

University of Michigan Journal of Law Reform

Volume 28

1995

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Recommended Citation

Gerard Hildebrand, *Federal Law Requirements for the Unemployment Compensation System: Interpretation and Application*, 28 U. MICH. J. L. REFORM 65 (1995).

Available at: <https://repository.law.umich.edu/mjlr/vol28/iss5/17>

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FEDERAL LAW REQUIREMENTS FOR THE UNEMPLOYMENT COMPENSATION SYSTEM: INTERPRETATION AND APPLICATION

Gerard Hildebrand

Since the creation of the federal-state unemployment compensation (UC) system in 1935, the desirability of federal requirements has been a subject of debate. It can only be expected that this debate, along with attempts to add to, delete, or amend the federal requirements, will continue. An understanding of what happens to a federal requirement once it is enacted, and of the United States Department of Labor's (DOL) general approach toward interpreting and applying the requirement, should be a part of any discussion concerning the desirability of federal requirements.

The notion that states generally are free to operate their UC programs without dictation from Washington is the major influence on DOL's application of federal law. This has had varying effects on different types of federal provisions, which I divide into three categories for purposes of this Article: discretionary provisions, minimum requirements, and absolute requirements.

I. DISCRETIONARY PROVISIONS

The main discretionary provision is the requirement in section 303(a)(1) of the Social Security Act that state law contain such "methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due."¹ Over the years, DOL largely has interpreted this requirement to apply only to operationalizing other federal requirements, such as payment through public employment offices, the right to a fair hearing, the requirement that amounts withdrawn from the unemployment fund be limited to cash payments to individuals. The wide scope of this provision would have allowed the Department to create

1. 42 U.S.C. § 503(a)(1) (1988).

many more requirements than were created. In fact, since *Java*,² much of the impetus for interpreting and applying this provision has shifted to the courts.

II. MINIMUM REQUIREMENTS

Many of the provisions in federal law require states to meet only a minimum requirement, which a state is free to go beyond. When a new requirement is placed on the states, DOL generally has appeared to follow two rules of construction. First, since the requirement impinges on areas otherwise left to the states, it is construed as narrowly as possible while reasonably effectuating the requirement's purpose. The second rule of construction, a corollary to the first, requires that any language which may be construed as leaving discretion to the states should be broadly construed, unless there are compelling reasons for a narrow construction.

For example, the "double dip" provision of section 3304(a)(7) of the Federal Unemployment Tax Act (FUTA),³ the alien provision of section 3304(a)(14)(A) of FUTA, and the pension deduction provision of section 3304(a)(15) of FUTA, allow states to be more restrictive but not more liberal than DOL's position. On the other hand, the approved training requirement of section 3304(a)(8) of FUTA has been interpreted in such a way that states must only include the basic requirement in their laws; what constitutes approved training is up to the states.

III. ABSOLUTE REQUIREMENTS

"Absolutes" differ from the "minimum" federal requirements discussed above in that states have no latitude under these requirements. The "absolute" character of these requirements is derived from the federal law itself, which denies DOL authority to apply the rules of construction that it uses for minimum requirements.

2. California Dep't of Human Resources Dev. v. Java, 402 U.S. 121 (1971).
3. FUTA is codified at 26 U.S.C. §§ 3301-3311 (1988 & Supp. V 1993).

Some absolutes are easy to administer for conformity and compliance purposes. An example is the requirement that for certain nonprofit organizations and state and local governmental entities, states pay UC based on services performed on the same terms and conditions as apply to other services covered under state law. The “between and within terms denial” is more difficult to administer, as is the “systematic and sustained” work search effort required for extended benefits (EB). Both incorrectly assume that all states would make the same determination given the same set of facts.

It also is impossible for DOL to provide guidance on every situation or to monitor every determination. DOL has, therefore, created a framework under which states have at least some latitude. In the between and within terms denial, this latitude consists of allowing states to determine whether a reasonable assurance exists in cases where the economic terms and conditions of the employment in the second academic period differ from those in the first. The EB “systematic and sustained” work search effort simply requires states to make determinations under a federal framework, based on the local labor market, which allows the actual application to vary considerably from state to state.

A major problem in administering federal requirements is that there may be situations in which the requirement may be circumvented. This is particularly true with the deposit and withdrawal standards of sections 3304(a)(3) and (4) of FUTA, which impose restrictions on the states concerning the use of the unemployment trusts while in the hands of the beneficiary—the state. Because states interpret their own laws, however, states could claim that they are adhering to standards, while actually circumventing them. For example, states have claimed that certain moneys are not unemployment fund moneys and therefore could be used for non-UC purposes, even when applicable laws make clear that the moneys do belong to the unemployment fund.

IV. CONCLUSIONS—WHAT TYPE OF FEDERAL REQUIREMENTS ARE DESIRABLE?

Federal requirements work most effectively, from the perspective of Federal administration, when they allow states to

simply establish specific criteria in their laws. An example is the “double dip” requirement, under which state law simply establishes the amount of work necessary to establish a second benefit year. This type of requirement is easily verified and, in most cases, after the state enacts the provision, few conformity or compliance issues will arise. Requirements which do not meet this test should be avoided. When Congress wishes to address a specific matter, it should explore whether the federal requirement is better framed as a minimum requirement. For example, the between and within terms denial provisions of federal law could have been framed to require states to create provisions providing for such a denial for individuals expected to return to educational employment, while leaving it to the states to craft the specific provisions. Presumably, educational institutions, their employees, and the public sector would work jointly to develop equitable provisions. DOL’s role would then be similar to the approved training requirement—simply to assure that the state law contained some provision addressing between and within terms situations. This approach might not work for every type of requirement. For example, for the denial of UC to aliens, this solution may not be as viable, since there may not be any public or private sector interest in a state for creating a meaningful provision of state law.

The problem with setting certain federal requirements, as in the case of approved training, is that states could enact provisions of law ostensibly designed to meet the requirements, which in effect are meaningless. Although it may be impossible to frame all standards in a way that prevents states from paying lip service to them, Congress should consider seriously this issue whenever a requirement is created. It is unlikely that any state would approve of any provision that allows DOL to tell the state what its law means (which appears to be the only solution for the deposit and withdrawal standards); however, it is possible to fashion requirements where compliance is easily tested. The “double dip” provision, for example, avoids this lip service. Its requirement is so clear that a state could not argue that its law required work following the beginning of a benefit year unless its law actually did.

Finally, it is obvious that framers of new requirements should be careful to assure that the statutory language effectuates their intent. This is perhaps even more critical for federal UC requirements, given that DOL usually interprets a new provision of law as placing the least burden on the states.