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## Unemployment Compensation in a Time of Increasing WorkFamily Conflicts

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## **UNEMPLOYMENT COMPENSATION IN A TIME OF INCREASING WORK-FAMILY CONFLICTS**

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Martin H. Malin

Supporters in Congress of the Family and Medical Leave Act (FMLA) were fond of declaring that, as a matter of basic policy, American workers should not be forced to choose between caring for their loved ones and their jobs. The FMLA, although important, is not a panacea for workers facing conflicts between employment and family responsibilities. When workers are forced to choose between family and job and, as a result, find themselves unemployed, they may seek unemployment compensation. This Abstract and the Article which will follow consider the degree to which such benefits should be available to these workers.

Examples of how family responsibilities may cost employees their jobs abound. An employer may refuse to allow an employee time off to attend to a family need which falls outside the FMLA's coverage. An employer may change an employee's work schedule or require overtime which conflicts with the employee's care-giving responsibilities. In these cases, the employee may defy the employer's directives and be terminated from employment. If this occurs, the employer may seek to disqualify the employee from receiving benefits because the employee was discharged for misconduct. Alternatively, if the employee resigns rather than complies with the employer's directive, the employer may seek a disqualification because of a voluntary quit that was not for just cause attributable to the employer.

An employee who loses employment and restricts the job search to certain shifts or certain days of the week to avoid conflicts with family obligations may not be sufficiently exposed to the workforce to be available for work. An employee who refuses a particular job because it conflicts with family responsibilities may have refused suitable employment.

The states have taken dramatically different approaches to these issues. Some recognize family responsibilities as a relevant consideration in evaluating employee behavior said to disqualify the employee from benefits. Others do not. Some reach seemingly anomalous results. For example, Florida disqualifies an employee who resigns rather than complies

with employer directives that conflict with family responsibilities. The Florida courts reason that although the employee quits with good cause, the cause is not attributable to the employer. Florida grants benefits, however, to the same employee who refuses to comply with the employer's directive and is fired, reasoning that the family obligations mitigate against a finding of misconduct.

The demographics of the workplace have changed dramatically. The typical family no longer consists of a father employed outside the home and a mother who, because she is not so employed, is available to care for children and other relatives in need. The percentage of women aged twenty-five to fifty-four in the labor force increased from 19% in 1900 to 74% in 1993. As of 1993, 96% of fathers and 65% of mothers worked outside the home. The percentage of families headed by single parents more than doubled from 1970, reaching 27% in 1993. Many workers find themselves not only having to care for their children, but also for their aging parents. It has been estimated that 20% to 25% of all workers have some care-giving responsibilities for an older relative.

The frequent shortage of reasonably priced competent childcare aggravates the tension between a worker's availability to job and availability to family. A recent study by the Population Reference Bureau (PRB) illustrates the situation. The PRB found that among families where both parents work outside the home, the most common arrangement was to have the father care for the children while the mother worked. The percentage of children cared for by their fathers while their mothers worked increased overall from 15% in 1988 to 20% in 1991; among married couples the increase went from 17.9% to 22.9%. This was not the result of fathers dropping out of the workforce. Rather, pressed by the cost and unavailability of childcare, parents work different shifts so that each may care for the children while the other is on the job.

Unemployment compensation in the United States is designed for "job losers" rather than "job leavers." This reflects the conventional economics view that the availability of unemployment compensation increases unemployment. When benefits are provided, unemployed workers increase their reservation wages, reduce their search intensities, and take longer to find work. Thus, for example, it has been suggested

that the higher unemployment rate in Canada may be traced to that country's provision of benefits to job leavers and new entrants.

Disqualifications for discharges for misconduct, quits without just cause attributable to the employer, unavailability for work, and rejections of suitable employment operationalize the restriction of unemployment benefits to job losers. These terms, however, are laden with value judgments and assumptions. Must an employee accept a job whose hours conflict with care-giving responsibilities, or may the employee reject the work as unsuitable? When an employer changes an employee's work schedule thereby forcing the employee to quit, should the cause of the quit be attributed to the employee's personal concerns or to the work schedule change? If the latter, is it not attributable to the employer? Does an employee who defies an employer's directive because compliance conflicts with family responsibilities engage in misconduct? Should we assume that an employee, to receive benefits, must be available to take any job regardless of schedule?

Public and private workplace justice values are evolving to recognize that employees' family obligations may curb employer autonomy in directing the workforce. The FMLA and more generous state family leave laws force employers to accommodate employee family responsibilities in certain instances. Similarly, several states have enacted statutes mandating that employers give parents time off to attend meetings and functions at their children's schools. Public officials, such as the Secretary of Education, have called for employers to provide time for employees to increase their involvement in their children's education. Private arbitrators applying collective bargaining agreements have shown increasing willingness to take conflicting family responsibilities into account as a factor mitigating against discipline and discharge.

Interpretation and application of unemployment benefits disqualifications also should reflect these evolving workplace justice values. Currently, we allow employees to reject as unsuitable work which does not utilize their skills and training. We recognize that this approach probably will prolong the employee's period of unemployment. Nevertheless, we recognize that in the long term it is more efficient to allow workers to wait for a reasonable time for jobs that better utilize their skills. Similarly, allowing workers to reject as

unsuitable jobs which conflict with family responsibilities may prolong their periods of unemployment. In the long run, however, it will be more efficient to allow them to await jobs which accommodate family responsibilities.

In determining availability, we can no longer require that workers be available to accept any schedule, regardless of care-giving responsibilities. The typical worker no longer has a spouse not employed outside the home to do whatever is necessary to free the worker to take any job.

Similarly, we should recognize that when an employer's refusal to grant an employee a reasonable accommodation of family responsibilities forces that employee to quit, the resignation may, by virtue of the refused accommodation, be attributed to the employer. Where a reasonable accommodation is available and refused, an employee's defiance of an employer's directive that conflicts with care-giving responsibilities should not be considered disqualifying misconduct.