The Catholic Lawyer

Volume 24, Summer 1979, Number 3 Article 12

Unemployment Compensation

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INTRODUCTION

The purpose of my talk is twofold: first, to provide background on the nature of the unemployment insurance law; second, to review what the Office of General Counsel has done regarding this law's proposed coverage of Catholic elementary and secondary schools.

BACKGROUND

The United States unemployment insurance program is a joint federal-state program whose purpose is to provide temporary wage loss compensation to workers as protection against unemployment. Under the law, employers are required to pay a payroll tax. From the accumulation of this money, benefits are paid to unemployed workers. The federal provisions, found in the Social Security Act and the Federal Unemployment Tax Act, commonly referred to as FUTA, establish the framework of the system. If a state law meets minimum federal requirements, employers receive a credit against the federal payroll tax and the state is entitled to federal grants to cover all the necessary costs of administering the program.

Before 1970, nonprofit organizations which were exempt from taxation under section 501(c)(3) of the Internal Revenue Code were covered as employers for unemployment compensation purposes only at the option of the states. In 1970, FUTA was amended by the addition of section 3309, which provided for coverage of certain nonprofit institutions, including hospitals and institutions of higher education. These amendments extended coverage to employees of nonprofit employers who have at least four employees for at least twenty weeks of the year. These nonprofit employers would not be required to pay the federal tax and could choose the option of reimbursing the state employment office for any benefits paid to former employees.

Although the 1970 amendments provided for coverage of certain services performed for nonprofit organizations, the amendments also permitted the states to exclude certain services from state coverage. Included among the permissible exclusions were services performed:

> (1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; (2) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such

order; (3) in the employ of a school which is not an institution of higher education.

In 1976, FUTA was again amended. Among other things, the third exclusion above was deleted from the law. It has been this change which has caused concern to many in the Catholic school community.

THE USCC'S POSITION

The Conference has consistently taken the position that the 1976 change did not mandate the coverage of Catholic parochial elementary and secondary schools. These institutions continue to be excluded by the church and religious organizations' exemptions in the law.

The history of this Act supports the Conference's position. In 1965, Congress first sought to extend coverage to nonprofit organizations. The proposed legislation did not, however, contain any institutional exemptions. Because of the action of the Conference, the previous mentioned institutional exemptions, among others, were placed in the law, as were provisions for exemption of nonprofit organizations from the federal tax and the reimbursement option. The exemptions and nonprofit provisions were again supported by the Conference in 1975, as Congress prepared to amend the law again. While the Conference indicated support for the concept of unemployment compensation and did not challenge the inclusion of many nonprofit organizations under the law, at no time did it state any support for the elimination of the exemptions placed in the law at its request in 1970. It has always felt that those exemptions were both constitutionally and socially valid. They minimized the interference of government with churches, while doing little to harm the unemployment compensation system.

Because both churches and schools were exempt before 1976, no decision had to be made as to where parochial schools fit in. They were clearly exempt before that time, but the exemption could have been under either the church or school provisions. Congress, when it eliminated the exemption for schools not of higher education, did not give any indication of the extent of coverage it sought. There is nothing in the legislative history that refers to parochial schools. In 1976, Congress gave no indication that it was mandating the coverage of parochial schools under FUTA.

THE USCC'S RESPONSE

We brought the 1976 change in the FUTA law to the attention of the Catholic community when it was first proposed. In that year, the potential action of Congress was explained in detail to the State Conference Directors. After the amendments were made in 1976, the Offices of Government Liaison and General Counsel made a major presentation on the revised law during the annual meeting of the State Conference Directors. At that time, the State Conference Directors were encouraged to consult their Boards for specific directions regarding the provisions of state laws which, under the federal law, has to be revised by January 1, 1978. A little later, in January 1977, the Offices of General Counsel and Government Liaison met with officials of the Department of Labor. At that meeting, we argued that parochial schools were covered by the religious exclusions in the law. The Department's response was not positive, but it was felt that an opinion from the Solicitor was necessary before a final decision was made.

In June 1977, we sent a short brief to the field containing arguments for the dioceses to use in maintaining that parochial schools are within the exemption accorded to churches and religious organizations principally supported by a church. It was anticipated that this brief would supplement arguments that may be specific to a particular state law. During the summer, we received varying information on the success of the Dioceses in maintaining the exemption for parochial schools. A few states' schools were given the exemption; others were refused it. For the most part, however, the states were looking to the federal government for guidance. The Department of Labor's regional offices were advising the states that parochial schools were covered by the law. This advice was based on language contained in supplementary materials to the *Draft Language and Commentary to Implement the Unemployment Amendment of 1976—P.L. 94-566.*

To verify our information, the Office of General Counsel sent a questionnaire to all the dioceses requesting information on what has occurred in the unemployment compensation tax area. The response to the questionnaire was good. Through it we learned that while most states had amended their laws to conform to the federal amendments, the majority of them had either not decided the issue of parochial school coverage, or decided it unfavorably.

At that point, the Office of General Counsel decided that we had to discuss the issue again with the Department of Labor. We met with Department of Labor officials twice during the latter part of 1977. At both meetings we emphasized that the term "church," as it had been developed within the Internal Revenue Code, had always included the parochial school as one of its essential components. The Solicitor who had the responsibility of preparing a memorandum of law on the issue requested that our office submit a brief on the subject.

On December 21, 1977, we submitted a brief. This brief asserted that the parochial school is an integrated part of the church and that the legislative history of FUTA is not conclusive on the issue of coverage of parochial schools. It was argued that tax law precluded an interpretation that the parochial school is not part of the church. It made reference to the various decisions of the Supreme Court on the school aid question and the entanglement problems generated by coverage under FUTA.

On April 18, 1978, Secretary of Labor Marshall responded to the Conference. In a letter to Bishop Kelly he stated the following:

> We believe that the repeal by Congress of the exclusion, in section 3309(b)(3) of the Federal Unemployment Tax Act, of employees of elementary and secondary schools was clearly intended to result in State coverage of church-

> related schools, whose employees constitute over 80 percent of the employees of all nonprofit schools. In light of the repeal of 3309(b)(3), we think the only services performed in the schools that may reasonably be considered within the scope of the exclusion permitted by 3309(b)(1) are those strictly church duties performed by church employees pursuant to their religious responsibilities within the schools.
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> We believe also that unemployment insurance coverage of employees of church-related schools is constitutionally permissible. This view is based on a thorough review of relevant court decisions and application of the tests of constitutionality that have been advanced in deciding First Amendment issues.

The letter of April 18, 1978 was followed by an Unemployment Insurance Program letter. This letter stated that the exclusion in section 3309(b)(1)(A) relating to church employees has no other application to activities performed in elementary and secondary schools, since the schools are not churches within the meaning of that section. The Department of Labor is now requiring all states to inform nonprofit elementary and secondary schools that services performed in their employ on or after January 1, 1978 are covered by the law.

THE ELEMENTS OF THE LAW

What does coverage mean for Catholic schools? The federal law requires that the states provide coverage for nonprofit employers who have at least four employees in at least twenty weeks of the year, unless there is a specific exemption. Under the 1976 amendments, the federal law requires that the employer pay a tax on the first $6,000 of yearly wages.

Assuming a nonprofit institution is liable under the Act, the first step in the process in almost all the states is the filing of a Report to Determine Liability. Once an organization files this report, it is given an identification number and a tax rate. Most states require the taxes to be filed quarterly if you are a contribution method type employer.

In financing the system, many states have adopted what is called a pooled fund plan in which all the money collected for employers is comingled and divided, and the cost of the program is spread over all employers. A separate bookkeeping account is maintained for each employer, but the workers have no special claim on the fund established in the name of the employer. All benefits are paid from the unemployment fund regardless of the balance of an employer's contribution over the benefits paid his worker. However, a substantial balance of an individual employer has a favorable effect on his experience rating, thus reducing the amount of tax he must pay. The law requires that all the money received in the unemployment fund shall upon receipt by the state be paid over to the Secretary of Labor to the credit of the Federal Unemployment Trust Fund. The money is then distributed to the proper account.

EXPERIENCE RATING

Experience rating is the method by which the tax collected is related to the benefit costs. It provides for lower rating for employers who cost the system less. Under FUTA, a tax is levied on covered employers at a current rate of 3.4%. The law, however, provides a credit against the federal tax liability of 2.7% to employers who pay state taxes under an approved state unemployment compensation law. This credit is allowed regardless of the tax paid to the state by the employer.

An individual employer can have a contribution rate higher or lower than 2.7%. The rate depends on what the state determines his experience factor to be. To determine the experience factor, there are various types of formulas in effect in the several states. However, most of the states adhere to the reserve-ratio formula. On each employer's record are entered the amount of his payroll, his contributions, and the benefits paid to his workers. Benefits paid are subtracted from contributions, and the resulting balance is divided by the payroll to determine the size of the balance in terms of potential liability for benefits in wage payments. The balance carried forward is the difference between the employer's total contributions and total benefits. This differential has an effect on the tax rate.

There are several factors in all of these formulas which must be considered. One is the total size of the unemployment fund. If the fund is low, the tax rates will rise even though an individual's experience rating is very low. Another factor is the sharing of the burden among other employers. Thus, if an employee worked for Employer A for twenty weeks and voluntarily terminated his services, then worked for Employer B and was involuntarily discharged after working two weeks, both employers would be charged for the benefits extended. This sharing of the burden is designed to ease the general load on all employers. In many states, there is a maximum limit upon the amount that may be charged any one employer. When the limit is reached, the next previous employer is charged.

The experience rating is not the result of an employer's own exclusive experience but is affected by the size of the total unemployment compensation fund and by the legal requirement of sharing the burden of the costs of paying the benefits.

BENEFITS

There are no federal standards for benefits, qualifying requirements, or duration of regular benefits. Thus, there is no common pattern of benefit provisions comparable to that on coverage and financing. The states have developed diverse and complex formulas for determining workers' benefit rights. Under all state unemployment laws, however, a worker's benefit rights depend on his experience in covered employment during a past period of time, called the base period. The period during which the weekly rate and the duration of benefits determined for a given worker apply to him is called the benefits year.

All states determine an amount payable for a week of total employment, as defined in the state law. This is called the weekly benefit amount. Usually, a week of total unemployment is a week in which the claimant performs no work and receives no pay. Under all state laws, the weekly benefit amount varies with the worker's past wages with certain minimum and maximum limits. The period of past wages used and the formulas for computing benefits for past wages also vary among the states. In most of the states, however, the formulas are designed to compensate for a fraction of the full-time weekly wages; that is, for a fraction of wage loss within the limits of minimum and maximum benefits amounts. Most of the states use a formula which bases benefits on wages in that quarter of the time period in which wages were the highest. This quarter most clearly reflects full-time work. The benefit payment for such a week is the difference between the weekly benefit amount and the part-time earnings, usually with a small allowance as a financial inducement to take part-time work. The maximum amount of benefits which a claimant may receive in a benefit year is expressed in terms of dollar amounts, usually equal to a specified number of weeks of benefits for total unemployment. Often it is computed as one-half of the employee's weekly wage.

QUALIFYING REQUIREMENTS

All states require that an individual have a specified amount of wages and have worked for a certain period of time within his base period, or both, to qualify for benefits. The purpose of such qualifying requirements is to restrict benefits to covered workers who are generally attached to the labor force. Most states express the earning requirement in terms of a specified multiple of the weekly benefit amount, high quarter wages, or a flat qualifying amount. Many states, as well, require that an individual work a specified number of weeks meeting a specified weekly wage. The waiting period for benefits is one week of total or partial unemployment in which the worker must have been otherwise eligible for benefits. All except ten states require a waiting period of one week of total unemployment before benefits are payable.

All state laws provide that, to receive benefits, a claimant must be able to work, must be seeking work, and must be available for work. Also, he must be free from disqualification for such acts as voluntarily leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic causes. In all states, claimants who are held ineligible for benefits because of inability to work, refusal of suitable work, or disqualification are entitled to a notice of determination and an appeal from that determination.

BENEFIT DURATION

Most states provide for a maximum potential duration of benefits in a benefit year equal to a multiple of the weekly benefit. That is often twenty six to thirty nine weeks of benefits for total unemployment. There is also usually a limitation on annual benefits. For example, benefits payable may be limited to a specified percentage of total base-period earnings. The limit may be used on the number of weeks worked in the base period.

Some states have a uniform duration and allow potential benefits equal to the multiple of the weekly benefit amount to all claimants who meet the qualifying wage requirement. Other state laws provide a maximum potential duration of benefits in a benefit year equal to a multiple of the weekly benefit but place another limitation on annual benefits. For example, benefits payable may be limited to a specified percentage of total base-period earnings.

OTHER UNEMPLOYMENT PROGRAMS

There are three other programs which are an important part of the unemployment system. One is the "Federal-State Extended Unemployment Compensation Act of 1970," which established a permanent program to pay extended benefits during periods of high unemployment to those who exhaust their basic entitlement to regular state unemployment compensation. The federal government and the states each pay 50 percent of the cost of benefits under the program. These extended benefits are paid to workers only during an "extended benefit" period. Such a period can exist either on a national or state basis by the triggering of either the national or state "on" indicator.

The "Emergency Unemployment Compensation Act of '76' " created a new temporary emergency unemployment compensation program. The program provided a third tier of protection to workers in states with high unemployment levels who exhaust their benefits under the regular state program and the Federal-State Extended Unemployment Compensation Act. The cost of this program was met by repayable advances from federal general revenues to the extended unemployment compensation account in the Federal Unemployment Trust Fund. Another program was "Special Unemployment Assistance." This provided for a special temporary general fund to provide benefits to individuals who were not eligible for regular unemployment benefits. These latter two programs have been or are being phased out.