Unemployment Insurance–New York "Merit Rating" Law

Judson F. Schiebel

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.
to restore these rights is conditioned by the exercise of another established power. The new law places no restraint upon the lawful discretion and power to be exercised by the licensing authority, which may grant or refuse the license or certificate necessary to legally pursue such profession or occupation. The ultimate authority in such cases is therefore the licensing authority. In this way abuses are prevented, and the high ethical standards which the legislature has set for the medical and dental professions and the safeguards provided by statute to protect the public are preserved.

It is submitted that the present law will serve to further the progressive attitude which the State of New York has always taken in attempting to solve the two-fold problem of crime prevention and punishment. The punishment attached to a crime serves to punish the criminal, to act as a deterrent to others, and to protect society. Rehabilitation of the criminal should begin where punishment ends, and it is the duty of society to give him an opportunity to prove his ability to become once again a law-abiding, self-supporting member of the community. The present emergency created by the war has afforded him this opportunity as never before, and he has, for the most part, earned the trust placed in him to do so. The inference of this new law is that the criminal, if proven fit, should be admitted to the full rights and privileges of citizenship.

JOHN E. PERRY.

UNEMPLOYMENT INSURANCE—NEW YORK “MERIT RATING” LAW.—In March, 1945 the New York State Legislature, by amending the Unemployment Insurance Law, passed what is popularly

20 N. Y. Exec. Law § 116, subd. 3: "... Nothing in this section shall be construed to prevent or limit any licensing board, body or authority from exercising its lawful discretion or power in either granting or refusing a license to a person to whom such certificate shall have been granted."

In construing § 126 of the Alcoholic Beverage Control Law, the Attorney General held that the state liquor authority is not prohibited from granting a license to an applicant previously convicted of a felony, but subsequently pardoned. The fact that the applicant had been once convicted may, however, be taken into consideration, in determining whether or not a license should be issued. Op. Att'y Gen. (1934) 116.

It has been held that a pardon, issued under constitutional power, to a doctor convicted of manslaughter, whose license to practice medicine was thereby revoked, does not restore the right to practice, though the pardon purports to restore all the rights and privileges forfeited by the conviction. State v. Hazard, 139 Wash. 487, 247 Pac. 957 (1926).

21 In considering the purpose of Section 74 of the N. Y. General Business Law, which deals with the issuance of licenses to private detectives and investigators, the courts declared its purpose to be "the protection of the public at large and to prevent from engaging in that business disreputable, incompetent persons who would prey on the public." Shorten v. Millbank, 170 Misc. 905, 11 N. Y. (2d) 387 (1939).

known as New York’s “Merit Rating” Law.\textsuperscript{1} This measure will
cause a distribution of $75,000,000 in unemployment tax rebates to
New York employers for the year beginning July 1st, 1945. This
amendment is based on a plan of distribution of excess surplus which
is essentially different from the more common type of “Merit Rating”
law in operation in the United States as exemplified by the Experience
Rating Plan of Wisconsin.

In the New York plan the general distribution and its amount
are specifically limited by economic factors.

Annual rebates will be given whenever the Unemployment In-
surance Fund on July 1st is above an amount equal to four times the
contributions paid for the preceding calendar year.\textsuperscript{2}

There are two limitations on the amount that may be distributed.
These are:

(a) The surplus above this amount must be more than 10\% of
the previous year’s contribution or no rebate may be given,\textsuperscript{3}
and

(b) The total distribution cannot be more than 60\% of the
contributions for the preceding year.\textsuperscript{4}

An employer has no duties in connection with the rebate. When
it is found that a surplus exists, the amount of credit to which an
employer is entitled will be computed and a notice of the amount so
credited will be sent him. This amount the employer will apply
against his next year’s taxes. The rebate will not take the form of
cash.\textsuperscript{5}

The amount of tax credit allowed an employer is computed on a
special point system. The factors and their respective point values
are;

1. Annual Factor (zero–12 points).\textsuperscript{6} This is based upon the
decreases in the employer’s annual taxable payrolls for the
three consecutive calendar years preceding the July 1st com-
putation date. The annual decrease quotients shall be ob-
tained by dividing any decrease of the total payrolls of a quali-
fied employer in any calendar year from the total payrolls of
the preceding calendar year by the amount of the total payroll
in such preceding calendar year, each division being carried
out to the fourth decimal place.

The points range from zero points for a sum of three annual
decrease quotients of 0.6 or more to 12 points for a sum of three
annual decrease quotients of less than 0.1.

\textsuperscript{1} N. Y. L. 1945, c. 646, § 577.
\textsuperscript{2} Id. § 577, subd. 1(e).
\textsuperscript{3} Id. subd. 3(c).
\textsuperscript{4} Id. subd. 1(e).
\textsuperscript{5} Id. subd. 4.
\textsuperscript{6} Id. subd. 1(f)(1).
2. Quarterly Factor (zero–6 points). This is the same as the above, except that it uses remuneration for quarterly periods during the three consecutive preceding calendar years. The points range from zero points for the sum of quarterly decrease quotients of 3 or more to 6 points for a sum of less than 0.5.

3. Age Factor (3–5 points). This represents credits for the length of time the employer has paid payroll taxes. If he has been subject to the tax for eight years or more, he gets the maximum 5 point credit. If he has paid contributions for less than four years, he receives the minimum 3 point credit.

Based on the points received from the above three experience factors, the employer is placed in one of the following classes:

<table>
<thead>
<tr>
<th>Experience Factor</th>
<th>Credit Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>20–23</td>
<td>I</td>
</tr>
<tr>
<td>16–19</td>
<td>II</td>
</tr>
<tr>
<td>12–15</td>
<td>III</td>
</tr>
<tr>
<td>8–11</td>
<td>IV</td>
</tr>
<tr>
<td>4–7</td>
<td>V</td>
</tr>
<tr>
<td>3</td>
<td>VI</td>
</tr>
</tbody>
</table>

The six classes do not receive equal portions of the surplus to be distributed. The proportion of surplus allocated to each classification is determined by two factors. The first is the percentage of payroll within a given class to the total payroll of all classes. The second factor is an arbitrary weighting as follows:

<table>
<thead>
<tr>
<th>Credit Class</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>6.</td>
</tr>
<tr>
<td>II</td>
<td>5.</td>
</tr>
<tr>
<td>III</td>
<td>4.</td>
</tr>
<tr>
<td>IV</td>
<td>3.</td>
</tr>
<tr>
<td>V</td>
<td>2.</td>
</tr>
<tr>
<td>VI</td>
<td>Zero</td>
</tr>
</tbody>
</table>

The following example will illustrate the method of determining the employer’s experience factor.

As of January 1st, 1945, an employer, John Doe, had been subject to the act for eight years. He is given an age factor of 5 points. His annual payrolls for the preceding three years were:

1942—$600,000
1943—$500,000
1944—$500,000

---

7 Id. subd. 1(f) (2).
8 Id. subd. 1(f) (3).
9 Id. subd. 3.
10 Id. subd. 1(g).
11 Id. subd. 1(f).
12 Id. subd. 1(f) (3).
His annual decrease quotient for 1943 would be 0.1667, found by dividing the decrease in payroll from 1942 to 1943, i.e., $100,000 by the 1942 payroll, i.e., $600,000. Since there is no decrease from 1943 to 1944, his sum of annual decrease quotients is 0.1667. This entitles him to an annual factor of 10 points.\(^\text{13}\)

His quarterly payrolls fluctuated each year as follows:

<table>
<thead>
<tr>
<th></th>
<th>1942</th>
<th>1943</th>
<th>1944</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Quarter</td>
<td>$150,000</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>$150,000</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>$200,000</td>
<td>$200,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

He thus has no quarterly decrease quotient for the second or third quarters of each year, but has a quarterly decrease quotient of 0.5 for the fourth quarter of each year. This is obtained by dividing the decrease in payroll from the third to the fourth quarter, i.e., $100,000 by the payroll of the third quarter, i.e., $200,000. The sum of the quarterly decrease quotients for the three years equals 1.5 and thus the employer receives a quarterly factor of 3 points.\(^\text{14}\)

Thus the employer illustrated will be in Credit Class II\(^\text{15}\) based on an experience factor of 18 points composed as follows:

- Age Factor — 5 points
- Annual Factor — 10 points
- Quarterly Factor — 3 points

Having now determined the employer’s credit class, we come to the all important question of determining the amount of credit he will get.

Let us assume that for the calendar year 1944 the total payrolls of qualified employers were $5,000,000,000, total payrolls of employers in Class II were $50,000,000, John Doe’s payroll was $500,000, and that the distributable surplus is $50,000,000.

We now take the following steps to compute John Doe’s credit:

1. We obtain the “class product”\(^\text{16}\) for Class II by dividing total Class II payrolls, $50,000,000, by total payrolls, $5,000,000,000, and multiplying by the “class weight”\(^\text{17}\) which for Class II is 5. We thus arrive at a “Class product” of 0.05.

2. The method of finding the amount of surplus assigned to each class is simple, but since it entails using the class products of all classes,\(^\text{18}\) we will assume that $500,000 of the surplus is assigned to Class II.

---

\(^{13}\)Id. subd. 1(f) (1).

\(^{14}\)Id. subd. 1(f) (2).

\(^{15}\)Id. subd. 2.

\(^{16}\)Id. subd. 1(h).

\(^{17}\)Id. subd. 1(g).

\(^{18}\)Id. subd. 3.
3. We then obtain the "class credit factor" by dividing the portion of the surplus assigned to Class II, i.e., $500,000, by the sum of the employer's payrolls in that class, i.e., $50,000,000. We thus arrive at a class credit factor of 0.01.

4. John Doe's credit is then determined by multiplying his payroll for the preceding calendar year, i.e., $500,000, by the class credit factor of his class, which we found to be 0.01. Thus John Doe will receive a credit of $5,000.

The Wisconsin Merit Rating Plan has for its purpose the desire for stabilized employment and elimination of labor turnover. It consists of a reduction or increase in the amount of tax payable as based on a "Reserve Percentage", and the percent of increase in payroll for year ending on "computation date" over 1940 payroll. Each employer has a reserve account which is charged with benefit payments to any of his employees and credited with his contributions to the fund.

The "Reserve Percentage" is his net reserve in the reserve account taken as a percentage of the highest one of the following amounts: (a) his payroll for the year ending on such a date, or (b) his average annual payroll for the three years ending on such a date, or (c) 60% of his largest payroll for any one of those three years.

The federal law allows the states to adopt provisions reducing an employer's unemployment compensation tax or entirely exempting him from tax payment, if he can demonstrate "merit" in stabilizing employment in his concern.

The method of relying on the fluctuations in the amount of wages paid by an employer as an index for experience rating has long been favored by some because it furnishes a workable and easily obtainable measure of partial unemployment, except in a period of wage increases or when much overtime was being worked. However, most people would agree that experience rating should be confined solely to the objective of promoting regular employment. Overtime work and adjustment of wage rates either upward or downward should not be allowed to affect the fixing of an employer's contribution rate.

Employment of payroll data as a measure for experience rating is of course attractive for its administrative simplicity, but this factor should not be allowed to overshadow or engulf the final purpose for the whole plan, which is stabilized employment and a reward proportioned upon the success or failure of each employer to contribute to such statewide stabilization.

---

[19 Id. subd. 1(i).
[21 Id. § 108.18.
[24 Note (1932) 7 Wis. L. Rev. 153.
It would seem that the "Merit Rating" plan of New York is merely a means of distributing to employers the excess surplus available in the fund based on how long and how much they have paid into this fund. There is no premium for keeping employment stabilized and perhaps the next few years will enable us to compare the relative effectiveness of the two extremes as represented by the New York and Wisconsin plans.

Judson F. Schiebel.