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## Representation of Claimants at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions

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**REPRESENTATION OF CLAIMANTS AT  
UNEMPLOYMENT COMPENSATION  
PROCEEDINGS: IDENTIFYING MODELS  
AND PROPOSED SOLUTIONS**

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We have set out to evaluate the need for claimant representation at unemployment compensation proceedings and identify a range of legal protections and organizational models that have developed across the country to expand access for all claimants, especially those least able to represent themselves. In the process, we have discovered a need for much greater monitoring on the part of the United States Department of Labor (DOL) and further empirical study by the Advisory Council on Unemployment Compensation (ACUC) regarding the impact of: (1) representation and recovery of unemployment benefits; (2) systemic issues underlying an overburdened administrative appeal system; (3) “experience rating” on the behavior of employers in requesting appeals; and (4) the growing industry of third-party employer representatives in promoting employer appeals. This Abstract and the Article which will follow conclude with a detailed description of legal developments and organizational practices that, if promoted nationally, can serve as models to expand claimant access to representation.

Beginning with an analysis of the empirical evidence, there has been no systematic effort on the part of DOL to document the impact of representation on the recovery of unemployment benefits or to evaluate broader developments related either to claimant or employer representation. With the technical assistance of Ohio appeal board officials, statewide data were generated for this Article which produced some revealing preliminary results. Employers in Ohio were represented almost four times as often as claimants in Ohio, and yet when represented, claimants had a thirty-two percent greater chance of recovery whereas the success rate for employers remained at precisely the same level whether or not they were represented. While these data are not without their limitations, they raise significant questions about the favorable impact of claimant representation that merit more detailed exploration

by the ACUC and specific monitoring and evaluation by DOL pursuant to the agency's administrative oversight obligations.

The Article's analysis of the need for representation also takes into account a number of institutional forces at play. For example, caseload demands on hearing officers and appeal review boards are increasing while their resources available to assist individual claimants acting *pro se* are decreasing. For those claimants who already face formidable barriers to the unemployment system, including the limited-English proficient, the poor, and the less educated, this development takes on special significance. As documented by a body of empirical research, the primacy of employment and the significance of job loss, often likened to the mourning process, also create special problems for claimants who must face their former employers alone in unemployment compensation proceedings. Moreover, with the implementation of the new "worker profiling" mandate and additional limits on coverage, unemployment cases for all workers are becoming more complex, not less, thus increasing the demand for experienced advocacy. On the supply side, however, institutional providers of claimant representation, such as labor unions and federally-funded Legal Services programs, have been forced to cut back on services due to funding reductions and other developments that show few, if any, signs of improving.

In addition, the Article focuses on two important employer-side developments that impact on this issue. First, while the research is still inconclusive, evidence documented in the 1995 report of the ACUC suggests that the "experience rating" system may indeed promote employer appeals. Second, and perhaps even more significant, is the existence of an expanding industry of third-party employer representation services—a development that, to date, has evaded public scrutiny. A highly competitive industry of employer groups, such as the Gibbens Company, which represents 15,000 employers nationwide with twenty-six offices around the country, routinely provide representation at unemployment compensation proceedings as part of a package of human resources "cost control" functions. The potential impact of this development, echoed repeatedly in several interviews with claimant and employer advocates, cannot be overstated. The Article examines the limited evidence of trends and practices in the industry and recommends that the ACUC and DOL conduct more detailed assessment of the impact of this development on the unemployment appeal system.

Considering these developments, the Article concludes that the program is at a critical stage requiring an evaluation of model practices that have evolved to improve access to representation. Beginning this process, this Article reports on the results of a survey of legal developments and organizational responses. Starting with a case holding that claimants are not constitutionally entitled to legal counsel in unemployment proceedings, we find that several states now require that claimants be notified of the availability of bar association referrals to obtain representation or, in the event that the claimant cannot afford representation, that services may be available locally at no cost from a Legal Services program. The Article also reports on a nationwide survey of state attorney fee and cost statutes regulating private bar representation in unemployment compensation proceedings.

With respect to organizational models promoting access to claimant representation, the Article reports on the results of a survey of numerous programs that offer services to the unemployed. We found an impressive mix of programs, ranging from community-based organizations that provide intensive peer counselling to federally-funded legal services programs, labor union programs, private bar *pro bono* projects, and student-run volunteer organizations which have varying degrees of capacity to represent claimants. As these organizations continue to provide a multitude of services with less resources in a time of significant need, additional resources for representing the unemployed become increasingly necessary. The challenge lies in creating, supporting and replicating models of representation that are cost-efficient and can serve large numbers of the unemployed while at the same time providing quality services that are responsive to the needs of claimants experiencing the trauma of job loss.