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## **ARE NON-ENGLISH SPEAKING CLAIMANTS SERVED BY UNEMPLOYMENT COMPENSATION PROGRAMS? THE NEED FOR BILINGUAL SERVICES**

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Thousands of otherwise eligible unemployed workers are denied the salary replacement insurance provided by the unemployment compensation programs—simply because of their inability to read, understand, or speak English. Many state unemployment compensation agencies fail to provide materials in languages other than English, to hire bilingual personnel, or even to ensure that translation services are provided at adjudicatory hearings. The result is that many limited and non-English speaking claimants do not receive the compensation to which they are entitled and many others experience delays in receiving benefits not suffered by English speaking claimants.

A substantial number of limited and non-English speaking persons are in the workforce. Approximately twenty-two million potential workers—people aged eighteen to sixty-four—reported to the Bureau of the Census that they speak a language other than English at home. Five million of these persons reported that they do not speak English well or at all. The overall number of limited English proficient persons grew by thirty-seven percent between 1980 and 1990. Spanish speakers account for the largest group of limited English proficient persons in the United States. Nearly 3.5 million (thirty percent) of the 11.5 million persons aged eighteen to sixty-four who say they speak Spanish at home reported limited English proficiency.

No records of unemployment among various linguistic groups exist, but records of ethnic origin do. United States Department of Labor (DOL) statistics indicate that over 1.4 million Hispanics over age twenty lost their jobs between January 1987 and January 1992. Recent Bureau of Labor Statistics data indicates that in 1993 the unemployment rate among Hispanics was 10.6% as compared to 6.8% among all workers nationally. Yet, many Hispanic unemployed workers are not receiving unemployment compensation benefits. A 1991 study, which reviewed 1989 unemployment data, found that unemployed Hispanic workers were less likely to receive unemployment compensation benefits

than their non-Hispanic counterparts. In 1989, fewer than one in five unemployed Hispanic workers received unemployment compensation benefits in an average month. Assuredly, many of these individuals have limited proficiency in English which impacts significantly in their dealings with state unemployment compensation systems.

The Article which will follow discusses the need for bilingual services in the administration of the unemployment compensation program. Part I explains how the unemployment compensation system works and describes how a claimant who is unable to communicate well—or at all—in English is denied full access to the program. Limited English speaking claimants are met by English only application forms and instructions. Those who manage to file an application for benefits notwithstanding these hurdles later may lose important rights because they do not understand notices, written only in English, advising them of agency action and of appeal rights. Those claimants who do file timely appeals then may have to contend with administrative “due process” hearings conducted only in English.

Part II describes how DOL has failed to ensure that state agencies administering unemployment compensation programs provide bilingual services, despite the obligations imposed on DOL by Title VI of the Civil Rights Act of 1964<sup>1</sup> and the federal unemployment compensation laws. DOL has not specifically addressed language issues in its Title VI regulations and insists that “federal reviews assure that the current regulations are followed in the States,” despite evidence to the contrary. Part II also describes how ten states with substantial populations of limited English proficient speakers—California, New York, New Jersey, Massachusetts, Illinois, New Mexico, Arizona, Colorado, Florida, and Texas—have dealt with the issue in the administration of their unemployment compensation programs despite the lack of guidance from DOL.

Part III contrasts how two other federal agencies, the United States Department of Health and Human Services (HHS) and the United States Department of Agriculture (USDA), have tried to ensure limited English proficient persons full participation in the Aid to Families with Dependent Children program and the Food Stamp Program. Like DOL, HHS has no specific regulation defining a state agency’s obligation to provide bilingual services. Unlike DOL, however, HHS has found state

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1. 42 U.S.C. §§ 2000d to d-7 (1988).



agencies to be out of compliance with Title VI when bilingual services are not provided. Unlike DOL and HHS, USDA has published Title VI regulations regarding a state agency's obligations to provide bilingual services in administering the Food Stamp Program.

Part IV of the Article argues that Title VI of the Civil Rights Act of 1964 requires state agencies administering unemployment compensation programs to ensure that limited and non-English speaking persons enjoy equal access to the program. Part IV also reviews the cases challenging failure to provide bilingual services and argues that the due process clause of the Fourteenth Amendment requires non-English language notice and translation at administrative hearings in at least some situations.

Finally, Part V proposes a model program for state employment service agencies administering unemployment compensation programs designed to ensure that all unemployed workers, whatever their language proficiency, receive at least "partial replacement of wages . . . to enable [them] 'to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief.'"<sup>2</sup>

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2. *California Dep't of Human Resources Dev. v. Java*, 402 U.S. 121, 131 (1971) (quoting H.R. REP. NO. 615, 74th Cong., 1st Sess. 7 (1935)).