AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

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UNEMPLOYMENT INSURANCE AND AGRICULTURAL EMPLOYMENT

The unemployment insurance system originated as part of the Social Security Act of 1935.1/ The legislation was designed to encourage states to take steps to provide income security to hired workers during periods of unemployment, to bolster the economy generally, and to combat labor shortages precipitated by workers moving permanently from an area during periods of temporary unemployment.2/ The incentive came in the form of a credit against the federal unemployment tax for employers located in an approved state where local law met minimum federal standards.

By June 30, 1937, all states and the District of Columbia had elected to be included in the federal-state scheme.3/ Employment in agriculture was not covered under the original legislation. While a few states moved in later years to provide some measure of coverage, it was not until major changes were made in federal law during the 1970s that substantial numbers of agricultural employees were working in covered employment.

"Covered" in this study refers to "covered employment." When a worker is employed in "covered employment", the employer pays unemployment taxes that fund benefits. However, not all "covered" workers are entitled to benefits if they are suddenly out of work. A claimant may be denied benefits because he has not worked in "covered employment" for a sufficient length of time or has failed to meet other requirements that are prerequisite to eligibility. Further, the reason why the worker is unemployed may disqualify him from receiving benefits. For example, being fired for cause disqualifies a worker.4/ Alien status may also be a basis for denial.5/

Historical Development

General Unemployment Compensation

According to the U.S. Department of Labor, most states were reluctant to create unemployment systems prior to 1935, fearing that the taxes levied on employers would put them at a competitive disadvantage with employers in states with no programs.6/

The unemployment compensation provisions of the Social Security Act of 1935 removed the obstacle of interstate competition and, by virtue of the substantial but less than fully offsetting credit against the federal tax, provided the incentive to the states to set up their own programs. The federal tax applied to employers who had a certain number of employees during each of 20 weeks in the current or preceding calendar year. That number was originally eight, but was changed to four and finally to one. In addition, under current law the payment by the employer of $1,500 in cash remuneration during any calendar quarter of the current or preceding calendar year, results in liability for the federal tax.7/ Certain exemptions apply, even if these tests are met, including the agricultural exemption.

Since January 1, 1978, the federal tax has been 3.4 percent and is assessed against the first $6,000 of wages paid to each employee in covered employment. A credit against the federal tax for taxes paid into the state system or excused under an approved experience rating system is allowed to the extent of 2.7 percent of taxable payroll.8/ The effect is that a tax of 0.7 percent of taxable payroll is paid directly to the federal government.

In all but three states, the local unemployment tax is levied only against employers. In Alabama, Alaska, and New Jersey, a tax is also assessed against the employee.9/ Unemployment taxes are assessed against the first $6,000 of the employee's annual wage, except in 12 states where local laws go beyond the maximum prescribed in the federal legislation and set higher taxable wage limits.10/ Tax rates at the state level vary widely with sharply different maximums and minimums. Experience rating systems,

which also vary from state to state, allow individual employers in a state to be taxed at different rates within the established maximums and minimums depending on the firm's past unemployment record.

When a worker loses his job and files for unemployment benefits, he must demonstrate that he meets state requirements for eligibility. Not all unemployed workers who were employed in covered employment are entitled to benefits. In some states, the worker must wait one week before being eligible, even if all other criteria are met.11/ All states require that a worker must have been employed in insured work during a recent 12-month period called a "base period."12/ No state requires full-time employment for the entire 12-month period, however. During his "base period," the worker must have accumulated a certain number of "credit weeks" or a set amount of "wage credits." Some states require that a certain dollar amount must have been earned; others, a certain number of weeks worked; and a third group, both minimum earnings and a certain distribution of those earnings.13/

Minnesota provides an example of a state in the third group. To qualify for benefits during his "benefit year," the worker must accumulate 15 or more "credit weeks" and at least $750 in "wage credits" within the "base period" of employment in insured work.14/ "Base period" is defined as the 52 calendar weeks immediately preceding the first day of the worker's "benefit year."15/ "Benefit year" is the 52 calendar weeks beginning with the first day of the first week with respect to which the worker files a valid claim for benefits.16/ A "credit week" is any week for which $50 or more of wages have been paid or are due but not paid from one or more employers to the employee for insured work.17/ "Wage credits" are the amount of wages paid and wages due but not paid by or from an employer for insured work.18/

All states pay unemployment benefits by the week. In order to provide an incentive to take a job rather than draw unemployment, the benefits paid are substantially less than the weekly wage paid when the claimant is working.19/ The method used to calculate the weekly benefit varies from state to state, but generally the design is to have a benefit equal to at least half the worker's weekly wage, subject to a statutory maximum.20/

All states limit the number of weeks of benefits the unemployed worker can draw during his benefit year. In most jursidictions, the maximum is 26 weeks, but a few allow more, for example, Iowa, with 39 weeks.21/ Puerto Rico is the single exception to the 26-week rule, with a current maximum of 20 weeks.22/

Not every unemployed worker is entitled to draw unemployment benefits for the maximum number of weeks provided under local law. In many states, the worker may draw for no more than a certain percentage of the number of weeks in the base period during which wages were paid in covered employment, subject, however, to a right to a certain minimum number of weeks of benefits. In Minnesota, for example, the worker will draw for the lesser of 26 weeks or 70 percent of the number of credit weeks earned, computed to the nearest whole week.23/ Thus, a worker who has 30 credit weeks will draw benefits for 21 rather than 26 weeks.

In times of high unemployment, many unemployed persons discover that even 26 weeks is too brief a time in which to find new employment.24/ Therefore, some states have extended their programs during periods when unemployment in the state reaches certain specified levels. Currently, California and Hawaii will add 50 percent of the weeks of original benefits, Connecticut will extend by 13 weeks, and Puerto Rico, in certain industries, occupations, and establishments, by 32 weeks. Minnesota also has an extended benefits program.25/

The recessions of 1958 and 1960-61 induced Congress to enact federal provisions for temporary extension of unemployment benefits. The Temporary Unemployment Compensation Act of 1958 26/ (TUC) was effective until June 30, 1959. The Temporary Extended Unemployment Compensation Act of 1961 27/ (TEUC) was effective until June 30, 1962. The 1958 legislation made federal monies available to states agreeing to pay individuals who had exhausted state benefits additional benefits equal to 50 percent of the total amount to which they had been entitled under state law.28/ Most of these funds had to be repaid by the states to the U.S. Treasury.29/ TEUC has been characterized as the more important of the two pieces of legislation since it involved the federal government in direct financing of benefits for the first time.30/

When Congress enacted the Employment Security Amendments of 1970,31/ it established a permanent program of federal- and state-financed extended benefits during periods of high unemployment. These benefits are provided for up to 13 weeks beyond regular state payments and are available automatically when certain rates of insured unemployment have been reached. The "trigger" requirements have been adjusted several times.32/

Another tier of benefits was added by Congress in 1971 under The Emergency Unemployment Compensation Act of 1971 (EUCA) 33/ This legislation provided a maximum additional 13 weeks of benefits during periods of very high unemployment. EUCA, originally to expire in September 1971, was extended to March 30, 1973. Then, in December of 1974, The Emergency Unemployment Compensation Act of 1974 34/ was enacted, providing further extension of temporary supplemental benefits.35/ Originally 13 weeks of supplemental benefits were provided. The maximum for a worker counting regular state benefits and extended benefits under the 1974 law was not to exceed 52 weeks. The maximum was later raised by expanding the supplemental benefits to 65 weeks.36/

The Emergency Jobs and Unemployment Assistance Act of 1974,37/ through its Special Unemployment Assistance Program (SUA), provided widespread coverage to farmworkers for the first time. This resulted from provisions designed to extend coverage on a temporary basis to individuals who were not eligible for regular state benefits because of an exclusion applying to their particular industry, employer size, or occupation.38/ Agriculture, of course, was one such industry. SUA expired at the end of 1977 with the provision to continue paying benefits in certain cases through June of 1978.

On January 1, 1978, The Unemployment Compensation Amendment of 1976 39/ became effective and certain agricultural employment was covered on a permanent basis for the first time at the federal level.

Farmworker Coverage

Agricultural employment was excluded from "covered employment" under the 1935 Act and it was not until recent years that the policy of total exclusion was reversed. Several reasons have been advanced through the years to justify the exclusion. Agriculture, it was argued, would be a deficit industry where more money would be paid out annually in benefits than collected in taxes. This, it was suggested, would threaten the solvency of the entire compensation system. Further, the nature of much of agricultural employment was assumed to be seasonal and thus it could create insurmountable administrative problems. It was also argued that most farms are small with few hired workers and that farm employers had little if any experience in scientific management and recordkeeping. It was concluded that extension of the program to agriculture would not be feasible. Another point that has often been made is that agriculture cannot absorb the added costs of social programs, in this case the unemployment tax.40/ Finally, concern has been expressed that there would be a great danger of producing perverse work incentives for short-term agricultural employees.41/

Technically, the exclusion was inserted into the federal law and in many state laws by providing that agricultural employment is not "employment" for purposes of the statutes. The definition of agricultural employment in the federal statute was so extensive that it left unprotected certain off-farm agricultural workers and substantial numbers of processing workers in addition to the on-farm production workers. In 1970, "agricultural labor" was redefined at the federal level to have the same meaning as the term "agricultural labor" in the Social Security Act 42/ with one modification. The result of the redefinition was the extension of coverage to employees performing off-farm services in the production or harvesting of maple syrup, maple sugar, mushrooms, and hatching of poultry.43/ The extension also brought coverage to employees of processor farmers who produced not more than one-half of the subject commodity on the farm where the workers were employed.44/ Except for these changes, the federal scheme continued to exclude the bulk of on-farm production workers.

Few states moved on their own to extend coverage. Seaver and Holt reported that, as of 1974, only Hawaii, Puerto Rico, the District of Columbia, and Minnesota had extended coverage to at least some of the hired agricultural workers excluded under the federal scheme.45/

However, groundwork for changing the law was being laid. An 18-state regional research project was mounted primarily as a result of a congressional mandate in the Employment Security Amendments of 1970.46/ The project, known as NE-58, produced a study entitled "Economic and Social Considerations in Extending Unemployment Insurance to Agricultural Workers" which was submitted to the U.S. Department of Labor (DOL) on September 30, 1973. It recommended that coverage be extended to agricultural employment where the employer had four or more hired workers in each of 20 or more weeks in the current or preceding calendar year or where the employer had a cash payroll of $5,000 in any calendar quarter of the current or preceding calendar year. The report noted that this recommendation was to be contrasted with the federal standard for most nonagricultural employment which extends coverage where the employer has one or more hired workers for 20 or more weeks in the current or preceding calendar year or a $1,500 cash payroll in any calendar quarter of the current or preceding calendar year.47/

The NE-58 study provided considerable data.48/ Coverage as proposed and based on 1969 data, would affect only about 21 percent of agricultural employers while reaching 69 percent of the hired farm work

force.49/ Some variations would exist if individual states were examined. For example, 51 percent of Florida's agricultural employers would be affected and 95 percent of that state's hired farm work force.50/ There would also be sharp variations depending on the type of farm operation involved with coverage extending to very few field crop and general farms, 11 percent of the dairy farms, but more than 50 percent of the fruit, vegetable, and miscellaneous farms.51/ The important thing, of course, was that smaller operations, in terms of numbers of employees, would not be covered and this arguably would be important to those concerned with administrative difficulties and absorption of increased costs.

NE-58 and other studies suggest that arguments about the inability of farmers to absorb the extra cost of production and to handle administrative details were no longer valid given the data collected, the experience with Social Security, and other indicators.52/ It was suggested that not all of the costs of the unemployment system would actually increase the costs of production for certain farmers. For example, it was argued that the existence of this added fringe benefit might increase the willingness of workers to seek agricultural employment and also reduce job turnover, thus reducing attendant hidden labor costs of lost production, recruitment and training of replacements.53/

NE-58 also indicated that extending unemployment insurance to eligible farmworkers who become involuntarily unemployed would have little, if any, adverse impact on overall unemployment insurance cost rates in the 18 states studied.54/ It was noted that in California and Florida the inclusion would probably increase the overall benefit cost rates to a small degree. California, however, has provided agricultural coverage under its own law.55/ It was concluded that there might be some use of benefits as "rocking chair money" by seasonal workers who could work just long enough to qualify for benefits.56/ It was argued, however, that this might be a gain to the employer as well as to the employee since farmers would not be as likely to keep workers on during slack periods, thus incurring an expense simply to insure availability of a labor force during peak periods.57/

Congress, however, made no immediate move to change the exclusion in the federal statute, but the way was paved for the interesting and important SUA experiment. As has already been pointed out, in 1974 when the country was in the throes of a deteriorating economic situation, Congress enacted the Emergency Jobs and Unemployment Assistance Act of 1974.58/ This statute provided a temporary federal program of Special Unemployment Assistance (SUA) for workers who were ineligible for ordinary benefits for various reasons, including the existence of exclusions. New coverage, equivalent to that under state unemployment laws, became available for up to 12 million workers.59/ Individuals became entitled to benefits in the amount and for the length of time that would have applied had their employment been "covered employment" under state law. Significantly, 700,000 employees of large farms became potential beneficiaries as did many employees of small farms.60/ No specific statistics on small farms have been located but it was reported that there were about 1.4 million workers in small firms, small farms, nonprofit corporations, and other establishments that were potential beneficiaries.61/ Thus, with the exception of the few existing state laws, coverage was extended for the first time to the hired farm working force. Some advertising of the law was required, but once farmworkers learned about it, they behaved like most other American workers and benefits were paid.62/ SUA expired on December 31, 1977, although some benefits were paid for a time in 1978.

The impact of the SUA experience was the subject of a study prepared by Mathematica Policy Research, Inc., released January 1, 1977.63/ The study described the SUA program and noted that in all states the period over which the individual's prior work history was measured, the "base period," was the 52-week period immediately preceding the date of the SUA claim.64/ A farmworker, for SUA purposes, was thus considered to be in covered employment and if laid off it was simply a matter of checking work history against the state requirements to see if benefits could be paid. The remarkable thing about SUA is that the same standard for covered employment was applied in agriculture as in most other industries. If the farm employer had one or more hired workers in each of 20 weeks during the current or preceding calendar year or if he had a payroll of $1,500 in any calendar quarter of the current or preceding calendar year, his employees were potential beneficiaries. For all practical purposes, this comes as close to total elimination of noncovered employment as could ever be expected, even under the most radical of programs.

SUA was a federally funded program and there were no employer taxes involved in funding it. The benefits were originally designed to run for 26 weeks, but the act was later amended to allow 39 weeks of benefits.65/ During 1975, just over 1 million people received at least one payment under SUA and the total SUA payments in that year amounted to almost $700 million.66/ Of those receiving SUA benefits, 7 percent were farmworkers.67/ This represented about 1 percent of all job losers in covered employment, SUA included.68/ The Mathematica study did not indicate the dollar amount of benefits to agricultural workers or profiles of those receiving benefits.

The major conclusion reached by Mathematica had to do with the disincentive effect, if any, of SUA. It was reported that the mean value or "net" replacement ratio to SUA recipients other than school employees was 76 percent. In other words, the 50-percent-standard-wage replacement translated into a more significant figure when adjustments were made for savings in taxes, work-related expenses, and certain other items. Thus, the gross wage-replacement ratios did tend, according to the study, to understate that actual value of unemployment compensation relative to prior earnings.69/ The question then becomes whether this produced a substantial labor force disincentive. Will workers prefer unemployment compensation to staying in the labor force? For certain workers, the study suggested that the answer might be yes. However, for most, including farmworkers, the "net" wage replacement rate showed little disincentive effect.70/

The SUA experiment, therefore, taught us that unemployment compensation benefits can be paid to agricultural workers without generating hordes of applicants even in relatively difficult times and that one of the concerns about the extension of benefits to agriculture, the possibility of substantial labor force disincentive, is not a legitimate fear.

Current State of the Law

The termination of SUA did not mean the end of federal farmworker coverage. The Unemployment Compensation Amendments of 1976 71/ brought about a permanent extension of the system to certain agricultural workers effective January 1, 1978. However, as will be demonstrated by a review of the current law, the number of agricultural workers who are now potential beneficiaries is less than one-third the number who had that status in 1975 under SUA.72/

Effective January 1, 1978, covered employment at the federal level included work in agriculture where the employer had 10 or more hired workers during 20 weeks during the current or preceding calendar year or had a cash payroll for farm labor of $20,000 or more in any calendar quarter of the current or preceding calendar year.73/ Under this scheme, it is estimated that 459,600 farm employees will be potential beneficiaries and 17,400 farm employers will be affected and subject to paying unemployment taxes.74/ This, it is reported, represents about 40 percent of hired farmworkers and about 2 percent of all farm operators.75/ Obviously, the Congress did not adopt the recommendations of NE-58 which had called for covered employment to include agricultural employment where the employer had a cash payroll of $5,000 or more in any calendar quarter of the current or preceding calendar year or used four or more hired agricultural workers in each of 20 or more weeks in the current or preceding calendar year. However, when the present law was being considered in Congress, the original House bill 76/ had called for a four-or-more-employees-in-20-weeks test or a cash payroll test of $10,000. Given the impact of inflation since the NE-58 study, the raising of the $5,000 to $10,000 probably did not represent a substantial departure from the original study recommendation. However, during the hearings on the house bill, agricultural employer interests pushed hard for a total rejection of the permanent extension of coverage and, in the alternative, argued that if Congress was determined to act, that the test be changed to a 10-or-more-in-20-weeks or a cash-payroll-of-$20,000 test.77/

Typical of the arguments presented were those of the American Farm Bureau Federation: (1) the cost to farmer, which could range up to 5 percent of payroll, would have to be passed along to consumers given the limited profit margin in agricultural production; (2) the impact of SUA on agricultural employment has not been sufficiently documented to allow anyone to know the probable effects on costs, migrancy, and other matters; (3) in states where large numbers of agricultural workers are employed on a seasonal basis, there is likely to be more going out in benefits than coming in in taxes; (4) there would be an adverse impact on closely held farming corporations, nearly all of which have four or more employees, because taxes would have to be paid though it would be remote that anyone would ever collect benefits; (5) the presence of many seasonal workers would make it extremely difficult for farmers to keep accurate records; (6) many seasonal workers would not have benefits because of insufficient wage credits, thus it is better to handle their situation with an extension of SUA; (7) farmers are already overburdened with regulations, reports, and "bureaucratic excess;" (8) fruit and vegetable operations would be affected far more extensively than other types of operations; and (9) a limited extension of coverage would mean that the law would affect only larger operations that are in a better position to cope with the legal and accounting problems that would be created.78/ It is apparent that these arguments were given weight, given the provisions of the current law.

Laws have been updated in 46 states to bring them into compliance with the new federal legislation.79/ In addition, California, Hawaii, Minnesota, Rhode Island, the District of Columbia, Puerto Rico, and the Virgin Islands have provisions that are more liberal than required by federal law.

California mandates that agricultural employment is covered employment when the employing unit has one or more employees in any calendar quarter of the current or preceding calendar year and a payroll of more than $100 for such service in any calendar quarter.80/ In the District of Columbia, there is no noncovered employment, the hiring of one agricultural worker gives rise to covered employment.81/ In Hawaii, exempt employment still exists, but it is limited to situations where the agricultural employer paid less than $20,000 in cash remuneration in each of the calendar quarters of the current and preceding calendar years, and where either no more than 19 weeks exists in each such calendar year where agricultural employees were used, or no more than nine agricultural workers were used in any one calendar week in each such calendar year.82/ An employer election is permitted in Hawaii which results in the application of a special agricultural unemployment statute.83/ Minnesota has an exemption scheme much like that in current federal law except that instead of covered employment starting when 10 or more workers are used in each of any 20 weeks, covered employment starts when four or more agricultural employees are used for some portions of a day in each of 20 different weeks during the current or preceding calendar year.84/ The alternate test of cash wages of $20,000 or more in any quarter of the current or preceding calendar year is also present in Minnesota law.85/ After January 1, 1974 and prior to January 1, 1978, Minnesota had simply used the four-or-more-in-20-different-weeks test without the cash wage alternate test.86/ Puerto Rico defines covered employment as existing when any employing unit, including an agricultural unit, has employees.87/ Rhode Island treats employment of one or more on any day within the calendar year as covered employment.88/ The same test applies in the Virgin Islands.89/

Thus, agricultural employers who now run covered operations must pay unemployment taxes up to the established ceiling on each employee's wages. When the new law went into effect in most states, workers did not have enough wage credits accumulated to qualify for benefits until the last quarter of 1978.90/ A transition provision in the federal statute provided that if a state agreed to pay benefits to newly covered workers as of January 1, 1978, benefits paid through June 30, 1978, based on wage credits earned prior to that date, would be reimbursed out of general federal revenues.91/ States could also be reimbursed after June 30, 1978 in cases where they paid benefits based on newly covered wages earned prior to January 1, 1978.92/

Evaluation

The recent extension of permanent coverage to at least a part of the agricultural employment sector was a desirable thing. No adverse side effects of any consequence are likely to result and the cause of more equitable treatment of the hired farm labor force has been substantially advanced.

Some of the concerns that prevented an even broader extension of coverage as of January 1, 1978 are presented here. (1) Are there valid reasons to delay adoption of a more inclusive test for coverage of employment in agriculture? The American Enterprise Institute estimates that the four-or-more-employees-in-20-weeks or a $10,000-payroll test, the original house version, would have made about 700,000 farmworkers potential beneficiaries as opposed to an estimated 459,600 under the current law.93/ Some 6 to 7 percent of farm operators would have been affected as opposed to about 2 percent under current law.94/ The original proposal in NE-58, four or more employees in 20 weeks or a $5,000 payroll in a quarter, was designed to reach about 69 percent of the farm work force and about 21 percent of agricultural employers.95/ Putting agricultural employment on a par with other industries using the one-or-more-employees-in-20-weeks or a $1,500-payroll-in-a-quarter test, as was the case under SUA, was estimated to reach 89 percent of the employers and 96 percent of the agricultural wage items.96/ These statistics may not be as meaningful as they were a few years ago, given the number of workers currently in the hired agricultural labor force and the impact of inflation, but they do indicate that any one of these alternatives, including the four-or-more-employees-in-20-weeks or a $10,000-payroll-in-a-quarter test, would clearly move a bit closer to general coverage of agricultural employment. The question remains, why not move to a more inclusive test, particularly the NE-58 test or the test in the original house bill in the 94th Congress, both of which might be politically viable?

(2) Are there unmanageable administrative problems ahead if either of these extensions become law? This seems unlikely. The vast percentage of farm operators would still enjoy an exclusion and this should avoid the worst of the suggested administrative difficulties.97/ Further, success with other programs, such as Social Security and California's extensive disability insurance program begun in 1961 for establishments with one or more hired farmworkers, suggests that fears of administrative nightmares may be unfounded.98/ Admittedly, the problem of the myriad number of programs now impacting agriculture with their vastly differing threshold requirements does create a complex situation for farm employers and employees. However, short of ridding the law of most of these thresholds entirely, something that eventually ought to be considered, there will be no particular improvement of the

situation. However, little harm will be done in this context by moving this particular threshold to create less of an exemption.

(3) Will the further extension of coverage in agriculture generate solvency problems for the entire unemployment system? Studies indicate that this is not likely and that the effect, if any, will be quite minor even in states where agricultural unemployment is highest.99/ Although the average benefit cost rate for agriculture may be higher than in some other industries, it has been suggested that it will not be as high as the cost rate for the construction industry which has been covered for years.100/ This being the case, the justification for keeping the present level of noncovered employment for agricultural employment can hardly be based on the deficit industry argument.

(4) Will agricultural employers be able to pass on the cost of the program? One study has concluded that these costs will inevitably be passed through as has been the case with the costs of other social programs including Social Security. While some marginal operators may find the economic impact of unemployment taxes to be the "last straw," a decision affecting hundreds of thousands of workers should not be made on the basis of an adverse impact on a small number of employers. Most social legislation would have been defeated if this concern had been viewed as controlling.101/ Further, the costs may not be all that great since many agricultural employers are likely to have low experience ratings and will not be paying maximum taxes.102/ Finally, not all the cost impacts of covering agricultural employment will necessarily be cost increasing.103/

(5) Do the seasonal and migratory aspects of agricultural employment pose problems that command no further extension of coverage at this time? This does not appear to be the case. For seasonal workers, a tax may be assessed on a covered employer based on their cash wages even though many of these workers may never earn sufficient wage credits to qualify for benefits. Thus, these taxes are paid in vain. There are several responses to this concern. First, since these workers will not qualify for benefits under regular unemployment programs, their periods of unemployment will not have an adverse effect on the employers' experience rating. These taxes, however, contribute to the overall solvency of the system. The fact is, this situation exists under current law, but provides no impetus for repeal of what now is on the books. Further, to eliminate the tax on seasonal employment where the employer is otherwise required to remit calls is, in effect, an introduction to the law of a complex definition of "seasonal employment." Litigation will result. For a time Minnesota had a provision requiring a special computation for determining "wage credits" for "seasonal employment," but seeing the futility of such a provision, it was repealed in 1975.104/ The better view is to stay away from such a classification since the difficulties of its administration far outweigh any inequities resulting from its absence. As for migrant workers, it must first be realized that a relatively small portion, perhaps 7 percent, of the hired farm labor force falls into this category.105/ Given this reality, plus the fact that states are involved in interstate arrangements for combining employment and wages, the situation can be managed. States are required by federal law as a condition of approval of the tax credit to participate in agreements whereby an unemployed worker with covered employment and wages in more than one state is allowed to combine all such employment and wages to qualify for benefits or to receive higher benefits in one state.106/ The problems of multiple employers and recordkeeping and reporting are alleviated considerably under current law by the provision which treats a crew leader as the employer for FUTA purposes where he is registered under the Farm Labor Contractor Registration Act of 1963 or is providing certain specialized types of agricultural labor.107/

(6) Will further extension of coverage increase the cost of goods to consumers? This concern should be rejected as a justification for refusal to opt for broader coverage. Such a cost is already reflected in most goods and services since at least 85 percent of the nation's workforce is currently covered by unemployment compensation laws.108/ Why agricultural employees should be discriminated against because of a potential passing on of cost of coverage to consumers is difficult to justify.

(7) Will some categories of farm employment be affected much more than others by a further extension of the act? The most appropriate response is that in all probability this impact has already been felt as a result of the change in the law effective January 1, 1978. This argument may have been pertinent when the question before the Congress was whether to move to a partial exemption or keep the total exemption. Once the decision was made to cover part of the agricultural work force the decision was also made to accept differing impacts, if any.109/

(8) Will unemployment compensation benefits appear to many workers to be more attractive than employment at the typically low wage levels offered in agriculture? SUA experience indicates that this is not the case.110/ Further, there appears to be little danger that the flow of migrant labor will be diminished, leaving farmers without crews to cultivate and harvest crops. It has been demonstrated that choosing unemployment benefits would be a choice to lessen an already low level of income and it is not probable that many migrants would make such an election.111/

(9) Will the problems of the family farm corporation be exacerbated by a further extension? This question is important since present law does not deal very well with the increasing use of the corporate form by the traditional family farm. Under federal law, services of family members in an unincorporated farm business are not "employment" under FUTA. State laws correspond.112/ Even where a partnership is used, the exception will apply if the requisite family relationship exists between the employee and each of the partners comprising the partnership.113/ There is, however, no exemption for family members employed by a family farm corporation. If such an exemption is desired to maintain consistency in the law in treatment of family businesses, it would be possible to create a definition of family farm corporation and to create an exemption as under the former version of the Minnesota unemployment compensation law. That provision was insufficient, however, as it applied only to the officers of the family farm corporation who might be employed by it.114/ In the case of a large family, it was probably necessary to create a number of vice presidencies to have all exempt. Still, the basic idea has merit and should be considered in connection with legislation designed so the existing exemption.

While the experience after January 1, 1978 must be studied very carefully with these questions in mind, it appears to be the prediction of available studies that the conclusions stated herein will be borne out by newly generated statistics.

Recommendations

After there has been a reasonable chance to evaluate the experience under current federal law and the corresponding provisions in most of the states, a careful review of the current exemption should be undertaken with a view to limiting its scope. Valuable lessons should also be available from the California and Minnesota experiences where more limited exemptions are already in effect.

In this connection, a commission was established in The Unemployment Compensation Amendments of 1976 and assigned the task, among other things, of identifying the purposes, objectives, and future directions for unemployment compensation programs.115/ It was hoped that the commission would provide sufficient data on the agricultural employment sector to allow the review called for above. If the assumptions made in the Evaluation portion of this study are borne out, it would seem appropriate to encourage reduction of the scope of the federal exemption either to the level recommended in NE-58, the level in the original house bill in the 94th Congress, or the level of present Minnesota law. However, no data or recommendations on agriculture appear, even in the Second Report of the National Commission on Unemployment Compensation.116/

It is noted in one study that large numbers of eligible workers have traditionally not filed for unemployment benefits to which they were entitled. It is also suggested that because most farmworkers do not have labor unions to carry the responsibility of educating members regarding unemployment insurance rights, the Agricultural Extension Service should consider mounting a major educational program.117/ This suggestion deserves serious consideration.

Notes to Chapter 6

1. U.S. Department of Labor, Growth of Labor Law in the U.S. (1967) at 276; Wisconsin enacted the first state unemployment insurance system in 1932.

2. Elterich and Bieker, "Cost Rates of Extending Unemployment Insurance to Agricultural Employment," 57 Am. J. Agr. Econ. 322 (1975)

3. Growth, supra note 1 at 276.

4. Growth, supra note 1 at 280.

5. 26 U.S.C. §3306(c)(1)(b) (1976).

6. Growth, supra note 1 at 276.

7. 26 U.S.C. §3306a(1) (1976).

8. Staff Document 78-154, Senate Finance Comm. & House Ways and Means Comm., Description of H. R. 10210 (94th Cong. 2d Sess.) §I(B), reprinted at C.C.H. Unemp. Ins. Rep. ¶21489.

9. C.C.H. Unemp. Ins. Rep. ¶3000.

10. Ib.

11. Id. at ¶3001.

12. Growth, supra note 1 at 280.

13. Ib.

14. Minn. Stat. §268.07 subd. 2.

15. Minn. Stat. §268.04 subd. 2.

16. Minn. Stat. §268.04 subd. 4.

17. Minn. Stat. §268.04 subd. 29.

18. Minn. Stat. §268.04 subd. 26.

19. Growth, supra note 1 at 281.

20. Ib.

21. C.C.H. Unemp. Ins. Rep. ¶3001.

22. Ib.

23. Id. at ¶3034.

24. Growth, supra note 1 at 282.

25. C.C.H. Unemp. Ins. Rep. ¶3001, fn. 7; ¶3034.

26. Growth, supra note 1 at 282.

27. Ib.

28. Ib.

29. Ib.

30. "A Study of Recipients of Federal Supplemental Benefits and Special Unemployment Assistance" Mathematica Policy Research, at 5.

31. P.L. 91-373, 84 Stat. 813.

32. Mathematica, supra note 30 at 5.

33. P.L. 92-224, 85 Stat. 920.

34. P.L. 93-572, 88 Stat. 2145; phased out Oct. 31, 1977 to Jan. 31, 1978 According to C.C.H. Unemp. Ins. Rep. ¶20,695, and note following 26 U.S.C.S. §3304.

35. Mathematica, supra note 30 at 5.

36. Id. at 8-9.

37. P.L. 93-567, 88 Stat. 2117.

38. Mathematica, supra note 30 at 9.

39. P.L. 94-566, 90 Stat. 2667, codified at 26 U.S.C. 3306 (o).

40. Staff Document, supra note 8 at 121.

41. Mathematica, supra note 30 at 6.

42. 26 U.S.C. § 3306(c)(1) (1976).

43. Compare 26 U.S.C. § 3121(g) (1976), with Int. Rev. Code of 1954, ch. 23, § 3306(k)(3), 68A Stat. 453.

44. Compare 26 U.S.C. § 3121(g)(4)(A) (1976), with Int. Rev. Code of 1954, ch. 23, § 3306 (1)(4), 68A Stat. 453.

45. Seaver and Holt, "Economic Implications of Unemployment Insurance for Agriculture," 56 Am. J. Ag. Econ. 1084 (1974).

46. Data base of study was 1969-70.

47. Seaver and Holt, supra note 45 at 1084.

48. See generally Seaver and Holt, supra note 45.

49. Id. at 1085.

50. Ib.

51. Id. at 1086.

52. Staff Document, supra note 8 at 122; Griffin, Walker, Weitzman and Youtie, A Social and Economic Analysis of the Exclusion of Farm Workers From Coverage Under The Indiana Workmen's Compensation Act of 1929 (1977) at 22-33.

53. Seaver and Holt, supra note 45 at 1089.

54. Staff Document, supra note 8 at 121; Hearings on Unemployment Compensation Amendments of 1976 before Senate Committee on Finance (94th Cong. 2d Sess. at 17).

55. Ib.

56. Seaver and Holt, supra note 45 at 1090.

57. Ib.

58. P.L. 93-567, 88 Stat. 2117.

59. 5 U.S. Dept. H.E.W. Research and Statistics (1975) Note 3.

60. Mathematica, supra note 30 at 50.

61. Ib.

62. Phone conference, Unemployment Insurance Service, U.S. Department of Labor, June 23, 1976.

63. Note 30, supra.

64. Mathematica, supra note 30 at 9.

65. Id. at 10.

66. Id. at 25.

67. Id. at 53.

68. Id. at 66.

69. Id. at 150, 165.

70. Id. at vii.

71. P.L. 94-566, 90 Stat. 2667, codified at 26 U.S.C. 3306(o).

72. Mathematica, supra note 30 at 22.

73. O'Byrne, Farm Income Tax Manual, 5th Ed., 1979 Supp. §1000.

74. Staff Document, supra note 8 at §I(A).

75. Ib.

76. H.R. 10210 (94th Cong., 2d Sess.).

77. Hearings, supra note 54.

78. Id. at 124-125.

79. C.C.H. Unemp. Ins. Rep. ¶3011 - ¶3062.

80. C.C.H. Unemp. Ins. Rep. ¶3015; West's Ann. Un. Ins. Code §611, §612, §613, §614, §676.

81. Id. at ¶3019; D.C. Code §46-301 et.seq.

82. Hawaii Rev. Stat. §383-7(1); see Hawaii Rev. Stat. §383-9 for definition of "agricultural."

83. Hawaii Rev. Stat. §383-78; Hawaii Rev. Stat. §384-1 et. seq.

84. Minn. Stat. §268.04 subd. 12(13), as amended 1980 Minn. Sess. Laws 508 §1.

85. Minn. Stat. §268.04 subd. 12(13), as amended 1980 Minn. Sess. Laws 508 §1.

86. Minn. Stat. §268.04 subd. 12(15)(a).

87. C.C.H. Unemp. Ins. Rep. ¶3050; Laws of Puerto Rico T29 §702(k)(1)(E).

88. Id. at §3051; Gen. Laws of R.I. §28-42-3(5)(b), (7), (26), (27).

89. Id. at §3057A; Virgin Islands Code T.24 §302(K)(1)(I).

90. Staff Document, supra note 8 at §I(A).

91. Ib.

92. Ib.

93. "Unemployment Compensation Amendments" A.E.I. Legislative Analyses (1976) at 11.

94. Hearings, supra note 54 at 124; Staff Document, supra note 8 at §I(A).

95. Seaver and Holt, supra note 45 at 1085.

96. Id. at 1086.

97. A.E.I., supra note 93 at 18.

98. Ib.

99. Id. at 20.

100. Ib.

101. Griffin, Walker, Weitzman, and Youtie, supra note 52.

102. Seaver and Holt, supra note 45 at 1089.

103. Note 53, supra and accompanying text.

104. Minn. Stat. §268.07 subd. (5)(1) (1974), repealed by Act of June 4, 1975, ch. 336, §25, (1975) Minn. Sess. Laws 984.

105. Hearings, supra note 54 at 30.

106. C.C.H. Unemp. Ins. Rep. §2050.

107. C.C.H. Unemp. Ins. Rep. ¶23069(o).

108. A.E.I., supra note 93 at 11.

109. Notes 49, 50 and 51, supra and accompanying text.

110. Mathematica, supra note 30.

111. A.E.I., supra note 93 at 21.

112. C.C.H. Unemp. Ins. Rep. §20175.

113. Ib.

114. Minn. Stat. §268.04 subd. 12(15)(a)(5), as amended 1980 Minn. Sess. Laws 508 §1, which adds definition of far.

115. But see, P.L. 95-19, 91 Stat. 39 §303 extending the due date to June 30, 1979. No further extension granted.

116. Issued July 1979 by the National Commission on Unemployment Compensation, 1815 Lynn St., Suite 440, Rosslyn, VA 22209.

117. Seaver and Holt, supra note 45 at 1092.