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Interstate Claims and Unemployment Compensation

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INTERSTATE CLAIMS AND UNEMPLOYMENT COMPENSATION

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From January 1, 1993, through October 31, 1994, federal statistics show that approximately 1.5 million interstate claims for unemployment compensation were filed. In an interstate claim, the unemployed claimant worked in one or more states and then filed a claim for benefits in another state which may be adjoining or very distant. Interstate claims, therefore, present a number of unique logistical and legal problems. For example, which state's law applies in determining the claimant's eligibility? How would a claimant obtain legal representation for a hearing conducted in the state where he was formerly employed? If the hearing is conducted by telephone, how could the claimant subpoena necessary witnesses who reside in another state? When is a claimant entitled to and how does a claimant obtain judicial review?

In a mobile economy, the ability to file claims is important. The United States Department of Labor (DOL) does monitor how quickly interstate claims are processed. Desired levels of achievement have not been established, however, and therefore there is no conclusive standard by which to measure the quality of interstate determinations. The full Article which will follow presents an overview of the legislative history and contents of federal law and regulations governing interstate claims. In particular, the Federal Unemployment Tax Act provides that no one is to be denied unemployment compensation solely for filing an interstate claim. Moreover, if a claimant has worked in several states, wages are to be combined to assure that the claimant is eligible for benefits, and to increase benefits if appropriate. A study of some combined wage claim cases demonstrates that despite the current federal scheme, there are still many issues left unclear, particularly choice of law issues. Additionally, there are no federal regulations on interstate claims where wages are not combined.

To assess how well the system for interstate claims for unemployment compensation is working, one would need empirical research that is currently not available. In particular, target standards must be established before the existing system

can even be properly evaluated. Even though this empirical data does not exist, certain suggestions for improvement can be made.

There are federal regulations for combined wage claimants, but no federal regulations for all interstate claimants. To assist states on choice of law and many other questions, it would be helpful to have uniform regulations for all interstate claims on which state's law should apply. The Unemployment Compensation for Federal Employees and Unemployment Compensation for Ex-Servicemen programs, which address these issues for federal employees and ex-servicemen, provide possible models for clarification as to which state's law should be applied in interstate claims. Moreover, the case law which discusses agent state's and liable state's responsibilities could be codified to clarify the responsibility for each state.

For combined wage claimants, the regulations need clarification as to when the law of the transferring state controls, as compared to the law of the paying state. While DOL has done a good job in setting forth standards, case examples show there is still substantial ambiguity on this subject. In light of these examples, whether the paying state's or the transferring state's law controls should be clarified.

A fair hearing, as defined by section 303(a)(3) of the Social Security Act[1] presumes the right to notice, the right to present evidence, the right to cross-examine, the right to counsel, the right to a decision based on the evidence, and a right to have a complete record made. This means that an unemployed claimant should be notified as to how to obtain free or low-cost legal counsel from the liable state. Telephonic referee hearings also need clear standards which are discussed in another Article[2] in the Symposium. Additionally, a claimant should have the means to subpoena necessary witnesses and documents to the administrative hearing. Finally, to the extent not already allowed, the interstate claimant should have the right to seek judicial review.

More uniform regulations by the DOL or by Congress could help to clarify these concerns. With a more mobile society, it is inevitable that individuals will seek work in more than one state. When a worker loses work and then needs to file for benefits in another state, more problems are presented compared

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1. 42 U.S.C. § 503(a)(3) (1988).
2. Allan A. Toubman et al., *Due Process Implications of Telephone Hearings: The Case for an Individualized Approach to Scheduling Telephone Hearings.*

to the average intrastate claim. With improvements in technology and improvements in federal standards, however, these problems can be minimized. Hopefully, this discussion can serve as a starting point for these issues.