TO TRUST FUND, BENEFIT DISBURSEMENTS, RESERVES, AND YEAR TO YEAR CHANGE IN RESERVES, 1938-1966[a]

(Thousands of Dollars)

For Cal. Year	Contributions Collected	Interest Credited to Trust Fund	Benefit Disbursements	Reserves[b] as of Dec. 31	Year to Year Change in Reserves
1938	$21,741	$ 632	$ 9,344[c]	$ 32,783	
1939	22,567	945	10,707	45,587	+ 2,804
1940	22,104	1,251	9,921	54,794	+ 9,207
1941[d]	15,707	1,495	5,650	66,346	+11,552
1942	19,916	1,728	4,075	83,916	17,570
1943	25,920	1,985	705	111,116	27,200
1944	25,128	2,363	462	128,144	17,028
1945	18,302	2,834	3,967	155,313	27,169
1946	15,838	2,983	14,669	159,466	4,153
1947	20,297	3,304	7,030	175,957	16,491
1948	25,169	3,934	4,844	200,128	24,171
1949	26,436	4,511	11,918	219,046	18,918
1950	19,193	4,796	13,573	229,327	10,281
1951	19,962	5,140	5,986	248,274	18,947
1952	22,258	5,745	7,943	268,168	19,894
1953	20,005	6,450	11,891	282,597	14,429
1954	15,149	6,567	23,722	280,455	- 2,142
1955	14,144	6,415	17,140	283,687	3,232
1956	24,478	6,854	22,292	293,835	10,148
1957	31,922	7,682	31,189	301,247	7,412
1958	26,314	7,504	68,975	265,426	-35,821
1959	36,013	7,015	51,376	247,169	- 8,257
1960	43,267	7,578	58,191	244,515	-13,654
1961	46,819	7,465	62,869	240,525	- 3,990
1962	50,363	7,303	58,764	239,608	- 917
1963	49,582	7,430	66,779	230,016	- 9,529
1964	54,595	7,708	56,512	235,899	+ 5,883
1965	55,846	8,381	46,830	253,544	+17,645
1966	56,178	9,589	29,557	289,913	+35,369
1967[d]	26,178	5,601	15,365	306,002	

[a]Source: Texas Employment Commission, Annual Report (1967), Appendix A, Table 3.

[b]Includes Interest accrued at end of each calendar quarter.

[c]Benefits first payable January, 1938.

[d]Figures for six months.

Measures of Fund Solvency

Although the establishment of the 225 million dollar floor that triggers an across the board tax increase apparently insures the solvency of the fund, it also creates an aspect of inconsistency in the program. As the research staff of the Commission stated in 1964, the imposition of a surtax is certainly not in harmony with the principle of experience rated taxes.[39] In fact, it represents the complete abandonment of experience rating for those employers who have earned the lowest tax rate; and if it were ever imposed, it could cause a tremendous increase in taxes for these employers. For example, if a Texas employer normally has a tax rate of 0.1 percent and if the fund were to dip to say 204 million dollars, then his tax rate would increase under the Texas trigger to 0.6 percent, representing an increase of 500 percent in his tax payment from one year to the next. Considering the fact that over fifty percent of covered employers in Texas pay taxes at the 0.1 percent rate, if the fund were to recede below the triggering floor, their tax burden would become much heavier, at a time when business conditions were the worse.

Another obvious drawback of the dollar amount triggering floor is that it rapidly becomes obsolete with an increasing work force and wage payments. At the time it was

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[39]Texas Employment Commission, A Study of Unemployment Insurance Financing (Austin, 1964), p. 24.

adopted, the 225 million figure was approximately 4.5 percent of taxable wages. If this is the proper measure of solvency, then the 225 million benchmark would have been outgrown by 1963 when 4.5 percent of taxable wages was 241 million dollars--well above the actual Trust Fund balance of 230 million dollars.[40] If the solvency of the Trust Fund depends on having a balance at all times that is large enough to meet any major benefit demand, then the measure of minimum adequacy should fluctuate automatically with the potential liability of the Fund. This means that when payrolls go up or if legislative actions raise the weekly benefit amount or the potential duration of benefits, then since the potential liability of the Fund has been altered, its trust fund level should be altered. This would require a predetermined "automatic" adjustment or the modification of the triggering floor at almost every session of the Legislature--something that the Legislature in the past six years has not been inclined to do.

The general consensus of current thought seems to be that if the basic purpose of unemployment insurance reserve funds is to provide adequate reserves to finance benefit payments regardless of the state of economic conditions, then it is logical to relate the minimum level of adequacy to the amount of benefits paid out in the worst experience in the

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[40]Texas Employment Commission, Annual Report (1963), p. 8.

past, or at least in the recent past.[41] With this in mind, and with the fact that in Texas the rate of change of total wages seems to be the most adequate indicator of the growth of fund liability, the Commission suggested in 1964 that the fund's triggering floor and ceiling should be flexible and related to total wages.

The Bureau of Employment Security has long used the ratio of benefit payments to total wages during the worst prior recessionary period as a guide to the minimum reserve level required to finance a similar recession in the future. This ratio is called the "cost rate" in employment security language.

Since most recent recessionary periods have lasted for eighteen months or more, the average total cost of such periods of high unemployment is felt to be in the neighborhood of 1.5 times the highest-cost twelve months during that period. Thus, 1.5 times the ratio of benefits to total wages during the highest-cost twelve month period in the last decade is thought to give a valid indication of the minimum level of reserve adequacy. The Texas system with its rather stingy benefit structure and restrictive disqualification policy, experienced a highest twelve-month cost rate of only .98 percent of total wages for the twelve months ending January 31, 1959. On this basis, the triggering

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[41]Paschal C. Zecca, "Appraisal of State U.I. Reserve Funds," Unemployment Insurance Review, III (January-February, 1966), 1-5.

floor of the Texas fund should have been at the 160 million level for 1967 instead of its stationary 225 million dollar level. It would seem from this that the Legislature had an exaggerated idea about the level of the fund at which the solvency of the program would have been in peril in 1961. As a result, the employers of Texas came dangerously close to having their tax rates dramatically raised in 1963 when, based on the existing benefit and disqualification policy, the fund was still "technically" quite solvent.

The cost-rate method of determining a triggering floor is more logical than just picking an arbitrary peril point, and if provision were made in the Texas law for automatic annual adjustment of the triggering floor on the basis of the highest-cost rate during the recent years, the chances of having an obsolete gauge of solvency would be greatly decreased. It must be understood that the cost-rate method is not perfect. Its major drawback is that it makes no adjustment for legislative changes in benefit amounts and duration.

Current Solvency of the Fund

The comparative solvency of the Texas fund can be shown by using a method that is merely an extension of the cost-rate technique mentioned above. This method was developed to measure solvency in terms of whether a state has enough reserves to meet the cost of a future recessional

period similar in severity to the worst experienced in recent years. This measure, called the "reserve multiple," is the current reserve ratio (reserves as a percent of total covered wages) expressed as a multiple of the highest twelve-month cost rate during the previous decade. A reserve multiple of 1.5 has been commonly considered to indicate the minimum adequate reserve level necessary to meet the full benefit cost of a recession similar to those occurring in recent history. Even after three years of uninterrupted prosperity in the United States, twenty states had a multiple of less than 1.5 in June, 1965, a time when Texas possessed one of the highest reserve multiples in the country.[42]

Table XX compares the solvency of the Texas fund to that of the top fifteen industrial states as of December 31, 1967 (see page 168). The rankings in the table show that during the calendar year 1967 benefit payments as a percent of total wages in covered employment were lower in Texas than they were in any other state in the sample. Also, all the other states in the sample had greater highest twelve month cost rates within the ten-year period preceding December 31, 1967. However, on the same date, all other states in the sample had greater fund reserves as a percent of total wages. This would seem to indicate comparative

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[42]From Table 3 in Zecca, op. cit., p. 4.

TABLE XX

COST RATE, RESERVE RATIO, HIGHEST CONSECUTIVE TWELVE-MONTH COST RATE DURING LAST TEN-YEAR PERIOD, RESERVE RATIO AS A MULTIPLE OF HIGHEST CONSECUTIVE TWELVE-MONTH COST RATE DURING LAST TEN-YEAR PERIOD, SELECTED INDUSTRIAL STATES AND THE UNITED STATES, 1967*

State	Cost Rate: Benefits as a Percent of Total Wages		Reserve Ratio: Funds Available for Benefit Payments as Percent of Total Wages		Highest Consecutive 12-Month Cost Rate During Last 10-Year Period (Based on Total Wages)		Reserve Ratio as a Multiple of Highest 12-Month Cost Rate During Last 10-Year Period (Based on Total Wages)	
	Percent	Rank**	Percent	Rank**	Rate	Rank**	Multiple	Rank**
California	1.40	15	2.85	13	2.26	6	1.26	13
Massachusetts	.96	13	3.42	9	2.06	9	1.66	8
New Jersey	.99	14	3.54	8	2.63	4	1.35	11
New York	.88	12	4.39	3	2.18	7	2.01	5
Wisconsin	.67	9	4.27	4	1.82	10	2.35	4
Ohio	.39	2	3.23	10	2.44	5	1.32	12
Texas	.22	1	2.60	15	.98	15	2.65	3
Michigan	.76	11	3.66	6	3.69	1	.99	15
Indiana	.38	2	3.01	11	1.73	12	1.74	6
Missouri	.51	5	3.94	4	1.26	14	3.13	1
Tennessee	.67	9	3.66	6	2.18	7	1.68	7
North Carolina	.50	4	5.50	1	1.82	10	3.02	2
Illinois	.43	3	2.70	14	1.72	13	1.57	10
Connecticutt	.62	7	4.71	2	2.87	3	1.64	9
Pennsylvania	.56	6	3.77	5	3.02	2	1.25	14
All States	.71		2.94		2.05		1.79	

*Source: Tables 2 and 5 of U. S. Department of Labor, Bureau of Employment Security, Selected Unemployment Insurance Financial Data, Calendar Year 1967, Insurance Program Letter No. 951, March 15, 1968, attachments 2 and 5.

**Rankings signify: (1) in column 1 a rank of "one" represents the lowest cost rate; (2) in column 2 ranking of "one" signifies largest reserve ratio; (3) in column 3 rank of "one" signifies the highest cost rate; and (4) in column 4 rank of "one" signifies the largest multiple.

fund insolvency; but when Texas's rather low reserve ratio is expressed as a multiple of its highest twelve-month cost rate only two of the sample state funds demonstrate greater solvency. In other words, if all states had the same benefit structure and had experienced similar rates of unemployment, then Texas's rather low reserve ratio would indicate comparative fund insolvency. However, when the actual cost of benefits resulting from Texas's restrictive benefit policy is accounted for by relating the highest twelve-month cost rate to the reserve ratio as the reserve multiple then the fund appears comparatively solvent.

Adequacy of Financing in Texas

Although the solvency of the fund has never really been tested, the poor performance of the benefit financing system in replenishing reserves during the 1958-1963 period did cause some concern, and the experience of that period did reveal some weaknesses in the Texas method of financing. The anxiety expressed was the consequence of the fact that the benefit financing system just was not operating in a manner that was replenishing the fund as adequately and as quickly as it should have.

As was discussed previously, the Legislature showed its uneasiness in 1961 when it provided the 225 million dollar triggered floor, virtually eliminating the possibility of a very severe depletion of the fund. Whether the arbitrary

Texas trigger was appropriate or not, the fact is that it was a preventive measure that did little to correct the inability of the Texas's formula to yield sufficient tax income in the face of rising benefit costs.

With Texas employers confronted with the possibility of the imposition of a surtax after six years of inadequate tax income, the Commission addressed itself to the problem, and in its 1963 Annual Report made the following remarks:

> It might be possible to avoid the eventuality of a flat surtax increase if the tax rating system were overhauled before the Fund erodes below the "trigger point". Presently only about $5 billion out of a total of $9 billion of annual covered payroll in Texas is subject to the operation of the experience rating formula. This is because the $3,000 per year limit on taxable wages is unrealistic in the currently inflated economy. The effect is to eliminate about two-fifths of payrolls from the experience rating computations and the result is to keep most employers' benefit wage ratios inordinately high. This tends to compress the number of employers at the 2.7 percent tax rate (statutory maximum) instead of arraying rates more smoothly between minimum and maximum ends of the range in the table. Removal of the $3,000 limit on taxable "wages" would scarcely affect the taxbills of employers whose benefit costs are not in excess of 2.7 percent of currently taxable payrolls. This would, however, result in extracting more taxes from employers who earn tax rates above 2.7 percent.[43]

The Commission further remarked:

> Elimination of the $3,000 taxable wage limitation coupled with the expansion of the tax rate range above 2.7 percent (and possibly below 0.1

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[43]Texas Employment Commission, Annual Report (1963), p. 33.

> percent) would have the effect of taxing the 10 percent of high cost employers enough to halt the revenue deficit.[44]

In reference to raising the additional tax income needed to halt the skid in reserves by lifting the maximum tax rate or by eliminating the 3,000 dollar taxable wage base, the Commission recommended, "that the Legislature give consideration to each or both of these alternatives."[45]

How Should Increased Tax Yields be Obtained?

Actually, nearly every state was facing the problem of inadequate unemployment tax yields at that time. The situation served to intensify debate over the proper method of raising needed revenue.[46] There were actually three principal considerations involved in the selection of the proper method of increasing the tax take: (1) Should tax income be increased by increasing the taxable wage base thus increasing the taxes of all employers? (2) Should tax income be increased by raising the maximum tax rate thereby placing much of the burden of the increased tax yields on employers who had not been contributing as much to the fund as was being withdrawn in benefits by their former employees? or (3) Is there some combination of the first two alternatives that might be preferable?

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[44] Ibid. [45] Ibid.

[46] An excellent discussion of this debate can be found in Chapter 18 of William Haber and Merril G. Murray, Unemployment Insurance in the American Economy (Homewood, Illinois, 1966), pp. 358-378.

In a study completed in August, 1964,[47] the Commission suggested that the maximum tax rate be increased. Compiled by the research staff of the Commission, the study criticized the "arbitrary" tax ceiling of 2.7 percent, referring to it as being "incompatible with effective experience rating."[48] The report revealed that a significant minority of employers had consistently had employment experience for which they would have paid considerably higher tax rates were it not for the ceiling. The resulting loss or "leakage" from the Texas fund as a result of the ceiling was thought to be significant, though no actual dollar amounts were given. While recognizing that the 3,000 dollar limitation on taxable wages also contributed to "leakage," the point was emphasized that the taxable wage limit would result in inadequate contributions from employers only if there was a limit on tax rates, and the suggestion was offered that as long as there was a limit on tax rates the possibility of raising the taxable wage base limit "might be considered."[49]

The basis for the Commission's preference of the tax rate limit increase is contained in a remark made at another point in the study. The statement was made that "it would seem preferable to make revisions in the tax system which would premit the assurance of solvency within the framework

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[47]Texas Employment Commission, A Study of Unemployment Insurance Financing (Austin, 1964),

[48]Ibid., p. 21. [49]Ibid., p. 22.

of experience rating."[50] The desire to protect experience rating by increasing the maximum tax rate rests on the assumed need to maintain or increase the spread in tax rates so as to supply incentive to employers to stabilize employment. Actually the tax rate range in Texas is already quite large. The maximum tax rate in Texas is at present 27 times the minimum. How much more incentive do Texas employers need?

Also, consideration for companies with high unemployment insurance cost rates must not be ignored. Professor Richard Lester of Princeton has demonstrated that the highly competitive industries such as food products, apparel, textiles, and contract construction, are more apt to pay higher tax rates and have a wider dispersion of employers along the full range of tax rates. In other words, not only do these industries pay generally higher taxes, but the likelihood of the incidence of competitive employers within the industry paying widely differing unemployment tax rates is much greater. Such wide dispersion of tax rates in these industries makes shifting of the burden of an increased tax to customers more difficult for some employers. Lester concludes that, in the interest of the general welfare of such industries, it seems that the tax rate in any state must seek some practical limit, else the unemployment tax would

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[50] Ibid., p. 25.

become almost unbearable to some employers in highly competitive industries.[51]

The incentive argument also raises considerations of a more fundamental nature. As Lester has said,

> Actually, considerable financial incentive already exists for firms to stabilize their employment. Not only is the present spread of tax rates wide in most states but employment stability also has significant advantages from a labor cost and an industrial relations viewpoint. Wider spread in the tax rates would seem to provide not so much an additional effective incentive as an added handicap for certain industries in an unfavorable market position.[52]

More important, in a state like Texas where such a large percentage of employers have tax rates of 0.05 percent and less, it hardly seems possible that the higher tax bill for all employers resulting from an increase in the tax base to a more realistic level such as 4,000 dollars or even 4,800 dollars could reduce employers incentive. Take, for example, two Texas employers, employer A with an earned rate of 0.5 percent and employer B with an earned rate of the maximum 2.7 percent. If the taxable wage base were raised from 3,000 dollars to 4,800 dollars, then, assuming all employees of both employers earn at least 4,800 dollars, employer A's tax bill would amount to 24 dollars per employee while employer B's tax bill would amount to 129.60 dollars per employee. When one further considers that rates of 0.5

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[51]Richard A. Lester, The Economics of Unemployment Compensation (Princeton, 1962), pp. 65-67.

[52]Ibid., pp. 81-82.

percent and less apply to over 50 percent of taxable wages paid in Texas (Table V) and to over 70 percent of its employers, it becomes less probable that a rise in the taxable wage base would have any measurable effect on employer incentive to stabilize employment.

A study conducted by the Texas Research League,[53] a business-financed organization, agreed with the Commission's emphasis on the need to raise the limit on the tax rate. However, the League's recommendation was based on the contention that an increase in the taxable wage base would result in tax inequities for some employers. The League supported this contention by citing the following example:

> Let us assume that we have two employers, each with the same chargebacks and tax base, as follows:
>
> $$\frac{\text{3-year benefit wages charged}}{\text{3-year taxable wages}} = \frac{\$\ 450{,}000}{\$3{,}000{,}000} = \text{benefit wage ratio of 15}$$
>
> With a state experience factor of 22, the tax liability is limited by the maximum tax rate of 2.7 percent and the limitation on the tax base. The one-year tax liability would be $27,000 under present Texas law.
>
> A. Increase in Maximum Tax Rate: If the maximum tax rate were increased to require high-separation employers to "pay their way", both of these employers would earn a tax rate of 3.3 percent. The tax liability of each of them would be increased to $33,000.
>
> B. Increase in Maximum Tax Base: If the limitation on the tax base were raised, the extent to which each of these two employers would "pay their way" would depend on whether he was a high-pay or low-pay employer. Let us assume that for one employer the increase in tax base brought about an increase in taxable wages of five percent and for the other the increase in taxable payroll was 30 percent. The benefit wage ratio of the

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[53]Texas Research League, Financing Unemployment Benefits in Texas (Austin, 1964).

> low-pay employer would be 14.3, his tax rate would be 2.7 percent, his tax liability would be $28,350--obviously not enough for him to "pay his way". The benefit wage ratio of the high-pay employer would be 11.5, his tax rate would be 2.6 percent, but his tax liability would be $33,800 because of the higher tax base.
>
> Comment: An increase in tax rate would succeed in getting these two companies with identical charge-backs to "pay their way". An increase in the tax base would not succeed in getting both of these companies to "pay their way". The increase in tax base significantly raised the tax liability of the high-pay employer, but did little with regard to the low-pay employer.[54]

Similar arguments have been consistently advanced by employer groups: arguments based on the principle of protecting experience rating by maintaining a substantial spread in the tax scale. Implicit in these arguments is the assumption that benefit costs should be apportioned among employers on the basis of all the unemployment for which they are "responsible." Statements concerning the plausibility of experience rating have cast serious doubt upon the principle of employer responsibility for employment stabilization.[55] Such statements emphasize the fact that the individual employer has little or no control over cyclical unemployment and that he can affect technological unemployment only by delaying the addition of technological improvements at the risk of obsolescence. The employer can

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[54] Ibid., pp. 23-24.

[55] For example, see Harry M. Wagner, "A Reappraisal of Experience Rating," Southern Economic Journal, (April, 1959), pp. 459-69.

regularize seasonal unemployment to some extent but for the most part the best he can do is keep workers on the payroll by spreading work to a limited degree over a limited period.

The equity argument is also based on the assumption that there is some basic rationale for the 3,000 dollar maximum taxable wage base. When the 3,000 dollar base was set in 1939, the national law and the Texas law taxed total wages. The taxable wage limit was set at 3,000 dollars so that it would correspond to the limit then set on taxable wages for old-age and survivors insurance, thereby making the tax computation mechanism easier for the employer. Little income loss was anticipated at the time as a result of this move and the Social Security Board assumed that any future increase in the taxable wage limit for old age and survivors insurance would be accompanied by a corresponding increase in the unemployment tax.[56] What rationale that existed for the imposition of a 3,000 dollar limit on the base certainly no longer exists since the federal tax base for OASDI is now 6,600 dollars.

Professor Lester has further remarked concerning the plausibility of the "equity" arguments:

> The equity notion of requiring employers to pay unemployment taxes according to their individual responsibility for unemployment, though it has superificial plausibility, raises more questions

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[56]Haber and Murray, op. cit., pp. 367-68.

> than it settles. Responsibility for unemployment is a profound and involved subject. . . . Who knows the extent to which particular unemployment is due to employer policies, to consumer buying patterns, to technological change and other innovations, to policies of employees and their unions, or to various exogeneous factors ranging from crop failures to shifts in the currents of international trade? Who is responsible for a declining industry and over what time span does the responsibility extend?[57]

Another argument against the low taxable wage base was offered by Professor Lester.[58] He pointed out that the limited tax base can weaken the tendency of unemployment compensation to act as an automatic "stabilizer" of the economy. Benefit payments do expand as employees are laid off during business decline, thereby stabilizing downturns. But this tendency can be weakened if taxable wages do not fluctuate in proportion to cyclical variations in payrolls. According to Lester's explanation, since the average total wage in covered employment now exceeds 5,400 dollars and since the taxable wage limit is only 3,000 dollars "most of the cyclical variation in payrolls is in the part above $3,000." Due to the static nature of taxable payrolls, an employer's taxable payroll will not vary as much cyclically as does his total payroll. Consequently the employer's tax burden will likely rise more as a percentage of his total payroll during recessionary periods and will likely fall

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[57]Lester, op. cit., pp. 81-82.

[58]Ibid., pp. 70-71.

during boom periods. In both cases, such results would be cyclically accentuating and therefore destabilizing in effect.

Although the research staff of the Commission made no formal argument to support its suggestion of possibly raising the taxable wage base in its 1964 study, the facts presented in the study's discussion of the desirability of basing fund liability on total wages did lend support to such a shift. The discusssion involved a comparison of the relationship between average benefit amounts paid beneficiaries and the taxable wages of all covered workers on the one hand, and on the other hand the relationship between average benefit amounts and the total wages earned by all covered workers in Texas.

The study demonstrated that the average benefit amount in Texas had risen at a rate about equal to that of the rate of increase in the total wages paid covered employees. At the same time, while the number of taxable payrolls in Texas increased considerably, the 3,000 dollar limit on taxable payrolls had caused a rate of growth in total taxable wages that was significantly less than that of average benefit amounts. For these reasons the Commission staff felt that the use of taxable wages for measuring potential costs introduced a purely arbitrary factor unrelated to benefits and that the most logical measure of program liability is

total wages.[59] It seems reasonable from this analysis that the taxable wage base should be raised so that taxable wages will be at least more nearly in line with total wages.

The Commission study does not contain an evaluation of the specific effects of an increase in the taxable wage base on employer taxes or on total tax yields. However, after consideration of the foregoing comparison of the relative merits of an increase in the maximum tax rate or an increase in the taxable wage base as a means of increasing tax income, an increase in the tax base seems to have significant advantages over an increase in the maximum tax rate.

Other Considerations Advanced in Texas

In its 1964 study, the Texas Research League advanced its recommendation for raising the tax limit above 2.7 percent on the condition that certain inequities inherent to the Texas method of taxation be eliminated. These inequities, according to the League, would become increasingly unfair to some employers if the 2.7 percent maximum tax rate were raised. Foremost in the mind of the League was the need to adopt a new experience rating formula.

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[59]Texas Employment Commission, Unemployment Insurance Financing, pp. 28-30.

In view of the tax advantages held by Texas employers under the benefit-wage formula it would seem that there would be little expressed desire from employers to adopt a new formula. Nevertheless, the League recognized as valid the complaints of some employers who contended that they were being mistreated by the benefit-wage rate setting method. These employers argued that an employer is not necessarily a "high cost"[60] employer just because he has a high separation rate over a certaion period. He might belong to an industry subject to a high incidence of a short-term unemployment. Typical of these employers are automobile manufacturers who frequently lay off large portions of their work force for relatively short periods of time. In such cases the employees frequently become eligible for only one or two weeks of benefits before returning to work, creating a relatively small drain on the Trust Fund. However, under the benefit-wage formula, the employer is charged with the total benefit wages of all his employees who filed for benefits no matter if they only drew one or two weeks of benefits. The tax rate for these employers was based on benefit-wages calculated to cover the maximum period of benefit payments while most of these employees were only unemployed a few weeks. Under the benefit-wage ratio

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[60]Employers whose poor employment record would have earned tax rates higher than 2.7 percent if the maximum tax rate were higher.

formula if the maximum tax rate were raised, the excess of contributions over benefits that these employers already paid would most probably become even larger.

Using these inequities as a basis, the League recommended that before any adjustment was made in the maximum tax rate, a method of experience rating should be adopted that more closely reflected the actual cost to the fund arising from an employers employment record. Hence, it was recommended that the "benefit-ratio" method of experience rating be instituted, or that under the benefit-wage method the employer chargebacks be made in proportion to the actual amount of benefits paid.[61] Either method would have put the Texas rate setting on a basis of cost accounting because the rate of each individual employer would be based on his actual cost to the program and not on the number of separations he caused.

Besides tax income losses associated with the 2.7 percent limit, the League felt that, as a condition for the raising of the maximum rate above 2.7 percent, other sources of fund "leakage" should be attacked. The League estimated that over five million dollars per year in recent years had been lost due to benefit payments made to workers whose employers had gone out of business or sold out. Their

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[61]Texas Research League, op. cit., p. 15.

employers were, therefore, no longer liable for contributions to replace benefits paid to their former employees. Since an inordinate proportion of these "inactive accounts" were new businesses and had been in the program for less than three years, the League recommended that employers just coming under the provision of the Texas law should rightly contribute an amount approximately equal to the current ratio of reserves to taxable wages that had been built up in past years by "veteran" employers. In years immediately preceding 1964, the ratio of fund reserves to total wages oscillated between 4.0 and 5.0 percent giving rise to the suggestion that new employers contribute for a minimum of two years at the maximum 2.7 percent rate before becoming eligible for reduced rates.[62]

Secondly, measures were recommended that would cause successor employers to become liable for any contributions owed by the business acquired so that there would be some means of recouping the benefits paid to former employees of business that changed hands.[63] Finally, in order that the state experience factor could more nearly recoup "leakage" due to inactive accounts, the League recommended that all benefit wages charged to inactive accounts be excluded from its denominator. If this were done the League reasoned that

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[62] Ibid., p. 19.

[63] Ibid., p. 21.

the state experience factor would become larger by an amount directly related to the benefits paid to employees of inactive accounts.[64]

The Amendments of 1967

Discussion concerning the development of more rational taxing methods over the past few years has uncovered the basic reasons for the old tax formula's inability to effect sufficient contributions in the face of rapidly increasing benefit payments. The Texas Legislature has thus far made only token attempts to put the tax formula on a more sound, and rational basis regardless of the present solvency of the fund. The two amendments to the law in 1967 that pertained to benefit financing were thought to be significant.[65] However, these amendments--one establishing the benefit-ratio method of experience rating and the other requiring that covered employers who acquire the businesses of former covered employers who have unemployment tax indebtedness be liable for such indebtedness--did little to reduce the sources of "leakage" inherent to the tax mechanism while introducing new opportunities for tax reductions for some high separation employers.

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[64] Ibid., p. 22

[65] Sections 7(c)(2)(A), p. 13 and 14(O), p. 45 in Texas Employment Commission, TUC Act.

The Commission in its 1966 Annual Report formally recommended the abandonment of the benefit-wage formula in favor of the adoption of the benefit ratio formula.[66] The use of the benefit ratio plan involves the computation and combination of two formulas. One of these is the benefit ratio itself, and the other is what is called the "state replenishment factor." The benefit ratio for any given employer is determined by use of the following factors.

$$\text{Benefit Ratio} = \frac{\text{Total of benefit amounts charged to his account in the 36 calendar months preceding computation}}{\text{Total taxable wages for the same 36 months}}.$$

$$\text{The State Replenishment Factor} = \frac{\text{12-month net amount required from employers--total benefits paid less refunds and cancelled warrants}}{\text{13-month total chargebacks}}.$$

The employers' tax rate is determined by the product of the two factors rounded to the next highest percent. As is the case in the old formula, a table is provided in the law that facilitates the computation of the tax rate.

When the Texas Research League first suggested the institution of the benefit ratio formula in 1964, the solvency of the Fund was held to be in some jeopardy. The central aim of the suggestion was to make the tax formula more equitable so that the maximum tax rate could be raised,

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[66]Texas Employment Commission, Annual Report (1966), p. 31.

thus stopping some of the leakage that was contributing to the unfavorable imbalance of contributions and benefits that had been plaguing the operation of the program. However, since that time, the economy of Texas has experienced spectacular growth, with unemployment approaching the low levels of World War II in some metropolitan areas of the state. Solvency is no longer an immediate problem, for the time being at least, but the prospect of lowering some tax rates with the introduction of the new plan remained and was eventually taken advantage of by the 60th Legislature.

Although it would appear from the experience of other states that the benefit ratio formula would yield higher tax rates, the Texas version of the benefit ratio method is different from that used by other states in one very important respect: the Texas formula stipulates rates bounded by a 0.1 percent minimum and a 2.7 percent maximum. No state now using the benefit ratio formula has such a low maximum and only one of the states, Florida, has a minimum that is so low.[67] Hence, there are no formula-related reasons to suspect that the average tax rate will rise while certain employers will have significantly lower tax rates with the same employment experience that they have had under the old system.

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[67]From Table TT-1, Department of Labor, Comparison of State Laws (August, 1967), p. TT-1.

The amendment requiring that successor employers be liable for the debts of the business which they acquire should strengthen the benefit financing mechanism to a limited extent. However, the principal sources of "leakage," the limited tax base and the upper limit on the tax scale, still shackle the revenue producing capacity of the system. If benefit payments were to rise sharply in the future, there is little reason to expect that the present tax provisions would prove to be any more capable of effecting needed tax yields than were the former provisions during the last period of high benefit requirements. Tax collections since 1963 have obviously been adequate to pay benefits under the present restrictive benefit policy, but it would indeed be unwise to assume the continuation of the high levels of employment and low levels of unemployment that have prevailed since that year. Furthermore, the trend in Texas toward a larger, more industrially oriented labor force indicates that the Texas economy will probably be more responsive to future recessions, increasing the necessity for a broadly based tax formula with an increased revenue producing capability.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

Before any conclusions and recommendations concerning the Texas program are made, a few general remarks concerning the overall framework of the program are appropriate. In the first place, the examination of the background of the Texas program revealed that very little restriction was placed on the framers of state laws by the federal government. Although many states, including Texas, adopted unemployment insurance because of the tax offset device, major aspects such as eligibility, amount and duration of benefits, disqualification from benefits, and methods of experience rating were left largely to the discretion of the states themselves. Secondly, Texas has shared in the general prosperity that has characterized the economy of the United States since the beginning of World War II. Texas' very stable employment experience during this period has eased the problem of financing benefits at a minimum cost to employers. Only during the 1958-1963 period has there been appreciable concern over the solvency of the Texas unemployment insurance fund, and during the very recent past the fund has grown tremendously. In short, economic conditions in Texas have been almost ideal for the development of a broad, adequate, even superior unemployment insurance system.

Despite this very favorable economic climate, this study has revealed that the program falls short of the needs of the unemployed and with respect to other state programs compares rather unfavorably in several areas.

While, in principle, everyone working for a living and having a risk of unemployment should be covered by unemployment insurance, over 40 percent of the Texas labor force lacked coverage in 1967. The uncovered are in six major groups: employees of firms that employ fewer than four; farm workers and agricultural processing workers; domestic workers in private homes; state and local government employees; those who work on a commission basis; and a few other minor groups. The earlier discussion revealed that the reasons for non-coverage differed from group to group with varying degrees of plausibility.

The adequacy of the weekly benefit amount and the duration of the payment of benefits are crucial to the effectiveness of the unemployment insurance program. In theory the Texas benefit formula has always reflected the acceptance of the principle of paying a weekly benefit equal to 50 percent of average weekly wages in covered employment. However, in actual practice, limitation of the maximum weekly benefit has prevented this principle from applying to large proportions of Texas beneficiaries. As wage levels increased, particularly after World War II, Texas, along with most other states, failed to increase its maximum benefit amount

accordingly. Not since 1941, in fact, has even the maximum weekly benefit been as much as 50 percent of the average weekly wage. The maximum has been set so low that in most years about half of Texas claimants qualified for the maximum benefit. This situation has resulted in average weekly benefits that have been consistently below 30 percent of the average weekly wage. The best measure of benefit adequacy is the proportion that benefits bear to "non-deferrable" essential family expenses. On this basis, benefits are excessively inadequate in Texas. The average weekly benefit in Texas in 1966 would cover only about 34 percent of the non-deferrable expenses of a family of four in a large Texas city.

Twenty-six weeks of benefits has become the generally accepted standard; although some states provide even longer duration. While Texas has adopted the 26 weeks standard, its variable duration formula has operated in a manner such that potential benefits for a considerable proportion of its claimants is much less. Average potential duration has hovered around the 20 week mark in Texas for several years now. Benefit exhaustions have always been high in Texas, reaching a peak of 65.6 percent in 1947 with consistent yearly exhaustion ratios of 30 to 40 percent in the 1950's and 1960's.

Nationwide, much was said about the inadequacy of unemployment compensation particularly after World War II, and

the comment stimulated action such that the level and duration of benefits has been increased significantly especially in the more progressive industrial states. The rate of improvement in the Texas law with respect to benefits has been quite slow, however, and comparatively speaking, benefits under the Texas program have been definitely substandard. Even after recent improvements in the Texas law in 1967, 33 states allowed higher maximum weekly benefits and 39 states allowed greater maximum potential benefits. In 1965 9 of the 14 other leading industrial states had a higher macimum benefit amount as a percent of the average weekly wage, 9 had lower percentages of claimants eligible for the maximum benefit, 13 had greater average potential duration of benefits, and all 14 had fewer benefit exhaustions as a percent of claimants who received first payments.

While benefit amounts and duration, although substandard, have improved, the conditions for the receipt of benefits have become more restrictive over the years. Although the provisions of the law pertaining to availability have not been altered, such Commission rulings as its definition of the availability of pregnant women and the requirement that claimants furnish proof of "actively seeking work" are restrictive. Such standards are contrary to the accepted principle of testing availability individually as opposed to regulations that apply sweepingly in all cases. The increased severity of the application of the disqualification provisions for

voluntary leaving work and for misconduct are particularly noticeable. The language of the Texas law as regards these provisions is not unusual, but the rate of disqualification for these two causes has been three of four times greater than the national average. The reason for such high rates of disqualification can be traced only to the fact that cases involving these two issues are interpreted more restrictively in Texas than they would be in most other states. Two observable trends are also noticeable with respect to the period of disqualification. First, Commission policy has reduced Texas' variable disqualification provision into a system of more or less automatic fixed penalties for common specific disqualifiable employee actions. Second, periods of disqualification have been made longer. Texas now has the most harsh maximum disqualification period in the nation (26 weeks).

Compared to most other state programs, Texas seems to be operating a solvent unemployment insurance system. In terms of the ability of Texas' unemployment insurance fund to absorb the cost of a recession similar to that of 1957-1958, under existing benefit and disqualification standards, the fund is technically solvent. Texas' stable employment experience along with a low benefit policy and a restrictive disqualification policy have contributed to the accumulation of a large fund reserve despite the fact that the vast majority of Texas employers have enjoyed unemployment tax rates that have been consistently among the lowest in the nation.

Experience rating, the tax rate and base, and methods used to preserve fund solvency should, however, be means to a larger end--the financing of an adequate system of benefits. With this principle in mind, if the Texas benefit structure is upgraded, then it is reasonable to expect that total fund expenditures will rise. The review in Chapter VI disclosed that the revenue producing capacity of the Texas tax formula was inadequate during the last period of rising fund expenditures, 1958-1963. Although the stimulus for the rise in expenditures during this period was economic recession, unless improvements are made in the revenue producing aspects of financing, inadequate fund income will plague the system regardless of the reason for the increase in expenditures.

Because of the involvement of public attitudes and political institutions, some of the major reasons for the posture of unemployment insurance in Texas are somewhat intangible. To begin with, the Texas program was launched under unfavorable conditions. When the law was enacted in 1936, there was almost no public clamor for unemployment insurance, and the state was idealogically unprepared to establish an adequate program. Since 1941 Texas has enjoyed comparatively stable employment conditions and temporary unemployment has never really been a critical problem. As a result the program has never been able to wrench itself from a climate of public apathy. Labor unions, who can usually

be relied upon to push for improvements of unemployment compensation laws, are still relatively weak in Texas.[1] Organized labor in Texas has succeeded in obtaining a stronger legislative bargaining position in recent years, but its influence can in no way be considered equal with employer groups. In fact, labor leaders have often complained that that they have not received adequate representation from the Commissioner charged with representing labor on the three-man Texas Employment Commission. On occasion, open public feuds have broken out between organized labor and the Commission's "labor representative."[2]

The Commission itself and its Advisory Council must bear a great portion of the responsibility for any deficiencies of the benefit and coverage phases of the program. As is the case with similar bodies in other states, the Commission has emerged as a major influence, if not the major influence in the introduction and passage of unemployment insurance legislation. Through the years the Commission has shown little disposition to engage in extensive research of the benefit

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[1]See Ray Marshall, "The Development of Organized Labor," an article written for "Labor in the South," a special issue of the Monthly Labor Review, XIC, No. 3 (March, 1968), 65-73.

[2]Dallas Morning News, April 9, 1957, Sec. 1, p. 10, and Dallas Craftsman, March 29, 1963, p. 2.

and coverage portions of the program.[3] Nor has the Commission reacted to available statistics concerning Texas in comparison to the other states.

Occasional liberalization of benefit and coverage provisions have been responses to the national trend rather than the result of independent research into the problems of the Texas unemployed. The hesitancy of the Commission to furnish leadership in the development of a strong program of adequate benefits based on the individual capabilities of the Texas economy has certainly played a great part in the retardation of the system.

For various reasons, then, the program has fallen short of its capabilities. What can be done to improve it? The summary proceeds with a discussion of proposed changes that seem appropriate in view of present conditions. These recommendations assume that the basic features of the unemployment system in Texas are likely to remain the same and are proposed within its established framework.

Benefit Levels and Duration

The discussion of benefit adequacy in Chapter IV should leave little doubt as to the necessity of increasing benefits

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[3]Three studies involving financing have been compiled and published. Two by the Commission, Texas Employment Commission, A Study of Unemployment Insurance Financing (Austin, 1964), and Texas Employment Commission, A Study of Uniform Disqualifications (Austin, 1965), and one at the request of the Commission, Texas Research League, Financing Unemployment Compensation Benefits in Texas (Austin, 1964). As of this writing no studies of benefit adequacy have been made public.

in both amount and duration. Since benefit levels are a direct function of the benefit formula, changes in that formula are indicated. The ultimate effect of Texas' high-quarter benefit formula is determined by the inter-relationship among the fraction of high quarter wages used in computing the weekly benefit amount, the qualifying wage requirements at all benefit levels, the duration of benefits, maximum and minimum benefit levels, and the length of the lag period between each claimant's base period and benefit year. In a proposal to increase benefits all these factors must be considered as a whole because the internal consistency of the formula depends on their interaction.

As was disclosed in Chapter IV, Texas' first high quarter formula computed the weekly benefit amount as 1/13 of high quarter wages on the obvious assumption that the high quarter wage represented thirteen weeks of employment and the bi-weekly benefit should approximate one-half of weekly wages. In recognition of the fact that many claimants do not work the equivalent of thirteen weeks even in their high quarter, the fraction was later set at 1/25 of high quarter earnings. Even a 1/25 fraction requires a worker to work a minimum of twelve and one-half weeks during his high quarter at a constant wage rate for fifty percent wage replacement. In view of the accepted principle that twenty-base period weeks of employment should be required for benefit qualification regardless of the rate of pay during those weeks, the high

quarter fraction should be set such that fifty percent wage replacement is attainable for some appropriate number of weeks worked above a minimum of five weeks (one-fourth of twenty-weeks) during a claimant's quarter of high earnings. The appropriate level should be determined by a detailed study of the wage records of claimants who have qualified for benefits in the past. In the absence of such an investigation and since nine weeks is the mid-point of the five to thirteen week interval, it seems that a high quarter fraction of at least 1/20 would be more appropriate for Texas.

If the Texas fraction were liberalized to one-twentieth,[4] then it would be possible for workers who were employed for only ten weeks during their high-quarter to obtain fifty percent of wage replacement. Of course the same fraction in the absence of other restraints would yield a benefit equal to sixty-five percent of the average weekly wage of covered workers who work the full thirteen weeks of the high quarter. Such a high percentage wage replacement might be considered excessive by some in the cases of high wage earners, but it can be quite desirable in the instances of low wage earning claimants who need a higher percentage in order to purchase necessities for the family. Furthermore, the point has been

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[4]As of August 1967, six states had high quarter fractions as low as 1/20. From Table BT-4 in Department of Labor, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws (Washington, August, 1967), p. BT-7.

made that if a worker earning more than the average weekly wage in covered employment is to be compensated for fifty percent of his wage loss during unemployment, the maximum allowable weekly benefit must be set at a level higher than one-half such average wage. The Bureau of Employment Security's recommendation that the maximum weekly benefit be set at two-thirds of the average weekly wage in covered employment for the preceding calendar year[5] has been the standard of adequacy for years. Two-thirds is recommended because it would seem reasonable that a great majority of covered workers can attain fifty percent wage replenishment if the maximum weekly benefit were set at such a level. Furthermore, the undesirability of expressing the maximum in terms of a stated dollar amount should be remedied by expressing it as a fraction of the state average weekly wage in covered employment. The maximum should be adjusted automatically at a stated time each year so as to insure that it always reflects changes in wage levels. Almost half the states provide for annual or semi-annual re-computation of the benefit maximum although the maximum in these states is only 50 percent of the average weekly wage, and only Hawaii has complied with the Bureau's suggestion of a two-thirds fraction.[6]

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[5]U. S. Department of Labor, Bureau of Employment Security, Unemployment Insurance Legislative Policy--Recommendations for State Legislation, 1962 (Washington, 1962), p. 11.

[6]Department of Labor, Comparison of State Laws (August, 1967), p. BT-9.

Mention should be made of the fact that the current Texas benefit structure makes no allowance for the number of dependents that a claimant may have. Under this system claimants with no dependents who are regular members of the labor force receive proportionately more wage loss protection than do those beneficiaries with dependents. A worker's net earnings reflect his family income responsibility more accurately because the federal personal income taxes that are withheld take into account the number of dependents that the worker may have. Unemployment insurance benefits are figured on the basis of the average gross pay instead of after tax wages thus creating differences between the wage loss protection given to wage earners with dependents and the protection given to workers without such responsibilities. Take, for example, a man with a wife and two children who grosses 150 dollars per week, takes home 131 dollars and qualifies for the maximum benefit amount of 45 dollars per week, or 34 percent of take home pay. Yet a single man with the same gross pay and attachment to the labor force, takes home about 123 dollars and qualifies for the same benefit, or 37 percent of take home pay.[7]

Eleven states at present have additions to the weekly benefit in the form of dependents allowances. These systems

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[7]Withholding estimates are made from Treasury Department, Internal Revenue Service, Employer's Tax Guide (Washington, January, 1969), p. 23.

apparently have provided this added protection without endangering solvency.[8] The issue of dependents allowances, then, appears to be one of principle and not of ability to pay. Since the family head was the original focus of unemployment insurance legislation and since in the absence of dependents allowances the benefit formulas, in effect, discriminate to the detriment of the family head, it seems reasonable to consider the addition of dependents allowances to the system.

In view of the facts presented in Chapter IV, insufficiency of the benefit duration provisions of the Texas law are not difficult to ascertain. Even though a claimant must earn only 1.5 times his high quarter earnings to be eligible for benefits, only those claimants who have base period earnings in excess of 3.85 times their high-quarter earnings can realize twenty-six weeks of benefit duration.[9] Thus the effective maximum will be below the statutory figure for all eligible claimants who earn less than approximately 3.85 times their high quarter earnings. In fact, claimants who barely meet the qualifying wage requirements

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[8]From Table BT-6 in Department of Labor, Comparison of State Laws, p. BT-12.

[9]Maximum duration can be expressed as 26 times high quarter wages and as 27 percent of base period wages. Equating the two quantities $26 \times \frac{HQW}{25} = 27x^{BPW}$ will yield a value for the ratio of base period wages to high quarter wages required for maximum duration. $\frac{BPW}{HQW} = \frac{26}{25(.27)} = 3.85+$.

can expect benefit duration of only ten or eleven weeks[10] while those workers who have been more fortunate in obtaining employment can expect much longer durations.

In the absence of employee contributions, there is little reason for a system that provides greater equity for those with longer periods of previous employment. Yet, this is, in effect, what the Texas law seems to imply. With the possible exception of employees in seasonal employment there seems little reason for some claimants to receive longer duration just because they have had longer previous employment. Quite the contrary, those with the shortest periods of employment probably need the longest periods of benefits since they have had less chance to accumulate savings.

Uniform duration of twenty-six weeks for all claimants who qualify would probably meet the needs of the unemployed more sufficiently. Of course, the leading argument for such a proposal is that uniform duration would provide as much security for the worker who has difficulty securing and obtaining employment as it would for the worker who has a steady job. Uniform duration should also be easier to administer since it requires less information from the employer, less record keeping, and fewer computations. If

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[10]Using the equation found in footnote 9 of this Chapter, substituting 1.5 for $\frac{BPW}{HQW}$ and solving for the number of weeks that such a ratio of base period wages to high quarter wages would yield ($1.5 = \frac{\text{weeks of duration}}{25(.27)}$) results in 10.125 weeks.

variable duration is to remain part of the law, then, for the sake of improving upon the substandard length of benefit payments of the average Texas claimant, the limit on total benefits in a benefit year should be increased from 27 percent of base period wages to at least one-third or more.

Coverage

The serious gaps in coverage constitute an easily remedied shortcoming of the Texas program. The least defensible of these coverage gaps is the exclusion of employees of firms with less than four employees as twenty states are now covering such employees with no apparent difficulties.

The largest group of excluded employees in Texas are the employees of state and local governments. While Texas provides for optional coverage, no state and local government units in Texas have actually elected coverage. Coverage of such units would create only a minor financial problem. Benefits could be financed through reimbursement of the fund for the actual costs of benefits as is done in the program established for federal employees.[11]

By the same method the employees of most nonprofit organizations easily could be covered. Actually the small incidence of unemployment among these workers increases the feasibility of such coverage, since it would impose little

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[11]A program of unemployment compensation for federal civilian workers was instituted as Title XV of the Social Security Act, Public Law 85-848, approved September 1, 1954.

cost to these organizations. Due to the large amount of seasonal work in Texas agriculture performed by migrant workers, coverage of this class of workers in the state would be difficult but not impossible. However there is little reason from the administrative standpoint for the exclusion of employees of large agricultural units and agricultural processing plants.

The coverage of household workers would be extremely difficult since such workers tend to work for several employers at the same time. The tax collection problems would be difficult but New York and Hawaii have solved the problem by covering employers of one or more with certain minimum quarterly payrolls.

Finally, the coverage of certain self-employed workers and workers with questionable attachment to an employer such as agents on commission, filling station agents, and similar workers will probably have to await a broadening of the definition of "employer" in the federal law.

Eligibility for Benefits

Except for the qualifying wage requirements of the law, the eligibility and disqualification provisions are not, and cannot be, as precise as the provisions for coverage, benefits and taxation. As a result, the effective law as it pertains to eligibility for benefits in Texas is the statute as it is applied to individual claims by the staff of the Commission.

The "able and available" provisions of the Texas law are stated in general terms, as they should be, providing an opportunity for determinations to be made by claims examiners on the individual merits of each case. The Commission ruling requiring all claimants to show proof of "actively seeking" work, however, can severely restrict the claims examiner's discretion.

A requirement that a worker should make reasonable efforts on his own initiative is quite appropriate in, for example, an isolated area of West Texas where the employment service might have incomplete knowledge of job opportunities. On the other hand in a one industry town such efforts would probably be futile. Having a form filled out by several employers as proof of "actively seeking work" can be a meaningless gesture, demoralizing to the claimant, and can be a nuisance to employers when no work is available. The judgment of the individual claims examiner should be trusted to yield an equitable and efficient judgement as to the need for any special effort by the claimant. A claims examiner should be best able to gauge the hiring methods employed in the claimant's line of work, general business conditions of the area, and the claimant's individual circumstances.

Also the Commission's long standing ruling concerning pregnant women is excessively inflexible. The Commission's assumed specified period of ineligibility in pregnancy cases (six weeks prior to anticipated date of birth and

ninety days after birth) may or may not be too lengthy depending on the individual case. If it can be shown that a claimant is able to work during such period by either a doctor's certificate or her record of work during previous pregnancies, then it is only fair to rule her actually able for work and eligible for benefits.

In Texas, the disqualification for voluntary quit reflects the concept that the firm should bear only the cost of unemployment which is due to the action of the employer. This is in contrast to the more liberal concept that the only unemployment whose cost the firm should not bear is unemployment which is caused by some unreasonable act of the employee. Strict adherence to the former point of view has been a major cause of the high disqualification rates in Texas for voluntary quit and misconduct. The language of the law that limits "good cause" for leaving work to causes directly attributable to the employer is overly restrictive. There are many cases in which compelling personal reasons for quitting justify the payment of benefits. Such a narrow interpretation conflicts with accepted concepts of family obligation in many cases and can discourage the mobility of labor.

The new qualifying wage requirements instituted in 1967 (one and one-half high quarter earnings and 500 dollars in base period earnings) seem to be appropriate and should serve to tighten the qualifying wage requirements of the law.

However, the requirements as they are now written can prevent some high wage employees from obtaining benefits because their earnings are too high. For example, suppose a worker earned 1,500 dollars per month during 1967 and the first quarter of 1968 and applied for benefits on June 1, 1968. His base period wage credits would amount to only 6,600 dollars because, for benefit computation purposes, his employer reports only the first 6,600 dollar earned during a calendar year. Since the worker earned 4,500 dollars in the first quarter of 1968 his reported base period wages will not equal one and one-half his high quarter earnings. According to Commission staff members, since January 1, 1967, several cases similar to this have occurred, most involving highly paid engineers in the aerospace industry.[12] Although such employees are obviously attached to the labor force, the Commission has ruled that no special consideration will be given to such claimants and that determinations of ineligibility will continue to be made in such cases until the law is amended. Although the inconsistency affects very few workers, it should be removed at the first opportunity.

The disqualification provisions of the law are intended to delineate the risk that is to be insured by the program. Although a postponement of benefits may seem harsh to an unemployed worker, the intention of disqualification is not to punish; rather, these provisions are included to limit

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[12]Statement by claims examiner, June 22, 1968.

compensation to payments for weeks of unemployment that can reasonably be attributed to lack of work. From the social viewpoint, if unemployment insurance is designed to alleviate hardship due to unemployment, then it is in line with this purpose to pay benefits when unemployment persists beyond a certain point even in disqualified cases. Extending the length of a disqualification with the relative "seriousness" of the circumstances surrounding voluntary leaving work, or refusing a referral, or being dismissed for misconduct introduces the concept of a penalty into the disqualification. Punishment is in no manner a function of the unemployment insurance system. As such then, the period of disqualification should be limited to that period within which an unemployed worker can reasonably be expected to find a job. With the above in mind, it is recommended that disqualifications for voluntarily leaving work without good cause, for refusal of suitable work, and for discharge for misconduct be limited to a maximum of six weeks. Six weeks is suggested only because this is the period most often quoted as the average period that it takes for a worker to secure employment[13] and because the states which now limit their disqualifications uniformly limit them usually to six weeks.[14]

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[13]William Haber and Merrill G. Murray, Unemployment Insurance in the American Economy (Homewood, Illinois, 1966), p. 302.

[14]From Tables ET-2 and ET-3, Department of Labor, Comparison of State Laws (August, 1967), pp. ET-3, ET-6.

Disqualifications should involve a postponement of benefits and not a cancellation of benefits as is now the case in Texas. Claimants can reasonably be expected to be denied benefits during periods of disqualification as these are periods of unemployment which, theoretically speaking, can be attributed to the disqualifying act of the claimant. The cancellation of benefit rights can be construed only as punishment. Cancellation can result in a denial of benefits for weeks of unemployment that are attibutable to conditions of the labor market over which the employee may have no control. A study conducted by the research staff of the Commission in 1964 revealed that if disqualification penalties in 1962 had involved postponement rather than cancellation, total benefit payments for the entire program for that year would have increased by only 2.1 percent, a cost that the Texas program easily could have absorbed.[15]

Finance

In making recommendations for the improvement of the financial provisions of the law, it is assumed that experience rating is firmly entrenched and will not soon be replaced by another method of setting the tax rate. It is also assumed that experience rating will function within

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[15]Texas Employment Commission, A Study of Uniform Disqualifications (Austin, 1964), p. 6.

the limit of a maximum tax rate designed to protect employers in interstate competition. Also, it is assumed that there will be a limit on taxable wages below average total wages in covered employment.

Most importantly, the limit on the taxable wage base is severely limiting the tax raising capability of the system. The taxable wage base of 3,000 dollars now covers less than 60 percent of total covered payrolls in Texas, and the base is constantly falling in relation to total payrolls as wages continue to increase. Also, the limited tax base discriminates against low wage employers in that they are forced to pay taxes against taxable wages that represent a larger percentage of total wages paid.

Mainly because of the fear of placing employers at a disadvantage in interstate competition, the selection of a proper taxable wage base is not an easy task. Although twenty-two states have recognized the need to raise the taxable wage base, only four of these have raised their base above 3,800 dollars.[16] The fact that these states have hesitated to raise their tax bases to more realistic levels is no justification for Texas also to select an unrealistically low base.

The taxation of total payrolls, as was done in the original law, would seem to be the most logical choice.

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[16]From Table TT-1 in Department of Labor, Comparison of State Laws (August, 1967), p. TT-1.

However, without an equal rise in the federal tax base, there is little likelihood of a return to the taxation of total wages. It would seem reasonable, though, that for the purposes of sounder financing, the tax base should be at least large enough to cover the wages used in determining benefits. With maximum potential benefits presently 1,170 dollars in Texas and with total benefits limited to 27 percent of base period earnings, a worker must earn 4,333.33 dollars in his base period to qualify for maximum total benefits. If the taxable wage base were raised to, say, 4,400 dollars, there would then exist a direct relationship between wages used for benefits and wages that are taxed.

In order that high unemployment benefit employers would pay more of their share of total benefit costs, some increase in the 2.7 percent maximum tax rate is recommended. However, the maximum tax rate should not be raised to unreasonable limits while the tax base remains unchanged.

As was the case in choosing an appropriate limit on taxable wages, the selection of a proper maximum tax rate is difficult. Relying on experience of the early days of the program when total wages in covered employment were taxed and tax rates ranged above 2.7 percent, along with the fact that new employers must pay a 2.7 percent tax until they qualify for experience rated rates, the research staff of the Commission in 1964 suggested that perhaps a good

guide for the determination of a maximum tax rate would be the "taxable wage percentage equivalent to 2.7 percent of total wages." Based on 1961 figures the indication was that the maximum rate figured on this basis should be 4.5 percent of taxable wages.[17] While the suggestion is reasonable, such a high rate might place some Texas employers in a competitive disadvantage since only five states now have maximum rates that are equal to or higher than 4.5 percent.[18] With a higher tax base, the maximum tax rate probably could be set at a more modest level such as 4.0 percent.

Finally, the provision of the law calling for an across-the-board tax cut when the Texas fund reaches 300 million dollars and an across-the-board tax increase when the fund recedes to the 225 million dollar level is arbitrary and should be replaced by a provision that furnishes a flexible fund "floor" and "ceiling" based on the highest twelve month cost rate in the most recent decade. This process is certainly more rational and, as was disclosed in Chapter VI, would protect employers from unnecessary tax increases while protecting the fund from unwarranted tax decreases.

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[17]Texas Employment Commission, A Study of Unemployment Insurance Financing, p. 21.

[18]From Table TT-1 in Department of Labor, Comparison of State Laws (August, 1967), p. TT-1.

While not exhausting all the possibilities by any means, the foregoing proposals represent needed and reasonable improvements in the Texas law. They attempt to point the direction rather than define the exact limits of needed reform.

BIBLIOGRAPHY

Books

Buehler, E. C., Compulsory Unemployment Insurance, Vol. VII, No. 6 of The Reference Shelf, New York, H. H. Wilson Co., 1931.

Burns, Eveline M., The American Social Security System, Boston, Houghton Mifflin Co., 1949.

Douglas, Paul H., Standards of Unemployment Insurance, Chicago, University of Chicago Press, 1933.

Ewing, John B., Job Insurance, Norman, Oklahoma, University of Oklahoma Press, 1933.

Gagliardo, Dominico, American Social Insurance, New York, Harper and Brothers, 1949.

Gantt, Fred, The Chief Executive In Texas, Austin, University of Texas Press, 1964.

Haber, William and Merril G. Murray, Unemployment Insurance in the American Economy, An Historical Review and Analysis, Homewood, Illinois, Richard D. Irwin, Inc., 1966.

Industrial Relations Counselors, An Historical Basis for Unemployment Insurance, Minneapolis, University of Minnesota Press, 1934.

Lester, Richard A., The Economics of Unemployment Compensation, Princeton, N. J., Industrial Relations Section, Department of Economics, 1962.

McKay, Seth, Texas Politics, 1906-1944, Lubbock, Texas Tech Press, 1952.

Rubinow, I. M., The Quest for Security, New York, Henry Holt and Co., 1934.

Witte, Edwin E., The Development of the Social Security Act, Madison, Wisconsin, The University of Wisconsin Press, 1962.

Wolfbein, Seymour L., Employment, Unemployment, and Public Policy, New York, Random House, 1965.

Articles

Burns, Eveline M., "New Guidelines for Unemployment Insurance," Employment Security Review, XXIX (August, 1962), 5-9.

Clague, Ewan, "The Economics of Unemployment Compensation," The Yale Law Journal, LV, No. 1 (December, 1945), 53-75.

Corson, John J., "Unemployment Insurance: An Appraisal 30 Years After Establishment," Unemployment Insurance Review, II (August, 1965), 9-14.

Malisoff, Harry, "The Emergence of Unemployment Compensation," Political Science Quarterly, LIV (September and December, 1939), 237-88, 391-420, 577-99.

Marshall, Ray, "The Development of Organized Labor," an article written for "Labor in the South," a special issue of the Monthly Labor Review, XIC, No. 3 (March, 1968), 65-73.

Rainwater, P. L., "The Fallacy of Experience Rating," Labor Law Journal, II, No. 2 (February, 1951), 95-104.

Rector, Roger Stanley, "The Frailty of the Fallacy of Experience Rating," Labor Law Journal, II, No. 5 (May, 1951), 339-49.

Saben, Samuel, "Work Experience of the Population in 1962," Monthly Labor Review, LXXXVII, No. 1 (January, 1964), 18-27.

Schmidt, Emerson P., "Experience Rating and Unemployment Compensation," Yale Law Journal, LV, No. 1 (December, 1945), 244-46.

Thompson, Carey, "Experience Rating in the Texas Unemployment Compensation Program," Southwestern Social Science Quarterly, XXVII (March, 1947), 311-30.

_____, "Unemployment Insurance in Texas," Southwestern Social Science Quarterly, XXXV (September, 1954), 91-106.

U. S. Department of Labor, Bureau of Employment Security, "Twenty Years of Unemployment Insurance in the U.S.A., 1935-1955," Employment Security Review, XXII (August, 1955), 1-66.

Wagner, Harry M., "A Reappraisal of Experience Rating," Southern Economic Journal (April, 1959), 459-69.

Zacca, Paschal C., "Appraisal of State U. I. Reserve Funds," Unemployment Insurance Review, III (January--February, 1966), 1-5.

Reports

Texas Employment Commission, Annual Report(s), Austin, Texas Employment Commission, 1938-1966.

Texas Manufacturer's Association, Executive Digest, III, No. 18 (May 4, 1967), 1-2.

_____, The Services Rendered Measure the Value of an Organization, Bulletin, 1953.

Texas Research League, Financing Unemployment Compensation Benefits in Texas, Austin, Texas Research League, 1964.

U. S. Department of Labor, Bureau of Labor Statistics, Reports to the President of the Committee on Economic Security, Labor Information Bulletin, Vol. II, No. 1, Washington, Government Printing Office, 1935.

Publications of Learned Organizations

Malisoff, Harry, The Financing of Extended Unemployment Insurance Benefits in the United States, Kalamazoo, W. E. Upjohn Institute for Employment Research, April, 1963.

_____, The Insurance Character of Unemployment Insurance, Kalamazoo, Michigan, W. E. Upjohn Institute for Employment Research, 1961.

Spivey, Clinton, Experience Rating in Unemployment Compensation, Bulletin, Series No. 84, Urbana, University of Illinois, Bureau of Economic and Business Research, 1958.

Public Documents

Council of Economic Advisers, Annual Report, Washington, Government Printing Office, 1966.

The General and Special Laws of the State of Texas, 44th Legislature, 3rd Called Session.

_____, 45th Legislature, Regular Session.

_____, 46th Legislature, Regular Session.

_____, 47th Legislature, Regular Session.

_____, 49th Legislature, Regular Session.

_____, 51st Legislature, Regular Session.

_____, 54th Legislature, Regular Session.

_____, 57th Legislature, 1st Called Session.

_____, 58th Legislature, Regular Session.

_____, 59th Legislature, Regular Session.

Social Security Board, Draft Bills for State Unemployment Compensation Laws of Pooled Fund and Employer Reserve Accounts, Washington, Government Printing Office, January, 1936.

Texas Employment Commission, A Study of Unemployment Insurance Financing, Austin, Texas Employment Commission, 1964.

_____, A Study of Uniform Disqualifications, Austin, Texas Employment Commission, 1964.

_____, Texas Unemployment Compensation Act, Austin, Texas Employment Commission, 1965.

_____, Texas Unemployment Compensation Act, Austin, Texas Employment Commission, 1967.

_____, Unemployment Insurance, Information for Claimants, Austin, Texas Employment Commission, 1967.

Texas Legislature, House of Representatives, House Bill 90, 51st Legislature, Regular Session, 1967.

_____, Senate Journal, 44th Legislature, 3rd Called Session, 1936.

U. S. Department of Labor, Bureau of Employment Security, Adequacy of Benefits Under Unemployment Insurance, Washington, Government Printing Office, 1958.

_____, Bureau of Employment Security, Comparison of State Unemployment Insurance Laws, BES No. U-141, Washington, Government Printing Office, August, 1967.

_____, Bureau of Employment Security, Significant Provisions of State Unemployment Insurance Laws, January 1, 1968, Washington, 1968.

_____, Bureau of Employment Security, Summary Tables for Evaluation of Coverage and Benefit Provisions of State Unemployment Insurance Laws, Washington, The Bureau, 1967.

_____, Bureau of Employment Security, Unemployment Insurance Legislative Policy, Washington, Bureau of Employment Security, 1962.

_____, Bureau of Employment Security, Unemployment Insurance State Laws and Experience, Washington, Government Printing Office, 1965.

_____, Bureau of Employment Security, Unemployment Insurance Statistics, Washington, Bureau of Employment Security, March, 1967, Table 13, p. 7.

U. S. Statutes at Large, XIL, Part I, 639 (1935).

_____, LIII, Part II, 1384 (1939).

_____, LIII, Part II, 1396 (1939).

U. S. Treasury Department, Internal Revenue Service, Employer's Tax Guide, Washington, Government Printing Office, 1969.

Vernon's Annotated Revised Civil Statutes of the State of Texas, XV (1962), 439-496.

Unpublished Materials

Appeals Policy and Precedent Manual, unpublished manual of the Texas Employment Commission, Library of Texas Employment Commission, Austin, Texas.

Burlage, Robb K., "James V. Allred--Texas' Liberal Governor," unpublished research paper, University of Texas, Austin, Texas, 1959.

Texas Employment Commission, Population and Labor Force Estimates for Texas, 1950-1966, unpublished mimeograph, Austin, Texas, 1967.

Texas Manufacturer's Association, How to Reduce Your Tax Costs on Unemployment Insurance, brochure printed by the Association in 1963.

U. S. Department of Labor, Bureau of Employment Security, Significant Provisions of State Unemployment Laws as of January 1, 1968, unpublished circular, Washington, Bureau of Employment Security, 1968.

Newspapers

Dallas Craftsman, October 2, 1936.

_____, October 30, 1936.

_____, January 13, 1939.

_____, March 29, 1963.

Dallas Morning News, October 26, 1936.

_____, January 9, 1941.

_____, April 9, 1957.

Legal References

Carmichael vs Southern Coal and Coke, 57 U.S., 868 (1937).

Steward Machine Company vs Daws, 57 U.S., 883 (1937).

Todd Shipyards vs Texas Employment Commission, 264 S.W. 2d, 709 (1953).