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UNEMPLOYMENT COMPENSATION ELIGIBILITY

Cheryl A. Leanza*

The American work force no longer comports with the picture envisioned by those who created the unemployment compensation system in the 1930s. Although it was never completely accurate, at one time an employer-employee relationship could be described as based upon some unstated, but fundamental, norms. By paying wages, the employer received the services of a worker who was completely supported by his domestic situation. This worker had few inflexible responsibilities besides the ones placed upon him by his employer. The worker's wife cared for his children, took care of his elderly parents, cleaned his home, did his laundry, and took charge of his social schedule. In exchange, the employer paid a wage that was sufficient for the worker to support his family. In a sense, by paying one salary, the employer acquired the services of more than one worker. In addition to obtaining the employee's services, the employer benefitted from the worker's domestic network—the worker's wife and family who kept the worker happy, healthy, and ready to work. The work force does not fit this picture today, and, for many people, it never has.¹

Today, employers do not pay wages that support entire families. Women do not limit their expertise to raising children and making a home for their husbands. Men's attitudes toward their attachment to the workplace are beginning to reflect their domestic responsibilities. Many aspects of the work force, however, have remained the same. For example, our nation's agricultural workers continue to experience high rates of unemployment between harvesting seasons, continue to earn extremely low wages, and continue to be excluded from most of our nation's social welfare programs just as they did in the 1930s.

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1. For a discussion of the unemployment compensation system as reflective of the "male norm," see Deborah Maranville, *Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm*, 43 HASTINGS L.J. 1081 (1992). For a discussion of the "good worker" theory and unemployment compensation, see Mary E. O'Connell, *On the Fringe: Rethinking the Link Between Wages and Benefits*, 67 TUL. L. REV. 1421, 1470-97 (1993).

As part of the New Deal, the Roosevelt administration and Congress created an unemployment insurance (UI) system. Unemployment insurance was designed to help workers who became unemployed through no fault of their own. The creators of the unemployment compensation system recognized that a well-functioning economy would produce some unemployment as inefficient companies closed, but decided that individual families should not suffer because of marketplace adjustments.² In order to reduce incentives to quit an undesirable job and collect unemployment insurance, the architects of the UI system devised some tests which limit coverage. These eligibility requirements have evolved over the years into a morass of competing policy goals, political compromises, and state-by-state variations which seldom result in the consistent treatment of individuals despite the fact that their circumstances are the same.³

The UI system is based on a complex combination of federally mandated requirements, state regulations, and case law. Federal and state laws impose eligibility requirements upon potential beneficiaries. These requirements are typically categorized into two groups: monetary and nonmonetary.⁴ Monetary eligibility requirements generally require that individuals demonstrate a minimum connection to the work force by working a minimum amount of time and earning a minimum amount of money.⁵ Nonmonetary eligibility requirements are designed to ensure that UI recipients: (1) are either involuntarily employed or voluntarily unemployed for good cause and

2. Economic analysts today maintain that a certain level of unemployment is necessary for a well-functioning economy. See Stephen Bingham, *Replace Welfare for Contingent Workers with Unemployment Compensation*, 22 *FORDHAM URB. L.J.* 937, 939-40 (1995) (stating that the Federal Reserve Board considers a stable unemployment rate to be 6%, which supports a hidden unemployment rate of 12%).

3. Elizabeth F. Thompson, Comment, *Unemployment Compensation: Women and Children—The Denials*, 46 *U. MIAMI L. REV.* 751, 758-60, 763-68 (1992); see also Kenneth M. Casebeer, *Unemployment Insurance: American Social Wage, Labor Organization and Legal Ideology*, 35 *B.C. L. REV.* 259, 311-20 (1994) (discussing the competing policy goals and political compromises that underlie the unemployment compensation system); Amy B. Chasanov, Remarks at Unemployment Compensation: Continuity and Change Symposium Presented by the Advisory Council on Unemployment Compensation and the University of Michigan Journal of Law Reform 57-58 (Mar. 30, 1995) [hereinafter Symposium Transcript] (transcript on file with the *University of Michigan Journal of Law Reform*) (discussing variations in unemployment compensation laws among the states).

4. See Amy B. Chasanov, *Clarifying Conditions for Nonmonetary Eligibility in the Unemployment Insurance System*, 29 *U. MICH. J.L. REF.* 89, 90 (1996).

5. *Id.* at 91.

(2) are able to work, available for work, and seeking work.⁶ Penalties for violating these requirements can range from a reduction in benefits to complete disqualification for a particular spell of unemployment.⁷

This Introduction will review the Symposium sessions which dealt with eligibility issues. Many of the statements made by the panel participants and audience members highlighted the contemporary problems of a system established over sixty years ago. Thus, this Introduction seeks to record the main points made during these sessions in an effort to contribute to the debate regarding reform of the unemployment compensation system.

I. STATE ADMINISTRATION OF UNEMPLOYMENT COMPENSATION ELIGIBILITY

The first session of the Symposium focused on the changing nature of the work force and its impact on the UI system. It revealed the extensive changes that have occurred in the workplace: women have moved into the paid labor market in greater numbers, contingent workers have become a sizeable part of the work force, and political pressures have intensified the drive to cut costs wherever possible.

Walter N. Adams of the Georgia Department of Labor provided the Symposium with an overview of the gradual tightening of eligibility and disqualification provisions in Georgia and discussed the impact of these changes on state trust fund reserves.⁸ According to Adams, Georgia legislators funded an increase in the weekly UI benefit amount by tightening the eligibility and disqualification rules in order to reduce the number of beneficiaries.⁹ Adams concluded, however, that additional increases in weekly benefits cannot be funded by further tightening of eligibility requirements. He contended that such action would not yield any more significant savings and would probably result in an increase in administrative costs.¹⁰

6. *Id.*

7. *Id.* at 94–95.

8. Walter N. Adams, Symposium Transcript, *supra* note 3, at 35–48.

9. *Id.* at 34–35, 37–48.

10. *Id.* at 47–48.

A Symposium participant added that the economic models that the Unemployment Insurance Service uses to predict the costs of the UI program began to break down in the 1980s.¹¹ These models could no longer accurately translate the number of unemployed individuals into the number of unemployment compensation recipients.¹² Although experts were never able to explain completely this breakdown, the research of this Symposium participant revealed that the tightening of non-monetary criteria for unemployment insurance could not totally explain the models' inaccuracies because states had made the most drastic eligibility restrictions during the 1970s, prior to the effect noticed in the 1980s.¹³ Experts hypothesized that after eligibility requirements were tightened in the 1970s, individuals learned by experience that fewer people could qualify for benefits and, thus, fewer people bothered to apply for benefits.¹⁴

Tightening eligibility requirements may leave particular social groups out of the UI system. Amy B. Chasanov of the Advisory Council on Unemployment Compensation focused on those groups that are particularly affected by nonmonetary eligibility requirements. She based her presentation on a survey performed by the Interstate Conference of Employment Security Agencies (ICESA).¹⁵ The results of this survey revealed that individuals in similar situations are often subjected to surprisingly incongruous treatment. For example, Chasanov indicated that under most state UI systems, an individual would continue to be eligible for benefits if he refused a job offer outside of his field of expertise or with a salary significantly lower than his previous salary, but he would not be eligible for benefits if he refused a job with hours that would force him to leave his children unattended at home.¹⁶

Chasanov found that nonmonetary requirements particularly affect four groups: women, low-income workers, contingent workers (part-time, temporary, or commission workers), and

11. Joseph Hight, Symposium Transcript, *supra* note 3, at 84.

12. *Id.*

13. *Id.* at 84-85.

14. *See id.* at 85-86.

15. Amy B. Chasanov, Symposium Transcript, *supra* note 3, at 52-65. This survey was designed to clarify and compare the treatment of individuals in a variety of situations under the statutes, regulations, and case law of all 50 states. *Id.* at 52-53.

16. *Id.* at 58.

two-worker families.¹⁷ For example, because women are more likely to be the care givers in a family, they are likely to enter and exit the work force more frequently than men, and thus are more likely to face difficulties in receiving UI benefits.¹⁸ These difficulties are exacerbated because pregnancy, child care, and other domestic responsibilities are unlikely to qualify as “good cause” reasons to leave a job.¹⁹ Chasanov challenged policymakers to determine whether the UI system can be modified to accommodate the groups for whom nonmonetary eligibility requirements pose particular difficulties, or whether other program vehicles must be found to ensure that the modern worker will receive benefits like those provided before the establishment of nonmonetary eligibility requirements.²⁰

James N. Evatz of the J.C. Penney Company responded to Chasanov’s point that women are more likely than men to be denied benefits because of their frequent entry into and exit out of the work force. He countered that perhaps the UI system is correctly screening out these women because they do not have a sufficient attachment to the work force.²¹ Evatz also questioned the ability of the administrative system to track the legitimacy of some of the disqualifying conditions that Chasanov criticized.²² For example, he contended that a state UI office might not be able to verify conditions such as a lack of affordable child care or the inadequacies of the public transportation system. He alleged that the UI system cannot cure many of the problems described by Chasanov, because they are products of changing social dynamics.²³ Moreover,

17. *Id.* at 60–61.

18. *Id.* at 59–60.

19. *Id.* at 62.

20. *Id.* at 64–65.

21. James N. Evatz, Symposium Transcript, *supra* note 3, at 70–71. To support this contention, he cited the conclusion of the Advisory Council on Unemployment Compensation (ACUC) that all states should require beneficiaries to have worked at least 800 hours per year and to have earned at least the minimum wage in order to demonstrate an attachment to the work force. *Id.* at 71. The ACUC projected that such an adjustment would actually increase the number of individuals eligible for UI benefits approximately 5.3%. *Id.* at 71–72; see also ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, UNEMPLOYMENT INSURANCE IN THE UNITED STATES: BENEFITS, FINANCING, COVERAGE 18 (1995) (recommending that each state should set its law so that its base period earnings requirements do not exceed 800 times the state’s minimum hourly wage, and so that its high quarter earnings requirements do not exceed one-quarter of that amount).

22. James N. Evatz, Symposium Transcript, *supra* note 3, at 72–73.

23. *Id.* at 73.

Evatz claimed that employers are already absorbing a number of costs associated with modern social problems. For example, he noted that employers must report new hires to assist authorities in locating individuals with delinquent child support payments.²⁴ He argued that the government should not require employers to absorb any more of these social costs.

II. UNEMPLOYMENT COMPENSATION ELIGIBILITY AND THE 1990S LABOR FORCE

The unemployment compensation system was designed for a white middle-class or blue collar worker who was an "ideal worker," available to work at any time or any place. Yet, the 1994 report of the Advisory Council on Unemployment Compensation (ACUC) stated that "[t]aken together, women, contingent workers, part-time workers, temporary workers, single heads of households, and single individuals now make up the majority of workers."²⁵ The second session of the Symposium focused on the special issues facing women in the work force.²⁶ Such workers do not fit the traditional model and, therefore, are often denied benefits under the current UI system.

Professor Martin H. Malin discussed the availability of UI benefits for workers who have lost their jobs because of conflicting family responsibilities, or who, after losing their jobs for other reasons, refuse offers of employment because of conflicting family responsibilities.²⁷ While such situations existed during the early years of the UI system, the dramatic increase in households with two-wage earners and households headed by a single parent has heightened the significance of this problem.²⁸ Professor Malin found that the states vary in their treatment of work-family conflicts and eligibility.²⁹ Additionally, under the current system, judges appear to evaluate the compelling nature of an employee's family needs in light of their own values.³⁰

24. *Id.* at 73-74.

25. ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, REPORT AND RECOMMENDATIONS 5 (1994).

26. For another treatment of this issue, see Thompson, *supra* note 3.

27. Martin H. Malin, Symposium Transcript, *supra* note 3, at 101.

28. *Id.* at 102.

29. *Id.* at 105-08.

30. *Id.* at 108.

Professor Malin also argued that fault is a problematic concept in the context of work-family conflicts and unemployment insurance. He criticized fault as a basis for UI benefits decision making, pointing out that the concept was inserted into the early law in order to preserve its constitutionality and only later increased in importance in the decisional law.³¹ Professor Malin argued that the purpose of disqualifying an applicant for reasons which are arguably the applicant's "fault" is to counteract the moral hazard common to all insurance schemes.³² Thus, Professor Malin proposed that we develop an unemployment insurance system based explicitly on the risks society believes are worth insuring against, as well as the countervailing moral hazard risks.³³ Professor Malin argued that the current system promotes undesirable behavior. For example, he noted that the legal distinction between quitting and being fired gives employees the wrong incentives. The law may deny an individual benefits if she agrees to leave a job, but may grant her benefits if she continues to perform inadequately and is fired.³⁴ Thus, the current law actually gives employees an incentive to wait and get fired rather than inform the employer that they will no longer be able to fulfill their duties.

Professor Mark R. Brown focused on the specific issue of pregnancy and unemployment compensation. Although many states apparently cover pregnancy in their UI laws, these states still require that beneficiaries be available for work. This means that a woman may only receive benefits after she has given birth and once again begins looking for employment.³⁵ Professor Brown suggested reform of the UI system that would grant unemployment benefits to all pregnant workers, at least as an experimental approach to this problem.³⁶ Based on data from California's disability system which includes pregnancy, he predicted the financial costs would equal only one to five percent of the current cost of unemployment

31. *Id.* at 109.

32. *Id.*

33. *Id.* at 112.

34. *Id.* at 110.

35. See Mark R. Brown, Symposium Transcript, *supra* note 3, at 122–23.

36. *Id.* at 131. A discussant responded that although the likelihood of granting full benefits to pregnant workers was probably very small, she thought that states could take smaller steps. For example, states could exclude time spent away from the work force due to pregnancy when calculating an individual's attachment to the workforce. Deborah A. Maranville, Symposium Transcript, *supra* note 3, at 141.

insurance.³⁷ While Professor Brown conceded that such a system would create undesirable incentives, he asserted that the limited amount of benefits actually received and the limited length of time such benefits would be provided would neither be enough to encourage women to have children in order to receive those benefits nor increase the length of time pregnant women stay away from the labor market.³⁸

Deborah A. Maranville of the University of Washington Civil Law Clinic addressed the significance of temporary and sub-contracted workers in the labor market. First, she expressed her concern that under the current system, employers incorrectly label workers as contractors in order to avoid financial contribution obligations.³⁹ She suggested that the severing of a traditional employer-employee relationship may no longer be the appropriate trigger for unemployment benefits and that a broader concept is needed.⁴⁰ Second, she indicated that the presence of temporary employees in the work force requires a new method of defining availability and involuntary quit requirements. For example, she suggested that the current system is counterproductive because it does not encourage temporary work and that our UI system ought to encourage people to engage in temporary work between periods of full employment.⁴¹ She also suggested that the availability of temporary and subcontracted jobs should affect our expectations of unemployed workers because changing circumstances make it more realistic to expect all workers to consider temporary or part-time work when they are unemployed.⁴²

Gerard Hildebrand of the United States Department of Labor noted that the financing of unemployment benefits could not be separated from the eligibility issues under discussion.⁴³ He noted that the UI system is employer financed and, thus, employers may legitimately question whether it is fair for them to pay for employees' decisions.⁴⁴ He also expanded on the presentation of Walter N. Adams, explaining that because financial resources are limited, increases in the number of

37. Mark R. Brown, Symposium Transcript, *supra* note 3, at 134-35.

38. *Id.* at 131.

39. Deborah A. Maranville, Symposium Transcript, *supra* note 3, at 143.

40. *Id.*

41. *Id.* at 143-44.

42. *Id.* at 144.

43. *See id.* at 151.

44. *See id.* at 150.

beneficiaries will likely result in smaller sums for each beneficiary.⁴⁵ Finally, he challenged Professor Brown's conclusion that states would be able to grant pregnant workers unemployment benefits because his interpretation of the federal "able and available" requirement⁴⁶ suggests that it would have to be repealed before Professor Brown's proposal would be possible.⁴⁷

Members of the audience for Session Two had much to suggest in response to the presentations of the panel participants. For example, one audience member suggested that all workers could contribute a small amount to a fund that would be available when parents leave the regular work force to care for children. This fund could be based on the idea that raising children is also work and that individuals have a right to compensation during that time. Although the speaker indicated that this fund might be collected through a tax on workers rather than through a tax on employers, he reminded the audience that no matter where the tax is placed, it eventually affects all system participants.⁴⁸

Another audience member proposed a system that would provide benefits to individuals regardless of the reason for their separation from the work force, arguing that a substantial savings might result from the reduction in administrative costs currently used to differentiate qualified beneficiaries from unqualified beneficiaries.⁴⁹ Professor Brown responded that although a similar debate was held in the 1930s, political realities today would prevent such a system from being enacted because it would be perceived as welfare.⁵⁰ Professor Malin added, however, that the American distinction between "job losers" and "job leavers" is unusual.⁵¹ Hildebrand agreed that for most claimants, the issue of quitting versus being fired is often a technicality, and that often a claimant's code of ethics might force him to quit even though the unemployment compensation system punishes him for that action.⁵²

45. *Id.* at 150–51.

46. *See* 26 U.S.C. § 3304.

47. *Id.* at 153. *But see* Mark R. Brown, *A Case for Pregnancy-Based Unemployment Insurance*, 29 U. MICH. J.L. REF. 41, 68–69 (1996) (arguing that, if the federal law does require availability, states should still be permitted to provide benefits to pregnant claimants pre-partum).

48. Audience Member, Symposium Transcript, *supra* note 3, at 154–56.

49. Audience Member, Symposium Transcript, *supra* note 3, at 159.

50. Mark R. Brown, Symposium Transcript, *supra* note 3, at 159.

51. Martin H. Malin, Symposium Transcript, *supra* note 3, at 160.

52. *Id.* at 162.

III. ELIGIBILITY ISSUES FACING SPECIAL GROUPS

While Session Two focused on the degree to which the work force has changed since the UI system was designed originally, Session Three presented an example of how little American society has changed since the 1930s. The UI system may have inadvertently disregarded the needs of women who participate in the work force. The Congress that passed the original unemployment compensation legislation, however, did not inadvertently create a system which excludes a disproportionate number of jobs held by people of color.⁵³ Policies based on racism in the past are still largely in place and receive little attention as they rarely serve as the subject of legal articles.⁵⁴

Laurence E. Norton II of Texas Rural Legal Aid and Central Pennsylvania Legal Services began by reminding the audience that, although Congress created the social welfare programs of the 1930s with an idea of shared risks, the decision makers of the day did not include Mexican Americans or African Americans in their vision of workers who should benefit from these programs.⁵⁵ As a result, farm workers are not covered by most of the social welfare programs enacted during that time, such as the minimum wage law, the federal overtime law, and the National Labor Relations Act. Norton explained that employers in the agricultural industry are protected by laws which insulate them from contributions to the UI system and from social security taxes. Further, he noted that farm workers must leap higher hurdles before receiving coverage in the UI system, even though they are more at risk of seasonal unemployment than most workers.⁵⁶

53. Laurence E. Norton II & Marc Linder, *Down and Out in Weslaco, Texas and Washington, D.C.: Race-Based Discrimination Against Farm Workers Under Federal Unemployment Insurance*, 29 U. MICH. J.L. REF. 177, 190-209 (1996); O'Connell, *supra* note 1, at 1448-49.

54. For works that have addressed this issue directly, see JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* (1994); Marc Linder, *Crewleaders and Agricultural Sweatshops: The Lawful and Unlawful Exploitation of Migrant Farmworkers*, 23 CREIGHTON L. REV. 213 (1990); Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1987); Irene Scharf, *Preemption by Fiat: The Department of Labor's Usurpation of Power Over Noncitizen Workers' Rights to Unemployment Benefits*, 56 ALB. L. REV. 561 (1993).

55. Laurence E. Norton II, Symposium Transcript, *supra* note 3, at 169-70.

56. *Id.* at 170-72.

Norton also indicated that many states use a system which allows agricultural employers to use farm labor contractors in order to avoid compliance with the UI laws. Although farm labor contractors are required to adhere to the UI laws, in fact they do not comply. This non-compliance is due to the structure of the federal law. The federal law provides that two requirements must be met before a farm labor contractor is covered by the UI laws. First, the law requires that the contractor be registered. Second, the law requires that the state determine that the grower is not an employer.⁵⁷ States often overlook this second step thus allowing farm labor contractors to escape compliance with the law. Norton indicated that even the ACUC reported these requirements inaccurately, and he expressed his strong concern that this issue be addressed.⁵⁸

Norton projected that covering all farm workers on the same basis as all other workers would cost growers only an additional one percent of their costs.⁵⁹ In addition, he noted that because the costs of covering workers is socialized, growers would benefit because they would be contributing less, relative to the benefits received, than many other categories of employers.⁶⁰ Norton stated that he believes farmers are opposed to equal unemployment compensation coverage for farm workers because they fear that allowing limited unemployment coverage might eventually cause other labor laws to be extended to farm workers.⁶¹

Norton, and his coauthor Professor Marc Linder, researched the history of the creation of the UI system and learned that Congress was fully aware of, and in fact intended, the disparate impact that the agricultural provisions would have on Mexican American and African American workers.⁶² He cited extensive statistics that showed the strong connection between race and farm worker status at that time, and explained that although the statute is phrased in terms of agricultural workers, the provisions were targeted at excluding people of color from the UI system.⁶³ Today, people of color are still

57. 26 U.S.C. § 3306(o)(1) (1994).

58. Laurence E. Norton II, Symposium Transcript, *supra* note 3, at 174–75.

59. *Id.* at 177.

60. *Id.* Because the agriculture industry experiences higher unemployment rates, on average, they would benefit from the funds contributed by industries which experience lower rates.

61. *Id.* at 177–78.

62. *Id.* at 178–84.

63. *Id.* at 178–79.

over-represented in the agricultural work force: African Americans, Latinos, and Mexican Americans comprise twenty percent of the total work force, but they comprise seventy to seventy-five percent of the agricultural work force.⁶⁴

In response to Norton's presentation, Howard Kelly of the Michigan Farm Bureau shared the views of farmers of the state of Michigan. First, he outlined the current policy goals endorsed by the members of the grass-roots Farm Bureau. The Farm Bureau currently advocates increasing the minimum payroll threshold for participation in the UI system from \$20,000 to \$40,000, in opposition to the \$1500 threshold advocated by Norton and Linder.⁶⁵ In addition, Kelly stated that the Farm Bureau does not believe that workers who "knowingly and willingly work in seasonal employment" should receive unemployment compensation benefits.⁶⁶

Kelly indicated that he did not believe that the racism cited by Norton was a problem in Michigan. He asserted that Michigan is a very popular destination for migrant families because of the favorable conditions in the state.⁶⁷ In addition, he mentioned a survey conducted in Michigan which found that migrant families were primarily concerned about housing conditions, Head Start availability, educational programs, favorable employer relations, and legal aid services rather than unemployment benefits.⁶⁸ He advocated competition among farmers in providing workers with benefits as a way to attract the most skilled farm workers. For example, he explained that Michigan state officials have attempted to showcase attractive migrant family housing in order to spur other employers to improve their own housing.⁶⁹

During the discussion, an audience member questioned Kelly on the agricultural industry's position on increasing the minimum payroll threshold because it would exclude more farm workers from UI coverage. He asked why the industry would want to make it almost impossible for workers who were integral to the industry to receive benefits.⁷⁰ Kelly

64. *Id.* at 183.

65. Howard Kelly, Symposium Transcript, *supra* note 3, at 188; see also Norton & Linder, *supra* note 53, at 213-14 (explaining the current requirements for UI coverage of farm workers and proposing a change in the law).

66. Howard Kelly, Symposium Transcript, *supra* note 3, at 187.

67. *Id.* at 189-90.

68. *Id.* at 190-92.

69. *Id.* at 193.

70. Audience Member, Symposium Transcript, *supra* note 3, at 219.

responded that currently the farm industry contributes to the system under the law and that his organization arrived at the \$40,000 figure by indexing the \$20,000 threshold set in the 1970s. Norton responded by arguing that the fundamental question was who should bear the risk of unemployment in this country. He questioned why agricultural workers should be the only workers who must bear the risk of unemployment unsupported by the nationwide system.⁷¹

Another audience member asked Norton to identify a funding source to cover the provision of benefits to farm workers.⁷² Norton conceded that covering farm workers would cause an increase in outlay because farm workers experience higher levels of unemployment.⁷³ He believed, though, that the financing for farm workers should be accomplished just as it is for all workers—through socialized employer contributions. In addition, he noted that some states do cover agricultural workers, and that this disparity allows Michigan agricultural employers to escape costs faced by farmers in other states.⁷⁴

Finally, an audience member asked Norton whether his proposal included a change in the maximum percentage tax rate for employers.⁷⁵ This audience member noted that if a change in the law added the agricultural industry to the UI system, higher contribution rates might be needed from all employers to cover the higher rates of unemployment in the agricultural industry.⁷⁶ Norton indicated that he had not considered the maximum employer contribution rate as a part of his proposal, but that a federally mandated percentage might be a good proposal because it would prevent states from competing against each other by trying to undercut other states' maximum rate.⁷⁷

71. Laurence E. Norton II, Symposium Transcript, *supra* note 3, at 221. For an international perspective on this question, see Clyde W. Summers, *Worker Dislocation: Who Bears the Burden? A Comparative Study of Social Values in Five Countries*, 70 NOTRE DAME L. REV. 1033 (1995). For a discussion of debates over unemployment insurance reform in China and the United States, see Lucy A. Williams & Margaret Y.K. Woo, *The "Worthy" Unemployed: Societal Stratification and Unemployment Insurance Programs in China and the United States*, 33 COLUM. J. TRANSNAT'L L. 457 (1995).

72. Audience Member, Symposium Transcript, *supra* note 3, at 226.

73. Laurence E. Norton II, Symposium Transcript, *supra* note 3, at 227.

74. *Id.*

75. Audience Member, Symposium Transcript, *supra* note 3, at 231.

76. *Id.* at 231–32.

77. Laurence E. Norton II, Symposium Transcript, *supra* note 3, at 231–32.

CONCLUSION

Insightful discussion about unemployment compensation on a systemic level is difficult to find.⁷⁸ The intricacies of a diverse federal system often lead to articles designed to help practitioners benefit their clients under the rules, rather than articles that provide a broad-ranging policy analysis of UI theory and its application. We have not often considered the underlying social values revealed by our collective decisions regarding the unemployed. In comparison with other welfare programs, unemployment compensation is supported by a relatively large percentage of the American public because of the perception that its benefits are “earned” by legitimate participants in society—workers who are unemployed through no fault of their own.⁷⁹ We have shown our willingness to provide extensive financial support for Americans who are suffering short-term income disruption for good reasons. Yet, unemployment compensation does not serve the members of our society who are most in need and, at the same time, we continue to cut back on programs that do assist those who are least able to help themselves and who are most likely to wind up in expensive programs of last resort.⁸⁰ It is possible that our unemployment compensation system guarantees that “America’s public welfare system . . . continue[s] to accept private industry’s judgment of a person’s worth,” by linking benefit entitlements not only to earning a wage, but also to how much a person earns.⁸¹

What is the goal of our unemployment compensation system? How can we implement the goals of the 1930s without fundamentally changing the system when the underlying

78. See Stephen A. Mazurak, *Foreword*, 59 U. DET. J. URB. L. 481, 481 n.3 (1982) (noting that the last two symposia on unemployment compensation were held in 1955 and 1945).

79. See generally O’Connell, *supra* note 1, at 1499–1501 (analyzing the theory that benefits such as UI are earned rights).

80. See generally *id.* at 1505–24 (comparing the reach of, and ideology behind, various social welfare programs).

81. *Id.* at 1525 (quoting BERKOWITZ & MCQUAID, *CREATING THE WELFARE STATE: THE POLITICAL ECONOMY OF TWENTIETH CENTURY REFORM* 103 (1980)); see also Martin Feldstein, *Unemployment Compensation: Adverse Incentives and Distributional Anomalies*, 27 NAT’L TAX J. 231, 237 (1974) (describing how middle and upper class families receive most UI benefits).

factual circumstances have changed? Are the problems faced by women and people of color problems that can be addressed by a system which includes a limited view of a deserving worker? Even if the system is not designed to assist children in the modern era, would it be better to use this system—one that is politically accepted and currently in place—to mitigate some of society's broader inequalities, rather than wait endlessly for the day when our nation's leaders adopt enlightened and well-crafted child-care and migrant worker policies? The following Articles raise these questions and their concomitant difficulties, and they propose solutions that may contain some of the answers. The next challenge will be to move these ideas from the world of academia into the world of work.

