

# **Unemployment Insurance Non-Monetary Policies and Practices: How Do They Affect Program Participation?**

## **A Study of 8 States**

Final Report

*Prepared for:*

**U.S. Department of Labor  
Employment and Training Administration**

*Prepared by:*

The Lewin Group (Under subcontract to Berkeley Policy Associates)

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## Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>ES-1</b>
A. CONCEPTUAL MODEL .....	ES-1
B. KEY FINDINGS.....	ES-2
1. <i>Separation Issues</i> .....	ES-2
2. <i>Non-Separation Policies and Practices</i> .....	ES-4
3. <i>Appeals</i> .....	ES-7
C. IMPLICATIONS FOR FUTURE RESEARCH.....	ES-8
<b>I. INTRODUCTION .....</b>	<b>1</b>
A. BACKGROUND.....	1
1. <i>Eligibility Criteria</i> .....	1
2. <i>Determinations and Denials</i> .....	2
3. <i>Appeals</i> .....	3
4. <i>Trends in Reciprocity</i> .....	3
5. <i>Changes in Claims Processing</i> .....	3
B. CONCEPTUAL FRAMEWORK.....	4
1. <i>State Policies</i> .....	4
2. <i>State Processes</i> .....	4
3. <i>Intermediate Outcomes</i> .....	5
4. <i>Program Outcomes</i> .....	6
5. <i>Other Factors That Affect Reciprocity</i> .....	7
C. RESEARCH QUESTIONS .....	7
1. <i>Separation Policies and Processes</i> .....	8
2. <i>Non-Separation Policies and Practices</i> .....	8
3. <i>Appeals</i> .....	9
D. METHODOLOGY .....	9
1. <i>Literature Review</i> .....	9
2. <i>Data Sources</i> .....	9
3. <i>Site Visits</i> .....	10
E. OUTLINE OF THE REPORT .....	11
<b>II. OVERVIEW OF THE UI PROGRAM IN THE STUDY STATES .....</b>	<b>13</b>
A. UI OUTCOME MEASURES IN STUDY STATES.....	13
1. <i>Reciprocity in Study States</i> .....	13
2. <i>Determination and Denial Rates</i> .....	14
B. STATE ENVIRONMENT.....	14
1. <i>Economic Environment</i> .....	14
2. <i>Employment by Industry</i> .....	15
3. <i>Type of Employment Opportunities</i> .....	16
4. <i>Seasonal Employment</i> .....	16
5. <i>Characteristics of the Claimant Population</i> .....	16
C. OUTREACH EFFORTS OF THE STATE UI PROGRAM.....	17
D. MONETARY ELIGIBILITY .....	18
1. <i>Eligibility Rules</i> .....	18
2. <i>Potential Duration</i> .....	22
3. <i>Shared-Work Compensation Programs</i> .....	23
E. OVERVIEW OF CLAIMS PROCESS .....	23
1. <i>Methods Available for Filing Initial Claims</i> .....	23
2. <i>Information Supplied</i> .....	25
3. <i>Trends in Initial Claims</i> .....	25
4. <i>Continuing Claims</i> .....	26

<b>III.</b>	<b>SEPARATION ISSUES .....</b>	<b>29</b>
A.	PREVIOUS RESEARCH.....	29
B.	DETERMINATIONS.....	30
1.	<i>State Rates</i> .....	30
2.	<i>State Determination Processes</i> .....	32
3.	<i>Factors that Affect Applications</i> .....	32
4.	<i>Summary of Separation Determination Issues</i> .....	36
C.	FACT-FINDING AND ADJUDICATION.....	38
1.	<i>Adjudication Location and Staff</i> .....	38
2.	<i>Claimant Information</i> .....	39
3.	<i>Employer Information</i> .....	41
4.	<i>Summary of Adjudication Issues</i> .....	42
D.	BENEFIT DENIALS.....	43
1.	<i>State Policies: Voluntary Quits</i> .....	45
2.	<i>State Policies: Misconduct</i> .....	53
3.	<i>Summary of Denials</i> .....	58
E.	CONCLUSIONS.....	59
<b>IV.</b>	<b>NON-SEPARATION ISSUES .....</b>	<b>61</b>
A.	PREVIOUS RESEARCH.....	62
B.	DETERMINATIONS AND DENIALS.....	63
C.	ANALYSIS OF KEY NON-SEPARATION ISSUES .....	69
1.	<i>Work Registration</i> .....	69
2.	<i>Able and Available Requirements</i> .....	71
3.	<i>Refusal of Suitable Work</i> .....	75
4.	<i>Job Search Enforcement/Accountability</i> .....	79
5.	<i>Eligibility Review Interviews</i> .....	82
6.	<i>Profiling</i> .....	84
7.	<i>Treatment of Disqualifying Income</i> .....	87
D.	CONCLUSIONS .....	93
<b>V.</b>	<b>APPEALS .....</b>	<b>95</b>
A.	BACKGROUND.....	95
B.	RECONSIDERATIONS.....	97
1.	<i>State Variation in Use of Reconsiderations</i> .....	97
2.	<i>Process</i> .....	97
C.	LOWER AUTHORITY APPEALS.....	98
1.	<i>Data on Cases Appealed</i> .....	98
2.	<i>Process for Appeals</i> .....	100
3.	<i>Format of the Proceedings</i> .....	101
D.	HIGHER AUTHORITY APPEALS .....	103
1.	<i>Data on Cases Appealed</i> .....	103
2.	<i>Process for Higher Authority Appeals</i> .....	104
E.	EFFECT OF APPEALS PROCESS (ALL LEVELS) ON CLAIMANTS AND OUTCOME MEASURES.....	105
<b>VI.</b>	<b>SUMMARY OF FINDINGS .....</b>	<b>109</b>
A.	SEPARATION POLICIES AND PROCESSES .....	109
1.	<i>Separation Determinations</i> .....	109
2.	<i>Fact-Finding and Adjudication</i> .....	110
3.	<i>Decision Making</i> .....	111
4.	<i>Non-monetary Separation Policies and Practices: Conclusion</i> .....	111
B.	NON-SEPARATION POLICIES AND PRACTICES.....	112
1.	<i>Work Registration</i> .....	113
2.	<i>Able and Available Requirements</i> .....	113
3.	<i>Refusal of Suitable Work</i> .....	114

4.	<i>Job Search Enforcement/Accountability</i> .....	114
5.	<i>Eligibility Review Interviews</i> .....	115
6.	<i>Profiling</i> .....	116
7.	<i>Treatment of Disqualifying Income</i> .....	116
8.	<i>Non-separation Policies and Practices: Conclusions</i> .....	117
C.	APPEALS.....	118
1.	<i>Lower Authority Appeals</i> .....	119
2.	<i>Higher Authority Appeals</i> .....	119
3.	<i>Appeals: Conclusions</i> .....	120
D.	KEY FINDINGS.....	120
E.	IMPLICATIONS FOR FUTURE RESEARCH.....	121
	<b>BIBLIOGRAPHY</b> .....	<b>123</b>
	<b>APPENDIX A</b> .....	<b>A-1</b>
	<b>APPENDIX B</b> .....	<b>B-1</b>
	<b>ARIZONA SITE VISIT REPORT</b> .....	<b>B-3</b>
	<b>DELAWARE SITE VISIT REPORT</b> .....	<b>B-21</b>
	<b>MAINE SITE VISIT REPORT</b> .....	<b>B-37</b>
	<b>PENNSYLVANIA SITE VISIT REPORT</b> .....	<b>B-53</b>
	<b>SOUTH CAROLINA SITE VISIT REPORT</b> .....	<b>B-67</b>
	<b>SOUTH DAKOTA SITE VISIT REPORT</b> .....	<b>B-85</b>
	<b>UTAH SITE VISIT REPORT</b> .....	<b>B-107</b>
	<b>WASHINGTON SITE VISIT REPORT</b> .....	<b>B-125</b>

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## EXECUTIVE SUMMARY

The percentage of unemployed workers receiving unemployment insurance (UI) benefits varies substantially across the 53 program jurisdictions (50 states, the District of Columbia, Puerto Rico, and the Virgin Islands). State UI policies and implementation practices, especially regarding *non-monetary* UI eligibility, might explain some of the differences in UI reciprocity rates among states. Whereas monetary eligibility rules are used to determine if a worker had substantial attachment to the labor market prior to applying for benefits, non-monetary eligibility criteria ensure that UI applicants are involuntarily unemployed and remain attached to the labor force. Non-monetary eligibility criteria are divided into two categories. Separation policies explore the reason for the job loss. To receive benefits, the worker must be involuntarily unemployed or voluntarily unemployed for good cause. Non-separation policies examine whether the worker is able to work, available for work, and in most states, actively seeking work.

The Department of Labor (DOL) funded this study to explore the relationship between non-monetary eligibility policies and practices and program outcomes, such as reciprocity and benefit duration. This report provides an examination of the factors that appear to affect program outcomes in eight states: Four “high reciprocity” states (Delaware, Maine, Pennsylvania, Washington) and four “low reciprocity” ones (Arizona, South Carolina, South Dakota, Utah). We explored policies and practices specific to separations, non-separations, and appeals of separation and non-separation decisions using information collected from documents supplied by the states, as well as from interviews conducted during site visits to each of the eight states. We examined the information obtained for this study within the context of existing research on factors that affect UI reciprocity and benefit duration.

### A. Conceptual Model

*Exhibit ES.1* depicts The framework used to guide this study. As this exhibit shows, a number of factors—state policies, state processes, intermediate outcomes, and program outcomes—interact. Each state has established policies regarding UI eligibility (column 1). The state processes define the steps and actions that claimants take to apply for UI benefits and remain eligible (column 2). Both policies and processes can affect the rate at which states detect issues (and raise determinations) and deny claims (column 3); they also affect appeal rates. In turn, these intermediate outcomes affect UI reciprocity and duration (column 4).

In addition, there are a number of factors not related to non-monetary issues that should be considered in understanding the variation in UI reciprocity across states. These include state monetary eligibility policies, state population demographics, the predominant industries in the state, the levels of unionization in the state, and state economic conditions.

**Exhibit ES.1: UI Non-monetary Issues: Areas of State Variation**

1	2	3	4
State Non-Monetary Policies	State Non-Monetary Processes	Intermediate Outcomes	Program Outcomes
<ul style="list-style-type: none"> <li>• Written policies that can be legislative or administrative and define initial and continuing eligibility</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>➤ Acceptable reasons for quitting job</li> <li>➤ Definition of job search</li> <li>➤ Definition of suitable work</li> <li>➤ Penalties for non-compliance with non-monetary policies</li> </ul> <ul style="list-style-type: none"> <li>• Practice (e.g., consistency, interpretation of non-monetary rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Written or unwritten processes that direct claimant flow through the UI system or staff activities</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>➤ UI benefit filing procedures (e.g., in person, telephone)</li> <li>➤ Procedures for demonstrating job search (e.g., face-to-face, mail in log)</li> <li>➤ Procedures for examining validity of claim (e.g., fact-finding process)</li> </ul> <ul style="list-style-type: none"> <li>• Practice (e.g., consistency of interpretation of non-monetary rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Determination rates</li> <li>• Denial rates</li> <li>• Appeal rates</li> </ul>	<ul style="list-style-type: none"> <li>• UI reciprocity rates</li> <li>• Duration of benefits</li> </ul>
<p><b>Other state factors (not related to non-monetary practices) that affect outcomes</b> Monetary eligibility policies and practices, population demographics, predominant industries, levels of unionization, and economic conditions.</p>			

**B. Key Findings**

Prior research indicated that much of the state-level variation in UI reciprocity is due to policies, processes, and practices that are not easily captured by administrative data. Thus, many of the questions we explored during the site visits focused on how UI programs operate at the ground level and how variation between the programs helps explain some of the variation in outcomes across states. The report’s key findings with respect to separation issues, non-separation issues, and appeals are summarized below.

**1. Separation Issues**

The nature of the job separation is important in determining eligibility for benefits. When an individual applies for benefits, UI staff explore the facts surrounding his or her job separation. In particular, staff examine the following separation issues: Was the applicant laid off? Did the applicant quit? If so, did the applicant quit for good cause? Was the applicant discharged? If so, did the discharge involve misconduct? We hypothesized that state variations in three key steps—

determinations, adjudication, and decision making—affect program outcomes, namely reciprocity.

**Determinations.** Each state has in place administrative procedures to detect failure to meet non-monetary eligibility criteria. When an issue arises that leads UI to assess eligibility and results in the issuance of a formal decision, it is referred to as a *determination*.<sup>1</sup> The literature suggested that a state's reciprocity rate depends on its effectiveness in detecting non-compliance issues. In other words, a state's determination rate is associated with its reciprocity rate.

- Based on site visits and analysis of the data, we found that, consistent with the literature, our low reciprocity states have higher overall determination rates.

Much of the literature suggests that separation determination rates are a function of how wide a net states cast in order to detect issues related to UI eligibility. Thus, when one observes an association between separation determinations and reciprocity rates, it is natural to assume that it is the state's ability to detect issues that affects its reciprocity rate. However, we did not find variation in the policies or procedures states used to detect separation issues; in all of the study states, any claimant who quits or was fired raises an eligibility issue. We found that the determination rate relates to a number of factors that affect UI applications. These include the state economy, the state's mix of industries, union representation, and claim filing method.

- Our findings suggest that states with low determination rates have more UI applicants who lost their jobs; that is, they tended to have higher-than-average unemployment rates, a high proportion of unemployed workers in construction or manufacturing industries, and high union representation (which also reflects the proportion of the labor force in industries sensitive to economic change). We also found that factors that increase the applicant pool, such as policies that make filing claims easier (e.g., call centers) tended to be associated with higher determination rates. States surmise that call centers lower the cost of applying for benefits (e.g., there is no need to travel to a local office and wait in line), thus increasing the number of applications among marginal candidates.

**Fact-finding and Adjudication.** Once UI staff detect a separation issue, the next steps in the process are fact-finding and adjudication. The states visited use a range of approaches to these activities. In some states the functions are centrally located in one call center. In others, adjudicators are dispersed across multiple call centers or local offices. States vary in terms of whether fact-finding is conducted over the telephone or in person, and the extent to which employers and claimants are asked to fill out paper work (e.g., questionnaires). In all states, adjudicators assess statements from both claimants and employers.

- Variations in fact-finding and adjudication processes in the eight study states were minor. The differences identified were related to the location of the adjudication unit, the types of staff involved in fact-finding (e.g., adjudicators and/or intake workers), and the methods for collecting information (e.g., mailing questionnaires to all claimants and employers, scheduling phone or in-person meetings with clients). Staff suggested these differences were unlikely to systematically affect determinations or decisions to approve or deny benefits. Thus, the effect on reciprocity is also minimal.

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<sup>1</sup> In some instances, issues are resolved informally and thus not included in the determination rate.

**Benefit Denial.** Once adjudicators conclude fact finding, they must make a decision to grant or deny benefits. Adjudicators use state laws, administrative rules and court precedent to make decisions on claims. Our site visits revealed considerable variation among the statutes and rules that guide states' decisions on voluntarily quits. There were more similarities in laws and rules for dismissals due to misconduct.

- State policies differed systematically for voluntary quits and are related to denial rates. The three states that had more lenient policies surrounding quits (Arizona, Pennsylvania, and Utah) in that they accepted personal reasons for quits (e.g., caring for a family member) had lower denial rates than states that allow quits only for specific work-related reasons (South Carolina, Delaware, and South Dakota).
- Conversely, we did not see much variation in state policies for misconduct. Denial rates for misconduct were similar across seven of the study states and lower than rates for quits in all states. Adjudicators noted that decisions are often difficult in misconduct cases because the statutes and rules provide less guidance than for voluntary quits. Also, employers, who have the burden of proof in discharge cases, often do not provide adequate information to justify benefit denial.

**Conclusion.** At the outset of this study, we hypothesized that high reciprocity states would have lenient policies and practices relative to low reciprocity states. Instead, we found that the relationship between separation policies and practices and reciprocity is more complicated.

- Factors unrelated to separation policies, such as the economy, the mix of industries in the state, and use of call centers, affect the determination rate because they likely influence who applies for benefits.
- The fact-finding and adjudication processes do not differ significantly and are unlikely to affect the reciprocity rate.
- States vary considerably in their voluntary quit policies. States with more lenient policies have lower denial rates.
- State policies do not differ significantly for misconduct. Denial rates were similar across seven of the eight states.

## **2. Non-Separation Policies and Practices**

Non-separation policies and practices play an important role in determining whether UI claimants initially qualify for UI benefits and continue to receive them. Claimants must meet a diverse series of non-separation requirements that are intended to ensure that they are attached to the labor force and engaged in active efforts to become reemployed. The non-separation requirements and the manner in which they are enforced vary substantially across states. We examined six issues related to work search requirements as well as how states define and treat disqualifying income. Our findings regarding non-separation policies and practices are summarized below.

**Work Registration.** Work registration is the process whereby a claimant registers with the Employment Service (ES). This process typically involves completing a registration form that includes background information about the claimant, desired employment, employment history, education, and other information pertinent to job placement. Work registration of claimants usually occurs at the time of or within roughly a week of filing an initial claim. Only one state

(Pennsylvania) did *not* require claimants to register with the ES as a condition for receiving UI benefits. In the other seven states, some or all claimants are required to register with the ES.

- In our interviews, the work registration process was not identified as a major factor affecting either reciprocity rates or duration of benefit receipt. States also noted that claimants generally comply with work registration rules. This is not surprising, as the process generally requires (at most) a short visit to a local UI office or one-stop to complete a registration form and (in some instances) meet with UI staff.

**Able and Available Requirements.** To initiate a claim and continue to receive UI benefits, claimants have to be both “able” to work and “available” for work. The purpose of the “able and available” requirement is to ensure that claimants are both physically able to work in suitable employment and that they are available to work for each benefit week in which UI is received. UI programs capture information for making decisions on whether claimants are able and available at the time the initial claim is taken and when claimants submit continuing claims for each new week of UI benefits. In addition, “able and available” issues may be identified at the time of eligibility reviews and through statements taken from employers.

- The basic requirements of being “able and available” are fairly similar across the states we visited and did not vary according to whether a state has high reciprocity or long benefit duration. In terms of ability to work, all of the states stipulate that claimants must be physically and mentally capable of working at a job for which they are qualified. In addition, states bar individuals from collecting benefits if they are on vacation or otherwise unavailable for work for some part or all of the week for which benefits are claimed. In three of the eight states (Arizona, South Carolina, and Utah) claimants must be available for full-time work. To be eligible for UI benefits during a given week, claimants must have arrangements for transportation and child care, which permit the individual to accept offers of employment.

**Refusal of Suitable Work.** When an offer of employment is rejected by a claimant and comes to the attention of the UI system, adjudicators must render a decision as to whether the claimant rejected what might be considered an appropriate (suitable) job offer. Rejections of offers of suitable employment are usually detected through self reports of claimants when they file for continuing benefits. Refusals of suitable work may also come to the attention of UI staff during eligibility reviews or from contacts with employers.

- States use a variety of factors to determine “suitability,” making it difficult to distinguish between more stringent and less stringent states. Factors considered include past wages, past training and work experience, and length of unemployment. However, the low determination rates relating to suitable work (a much smaller portion of determinations than for able and available issues) suggest that such requirements have at most very modest effects on the duration of benefit receipt. According to UI staff, they rarely learn when claimants refuse an offer of work and thus have no basis to make a determination in this area.

**Job Search Enforcement.** Job search requirements are intended to keep claimants actively engaged in efforts to secure work and end their UI spell prior to exhausting benefits. Job search requirements, which typically require claimants to make a specific number of contacts with prospective employers per week, are enforced in varying degrees by UI agencies. With the exception of Pennsylvania, the states we visited require active job search by claimants. Acceptable methods are those that are considered to be customary and appropriate to the

occupation and industry for which the claimant is qualified and seeking employment. UI programs enforce job search requirements at two points in the process: (1) when claimants file continuing claims, they are asked if they have conducted an active job search and may be asked to furnish the number or actual contacts made; and (2) during eligibility reviews (if states conduct them), claimants may be asked about the number of contacts they have made and, in some cases, to produce a log to verify that actual contacts were made with employers.

- More rigorous job search requirements appear to be linked with shorter duration. For example, South Dakota and South Carolina, which had perhaps the most stringent enforcement of job search requirements, also had the shortest duration among the study states. However, job search requirements must be monitored to be effective. It is difficult to disentangle the effects of states' job search requirements and their enforcement through eligibility reviews.

**Eligibility Review Interviews.** Eligibility Review Interviews (ERIs) provide UI programs with an opportunity to periodically review the ongoing eligibility of claimants. Potential issues which may be a part of the ERI include able and available status and adequacy of job search efforts. We found considerable variation across our study states in the extent to which they use ERIs to determine continuing eligibility of claimants. Two states (South Carolina and South Dakota) are much more rigorous in their use of ERIs than the other study states, calling in claimants multiple times to discuss their benefits. At the time of our visits, three states (Maine, Pennsylvania, and Utah) did not conduct ERIs with claimants to determine continuing eligibility. The other three states had some form of ERI, but the timing and methodologies employed varies considerably.

- Frequent eligibility reviews appear to be linked to shorter benefit durations (and lower reciprocity rates). The two states (South Carolina and South Dakota) with the most stringent ERI requirements had the highest share of eligibility reviews conducted as a percent of claimant contacts and also had the shortest duration among the study states. In contrast, the three states with no eligibility review requirements were among the states with the longest duration (Pennsylvania, Maine, and Utah).

**Profiling.** All states were required to institute worker profiling procedures to identify claimants most likely to exhaust their benefit entitlements and provide them with information and services to help them become reemployed. Profiling services typically involve reporting to a local UI or ES office for an orientation to available employment, training, and ES services. Usually these are one-to-two hour group orientations. They may also include discussions about effective job search strategies and how to obtain job leads.

- A number of state and local UI staff questioned whether the intensity of the profiling services offered (usually limited to a brief workshop and/or one-on-one meeting with an employment counselor) was sufficient to affect whether claimants became reemployed before their benefits expired. In addition, if a state conducted frequent eligibility reviews, there was some question as to whether profiling services added much value to services already being provided.

**Treatment of Disqualifying Income.** Disqualifying and deductible income—such as earned income, severance pay, pensions/annuities, and holiday, vacation, and sick pay—can affect claimants' initial and continuing eligibility for UI, as well as their weekly benefit amount (WBA). We found substantial variation across the eight study states. All states deduct some portion of earned income, above an initial disregarded amount, from the WBA. States vary in

terms of the amount disregarded and the amount/percentage of earned income above the threshold that is deducted from the WBA. Half of the states deduct severance pay from the WBA. Most of the states in our sample had provisions relating to deductibility of vacation, holiday, and sick pay for purposes of determining claimant eligibility and/or WBA. Pension, annuities, and retirement pay in all eight states are deductible in some form from WBA.

- State and local UI officials that we interviewed did not point to deductible and disqualifying income as key factors driving either reciprocity or duration of benefits. Those states that are more stringent in deducting earned income, severance pay, and vacation/holiday pay may delay the onset of benefit receipt, particularly where lump sum payments are prorated across initial weeks of benefit receipt. Additionally, more stringent rules with respect to deductions result in lower weekly benefits, which may create less incentive for the claimants to initiate claims and continue to pursue benefits. By the same token, the rules with regard to deductible income are fairly complex. It is not clear that claimants fully understand the rules even once they begin receiving benefits, thereby negating potential effects.

**Conclusion.** Our review of non-separation policies and practices indicates that enforcement of job search requirements and use of eligibility reviews are likely the most important non-separation policy tools that affect reciprocity rates and/or duration. For job search requirements, the actual enforcement mechanism is more important than the specific language governing “able and available,” refusal of suitable work, or the job search requirement itself (as long as the state has a job search requirement). States with stricter job search requirements and enforcement of their policies not only create and monitor higher expectations for job search, but also identify related non-separation issues when claimants are called in to review their job search logs. These states had shorter benefit duration and lower reciprocity rates.

### 3. Appeals

The Social Security Act provides claimants with the right to appeal the denial of benefits, and all states also provide employers the right to appeal adverse decisions. In some states, when an appeal is filed the original decision can be “reconsidered” before the appeal is processed. All study states have two levels of appeals, generally referred to as “lower authority” and “higher authority” appeals. Parties dissatisfied with the results after exhausting the administrative appeal process can file suit in a state court.

**Lower Authority Appeals.** In all states, claimants initiate a majority of lower authority appeals - although the share varies widely. Lower authority appeals most commonly deal with separation issues. The procedures for lower authority claims are similar but not identical across the study states. All states accept written appeals, and, other than Delaware, all accept appeals filed by at least one other means as well. All eight states have time limits for filing lower authority appeals. The setting for lower authority hearings varies among states. In some states a UI official called a referee hears lower authority appeals; in others the official is referred to as an administrative law judge (ALJ). More often than not, the hearing officers are attorneys, although some states did not require the officials to be attorneys. Lower authority hearings in the states we visited are all de novo (i.e., the presiding officer begins collecting evidence anew, and only evidence introduced at the appeals hearing is used to render a decision). In four of the states in our sample, a majority of the hearings are conducted over the telephone.

**Higher Authority Appeals.** Four of the study states have three-to-five member boards that review lower-level appeals, three states have UI commissions for higher authority reviews, and

one state uses appeals to the Secretary of Labor for its higher authority review. Most of the states rarely or never hold hearings where new evidence is presented for the higher authority review; Delaware is the only one of the eight states that holds hearings in a majority of the cases. In all states, parties that remain dissatisfied can file suit in court, and court decisions can be appealed to a higher state court. Staff we spoke with universally said that court involvement was extremely rare.

**Empirical Analysis.** In an effort to gain more understanding about how appeals are related to intermediate and program outcomes, we computed correlation coefficients between three appeals-related variables<sup>2</sup> and six background variables<sup>3</sup> and the reciprocity rate for 2001 data for the 53 UI jurisdictions. Our analysis suggests the following tentative conclusions:

- The greater the share of lower authority appeals filed by employers, the lower is the UI reciprocity rate.
- The proportion of lower authority appeal decisions favoring workers is not associated with the reciprocity rate.
- There is a statistically significant negative correlation between both separation and non-separation denial rates and the share of lower authority appeal decisions favoring the worker. That is, higher denial rates for both separations and non-separations are associated with a lower share of lower authority appeals favoring workers.

We also calculated an adjusted denial rate for the 53 jurisdictions that reflects lower authority and higher authority decisions.

- For the nation as a whole, the denial rate dropped 1.5 percentage points (from 63.3% to 61.8%). Only one of the study states—Delaware—experienced a drop of over 4 percentage points. Although we do not know the reasons why, staff in Delaware indicated that the higher authority body there might be favorably inclined toward claimants.

**Conclusions.** All study states have both lower authority and higher authority appeal options. The structure of the lower authority appeals processes (e.g., in person hearings versus telephone hearings, use of an ALJ or a referee) does not appear to affect appeals rates. With regard to higher authority appeals, states use different entities for reviews. Only Delaware holds hearings in most cases.

The effect of appeals on the denial rate appears to be a relatively small reduction in the proportion of claims that are denied. Delaware is the exception, where the denial rate drops 4.4 percentage points.

### C. Implications for Future Research

To understand further how state policies might affect UI program outcomes, the above analysis suggests areas for future research. These include:

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<sup>2</sup> Lower authority appeals as a percent of determinations, share of lower authority appeals initiated by employers, share of lower authority appeals favoring workers.

<sup>3</sup> Unemployment rate, separation determination rate, percent of workers represented by unions, separation denial rate, non-separation denial rate, percent separation determinations where claimant quit.

**Factors that affect state separation determination rates.** Research suggests that reciprocity is related to determination rates. We found that our low reciprocity states did in fact have higher determination rates. However, a number of factors appear to be associated with a state's applicant pool, which affects the determination rate. These include industry mix, union representation, the unemployment rate, and the claim filing method. Future research should explore the relationship between these factors, the determination rate, and UI program outcomes.

**Variation in state voluntary quit policies.** We found that state policies differed systematically for voluntary quits but not misconducts. Among our study states, there was a clear association between "stringent" quit policies and reciprocity. Those states that allowed quits only for narrow work-related reasons had higher denial rates and lower reciprocity rates. Research should explore state variation in this non-monetary policy.

**Enforcement of work search requirements.** Strict enforcement of the work search requirements, such as frequent eligibility review interviews (ERIs), appears to be associated with shorter benefit duration in our study states. Further research should be conducted to ascertain whether this association is true for most states. Moreover, some states in our sample discontinued ERIs. Research could explore whether most states continue ERIs and, if so, their frequency. For states that discontinued the practice, it would be interesting to compare benefit duration post-ERI to duration pre-ERI, holding other factors constant (e.g., economic conditions). Another area that merits further exploration is the association between work search enforcement and the shift to call centers. The adoption of call centers has the effect of removing clients from the local offices and decreasing their contact with UI and employment service staff. Are call center states more likely to discontinue ERIs? Finally, which state entities have the primary responsibility for enforcing the work search (i.e., UI, the employment service, workforce development programs)? Has this changed in states that adopted call centers?

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## I. INTRODUCTION

The percentage of unemployed workers receiving unemployment insurance (UI) benefits varies substantially across the 53 program jurisdictions (50 states, the District of Columbia, Puerto Rico and the Virgin Islands). State UI policies and implementation practices, especially regarding non-monetary UI eligibility, might explain some of the differences in UI recipiency rates among states. In order to explore this relationship, the Department of Labor (DOL) funded a study on non-monetary eligibility policies and practices. In particular, this study examined the extent to which these policies and practices affect the share of unemployed workers who apply for UI, the share who are ultimately approved for benefits, and the length of time they receive UI benefits.

The purpose of the study was to enrich our understanding of which factors appear to be driving UI recipiency through case studies of eight states. Information on policies and practices in the eight states was collected from documents supplied by the states, as well as through interviews conducted during site visits. In addition, prior to the site visits, the research team conducted a review of the literature on non-monetary eligibility practices and their impacts on UI receipt and examined state-level data collected by DOL.

This chapter begins with background information on the UI program, including eligibility criteria, methods for assessing eligibility, and trends in UI recipiency. The next sections describe the conceptual framework that was used to guide the study, the research questions, and the methodology used to answer the research questions.

### A. Background

The UI program serves three key purposes: It provides temporary benefits to workers who lose their jobs through no fault of their own, it serves as an automatic stabilizer that helps increase economic activity, and it prevents the dispersal of the employer' trained work force and the sacrifice of skills in industries where temporary lay-offs occur. Additionally, it links claimants with services at the local employment service office to help them become reemployed quickly.

The UI program is a federal-state partnership, whereby each state administers its own UI program. While states must follow guidelines established by federal law, they have wide latitude in setting criteria regarding monetary eligibility, allowable separation reasons, and continued eligibility requirements, described below. States also establish the benefit levels and maximum number of weeks allowed, and the tax rates imposed on employers to fund the UI benefits.

The remaining discussion in this section describes broadly the eligibility criteria considered by states, the processes used by states in assessing eligibility, and trends in recipiency rates over time.

#### 1. Eligibility Criteria

To be eligible for UI benefits, workers must meet both monetary eligibility and non-monetary eligibility criteria.

**Monetary eligibility** criteria ensure that UI applicants have had substantial attachment to the labor force before becoming unemployed. When examining monetary eligibility issues, UI staff look at employment and earnings over a base year. In most states, the base year is defined as the first four quarters of the previous five completed calendar quarters before an unemployed person claims benefits, although several states permit optional use of an alternative base period defined as the most recent four quarters. Most state monetary eligibility rules require an individual to have worked in covered employment during at least two quarters during the base year.<sup>4</sup> States also determine the qualifying minimum annual wages for the minimum weekly benefit amount (WBA).

**Non-monetary eligibility** criteria ensure that UI applicants are involuntarily unemployed and remain attached to the labor force. Specifically, non-monetary eligibility criteria are divided into two categories—separation and non-separation.

- **Separation issues:** The worker must be involuntarily unemployed or voluntarily unemployed for good cause. The involuntary unemployment may be due to lack of work or the inability of the worker to perform a job. A worker fired for misconduct in connection with the work is disqualified, although the definition of misconduct varies by state. Workers who voluntarily quit might be eligible, depending on the state's policies.
- **Non-separation issues:** The worker must be able to work, available for work, and in most states, actively seeking work, to continue receiving benefits. Definitions of able and available and policies regarding the job search requirement vary by state. Possible requirements include registering with the job service, attending an eligibility review interview, and/or sending in proof of having conducted a job search.

## 2. Determinations and Denials

Each state has in place administrative procedures that aim to detect claimants' failure to meet non-monetary eligibility criteria. When an issue arises that leads UI to assess eligibility, the decision of the agency is referred to as a *determination*. Determination rates for separation issues are generally defined in terms of new and additional claims. For non-separation issues, the claimant could potentially be ineligible during each week he or she claims benefits. Thus, non-separation determination rates are expressed on a weekly basis.

Determinations can lead to a denial of benefits. According to the DOL, 44 of the 53 state UI programs disqualify workers for the duration of unemployment if they voluntarily left their jobs without good cause.<sup>5</sup> The remaining nine states disqualify beneficiaries for varying lengths of time. In 41 states, a worker fired for misconduct is disqualified from UI benefits for the duration of unemployment. In 12 states, the penalty varies. Two measures that are used to assess

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<sup>4</sup> Covered employment means the employer was required to pay UI taxes for its employees. The vast majority of employees work in jobs covered by UI. The exceptions include some agricultural workers (working on "small" farms), workers who are self-employed, household workers of employers who pay less than \$1,000 per quarter, and employees of religious organizations (Bassi and McMurrer, 1997).

<sup>5</sup> *Comparison of State Unemployment Insurance Laws, 2002*. Washington DC: U. S. Department of Labor. In addition to the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands operate UI programs.

frequency of denials are the ratio of denials to determinations and the ratio of denials to either new claimant spells (separation issues) or weekly claimant contacts (non-separation issues).

### **3. Appeals**

If the claimant or the employer is dissatisfied with the UI agency's monetary or non-monetary eligibility decision, either party can appeal. All states allow at least one appeal, usually referred to as a lower authority appeal. Most states also allow parties to file a second appeal, usually referred to as a higher authority appeal. Administrative appellate proceedings are similar to formal court proceedings: There is a presiding officer (usually an administrative law judge or a referee), the presentation of evidence, cross examination, and the issuance of a written ruling. Claimants and employers have the option of formal representation at the hearings.

### **4. Trends in Reciprocity**

Although the majority of civilian workers are covered under the UI system, the majority of unemployed workers do not pursue benefits. Over the 22 years from 1977 to 1998, only about 30 percent of unemployed people, on average, received UI (Vroman, 2001). There is a great deal of variation in the rate by state (see *Appendix Exhibit A.1*, right-hand column). The average reciprocity rate over this period was lowest in Florida and South Dakota (16%) and highest in Alaska (61%). Generally, the low reciprocity states are located in the South and Southwest, while high reciprocity states are more heavily dominated by states in the Northeast and Northwest.

UI reciprocity declined considerably from the 1940s to the 1980s, and remained relatively low throughout most of the 1980s and 1990s. The decline was likely caused in part by shifts in labor market demographics and the decline in manufacturing employment (McMurrer and Chasanov, 1995). Lewin (1999) also found that state administrative practices had an effect on the UI reciprocity rate but was unable to isolate the individual effects of specific policies and practices.

### **5. Changes in Claims Processing**

One of the biggest changes in the UI program in the past 10 years has been the movement by states from in-person to telephone and Internet claims filing. States made this transition to reduce administrative costs and improve customer service (Needels and Corson, 1998). Colorado was the first state to implement statewide telephone processing of initial UI claims in 1991. According to the Information Technology Support Center (ITSC), in October 2002, 32 states had established call centers for taking initial claims over the telephone and 25 states were taking claims over the Internet.<sup>6</sup> The impact of telephone and Internet processing on reciprocity is not known, although it is likely that the move away from in-person filing and toward a process that is less burdensome on applicants has increased the number of UI applications.

Another potential effect, however, is that the movement to Internet and call center filing might reduce UI claimants' participation in services offered by the local employment service offices. Prior to the move to call centers, claimants filed for UI in the local offices and were immediately

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<sup>6</sup> Four states were conducting pilots in the state and 12 states were making plans to begin telephone processing. In addition, 23 states were making plans to begin taking claims via the Internet.

exposed to the reemployment services offered in the offices. While many states require eventual visits to the local offices (to register with the job service, meet with staff for an eligibility review interview, and/or attend a reemployment workshop), it is often well after they have begun receiving UI.

## **B. Conceptual Framework**

The first step in this study was to develop a conceptual framework for describing the possible links between the key elements of the UI program and UI reciprocity and other outcomes. The framework used to guide this study is depicted in *Exhibit I.1*. As this exhibit shows, a number of factors—state policies, state processes, intermediate outcomes, and program outcomes—interact. Each of these factors is described below.

### **1. State Policies**

Each state has specific non-monetary eligibility rules in place. Some are codified through legislation while others might be administrative rules or court decisions. One example of a policy is how a state defines “good cause” for quitting a job. Narrowly defined eligibility rules, coupled with consistent interpretation of those rules, might lead to a higher number of determinations (an *intermediate outcome*) and lower reciprocity rates (a *program outcome*). These hypotheses are examined further in Chapters II and III.

### **2. State Processes**

Processes and procedures can be written or unwritten. They define the steps and actions that claimants take to apply for UI benefits and remain eligible. For example, state law might require a beneficiary to register with the employment service and undertake an active job search. The job search requirements might involve how many job inquiries are made each week, how they are recorded, and how this information is relayed to UI staff (e.g., in-person interviews or mailing in weekly logs). The application of processes might be consistent across jurisdictions within a state, or individual UI offices might interpret them somewhat differently. Again, specific processes (e.g., three job contacts per week that must be verified by staff) that are implemented uniformly might affect both intermediate and program outcomes.

**Exhibit I.1: UI Non-monetary Issues: Areas of State Variation**

1	2	3	4
State Non-Monetary Policies	State Non-Monetary Processes	Intermediate Outcomes	Program Outcomes
<ul style="list-style-type: none"> <li>• Written policies that can be legislative or administrative and define initial and continuing eligibility</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>➤ Acceptable reasons for quitting job</li> <li>➤ Definition of job search</li> <li>➤ Definition of suitable work</li> <li>➤ Penalties for non-compliance with non-monetary policies</li> </ul> <ul style="list-style-type: none"> <li>• Practice (e.g., consistency, interpretation of non-monetary rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Written or unwritten processes that direct claimant flow through the UI system or staff activities</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>➤ UI benefit filing procedures (e.g., in person, telephone)</li> <li>➤ Procedures for demonstrating job search (e.g., face-to-face, mail in log)</li> <li>➤ Procedures for examining validity of claim (e.g., fact-finding process)</li> </ul> <ul style="list-style-type: none"> <li>• Practice (e.g., consistency of interpretation of non-monetary rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Determination rates</li> <li>• Denial rates</li> <li>• Appeal rates</li> </ul>	<ul style="list-style-type: none"> <li>• UI reciprocity rates</li> <li>• Duration of benefits</li> </ul>
<p><b>Other factors (not related to non-monetary practices) that affect outcomes</b> Monetary eligibility policies and practices, the state economy, demographic characteristics of the population.</p>			

**3. Intermediate Outcomes**

Research suggests that state policies, processes, and practices may contribute to variation among states’ intermediate outcomes, such as determination, denial, and appeal rates. Administrative data suggest that roughly 19 percent of initial claims resulted in a separation determination in 2001 (U.S. median), although there is significant variation across states, from a low of 10 percent in North Carolina to a high of 90 percent in Nebraska (see *Appendix Exhibit A.2*). The median non-separation determination rate for the U.S. is about 20 percent.<sup>7</sup> Again, there is a wide range of rates across the states from less than 2 percent in Tennessee to a high of 81 percent in Maryland.

Nationally, just over half of all separation determinations result in a denial. Nebraska not only has one of the highest determination rates, it also has the highest denial rate per separation determination (84%); Connecticut and Wyoming have the two lowest separation denial rates.

<sup>7</sup> The determination rates for nonseparation issues are measured per ten claimant contacts.

About three-quarters of all non-separation determinations result in a denial, ranging from a low of 30 percent in Maryland to a high of 97 percent in Idaho and South Dakota.

Appeals also affect reciprocity. An attempt by the claimant to overturn a denial or by the employer to overturn a benefit award will ultimately determine whether a claimant receives UI benefits. Appeal rates range from a low of 3.5 percent in Nebraska to a high of 26 percent in the District of Columbia and Florida. The U.S. median was 14 percent..

#### **4. Program Outcomes**

The primary program outcome that we focus on is UI reciprocity. Several measures exist for UI reciprocity. For this study, we used the ratio of weekly UI beneficiaries to the weekly average of total unemployment.<sup>8</sup> For further discussion, see Vroman (2001).

We also examine measures that are components of the reciprocity rate. Four measures—the application rate, ratio of new claims to total claims, share of new initial claims that results in benefit payment, and benefit duration—together determine the reciprocity rate for a given state. Particular policies affect these components differently. For example, separation policies are more likely to affect the share of new initial claims paid, and indirectly, the application rates (if they discourage some unemployed workers from applying), while non-separation policies are more likely to affect the duration of benefits received.

The intermediate outcomes discussed in the previous section directly affect reciprocity. States that increase their separation determination rates or denial rates will reduce the share of initial claims that result in a payment, assuming all else remains the same. States that increase their non-separation determination rates or denial rates will reduce claimant duration, all else being equal. Other external factors, discussed in the next section, affect these measures as well.

*Appendix Exhibit A.1* lists the rates of application, ratio of new claims to total claims, share of new initial claims paid, benefit duration index, and reciprocity by state, averaged across the period from 1977 to 1998. As this exhibit shows, nationally, just over half of all unemployed workers apply for UI benefits. Over half of total initial claims are new claims. Roughly 78 percent of new initial claims are paid. The duration index, which represents the ratio of average weeks of benefit receipt to average weeks of new spells of unemployment (among all unemployed workers), averaged about 1.3. Multiplying these measures together results in the reciprocity rate of about 30 percent. This means that, on average, about 30 percent of unemployed workers receive UI benefits in a given week of unemployment. The values for all four measures vary substantially across the 50 states and District of Columbia.

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<sup>8</sup> This is referred to as the Weekly Benefits to Total Unemployment (*WBTU*) ratio. The *WBTU* differs from another common measure, the Insured Unemployment to Total Unemployment (*IUTU*), because it includes only those in the numerator who received a payment, rather than all who claimed benefits for the week. Claimants may not be receiving benefits because they are serving a one week waiting period, will ultimately be disqualified from receiving benefits, decide not to pursue the application, or are serving a disqualification period (perhaps they were not able or available in the week, but will be eligible in subsequent weeks).

## 5. Other Factors That Affect Reciprocity

There are a number of factors not related to non-monetary issues that should be considered in understanding variations in UI reciprocity across states. These include state monetary eligibility policies, state population demographics, the predominant industries in the state, the levels of unionization in the state, and state economic conditions.

- **Monetary eligibility policies:** Variation in monetary eligibility policies across states affects reciprocity because it is more difficult to gain eligibility in some states compared with others. These policies also affect reciprocity because they include formulas for determining the length of time claimants are eligible for benefit, once approved.
- **Demographics:** Changes in demographics are likely to affect UI reciprocity. One study found that declines in the reciprocity rate during the 1960s and 1970s were due in large part to the influx of women and young workers into the labor market. These demographic groups were less likely to be covered by UI, and thus ineligible for benefits. The rise in two-earner families could have affected the reciprocity rate by decreasing the need to apply for UI once unemployed (Bassi and McMurrer, 1997).
- **Industry:** Burtless and Saks (1984) found that the shift of jobs from the manufacturing industry to other industries was a primary cause of the long-term decline in the number of UI recipients. Manufacturing employment is very sensitive to changes in the economy and results in more “lack-of-work” claims, which are eligible separations in all states.
- **Unionization:** Several studies have found a positive relationship between levels of unionization in the state and UI application rates (Vroman, 1999; Blank and Card, 1991; Lewin, 1991). Union membership rates are thought to have a positive effect on UI reciprocity because unions provide their members with information about UI benefits and eligibility, and union members are more likely to satisfy UI eligibility requirements following job separation than are non-union members.
- **Economy:** Changes in economic conditions affect reciprocity. During high unemployment periods, more workers are unemployed due to lack of work. These workers are more likely to be eligible for UI benefits, and more likely to apply because jobs are not readily available. Also, during poor economic conditions unemployment spells will be longer, UI beneficiaries will receive more months of UI benefits, on average, and they are more likely to exhaust their benefits.

## C. Research Questions

Several research questions emerged from our review of the literature and development of the conceptual model. Prior research indicated that much of the state-level variation in reciprocity rates is due to policies, processes, and practices that are not easily captured by administrative data. Thus, many of the questions we explored during the site visits focused on how UI operates at the ground level and how variation in UI operations helps explain some of the variation in outcomes across states. This section outlines the basic research questions we developed with

regards to separation issues, non-separation issues, appeals, and other factors that will be discussed further in Chapters III, IV, and V.

### **1. Separation Policies and Processes**

- How do separation policies differ across states? Is there variation in processes for making determinations and adjudicating these issues? What accounts for differences in separation determination rates across states?

States define good cause for voluntary quits differently. States might limit good cause to employment circumstances, such as changes made to the claimant's job responsibilities or reduced wages. More permissive states might allow claimants to receive UI if they quit due to certain personal circumstances (e.g., to care for an ill family member or to follow a spouse to a new location). These state policies might affect the number of claimants who apply for UI; claimants living in states that have restrictive policies might be less likely to apply for benefits if they are unemployed for reasons other than lack of work.

In addition, the processes for detecting issues might differ across states. For example, some states might solicit information regarding separation reasons from several sources or attempt to contact both the claimant and the employer multiple times during the fact-finding period.

The rate of UI claims leading to determinations is also likely to be affected by other factors—such as the economy, the industries operating in the state, and the level of unionization—that need to be taken into consideration when examining rates across states. For example, a state that experiences more mass layoffs is more likely to have low determination rates.

- How do separation policies affect the rate of denial and ultimately, reciprocity?

Certainly, state policies will affect the extent to which determinations lead to denials. If all allowable voluntary quits must be work-related, then cases filed by individuals who quit due to personal circumstances will be denied.

### **2. Non-Separation Policies and Practices**

- How strict are states' work search requirements, and to what extent are these requirements being enforced? What is the role of worker profiling in the state? How much variation exists across the states in implementing these requirements? Do these policies affect benefit duration?

In most states, claimants must undertake an active job search. However, states may enforce this requirement to varying degrees, from merely informing claimants of the requirement to having claimants provide evidence of weekly employer contacts. In addition to this requirement, states may impose additional work search requirements on a subset of claimants who have been identified as likely to exhaust their benefits.<sup>9</sup> Claimants in these states might be more likely to

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<sup>9</sup> In 1993, Congress mandated that states implement the Worker Profiling and Reemployment Services (WPRS) program to help UI beneficiaries who are at risk of exhausting their benefits become reemployed more quickly.

become reemployed and/or more likely to be ineligible or voluntarily leave UI because of the requirements. States that actively refer selected claimants to required employment services and/or have strict eligibility reviews for some or all claimants might reduce the proportion of claimants who exhaust their benefits.

Understanding the processes as well as the policies is important because a state that has enforced these requirements might have different outcomes than states that do not enforce them.

- How is “suitable work” defined by the state? To what extent are claimants penalized for refusing suitable work? Does this appear to affect benefit duration?

Generally, a claimant cannot refuse an offer of suitable work without good cause. How states define suitable work differs considerably. For example, this can include work in the claimant’s customary occupation, work that is a reasonable distance from the claimant’s residence, work that does not put at risk the claimant’s health, safety or morals, and work that does not pay substantially less than they were previously making. Some states change the definition as the length of unemployment increases. It is important to document not only the state’s policies but also whether there are processes in place for detecting these types of issues.

### **3. Appeals**

- Does the appeals process vary by state? What are the factors that increase appeals? How do appeals affect UI outcomes?

The appeals process begins when workers and employers are first informed of the opportunity to appeal a decision and continues with the steps each party must take to appeal a decision.

## **D. Methodology**

This study consisted of three activities: a literature review, a review of DOL UI data, and site visits to eight states.

### **1. Literature Review**

The literature review provided background information on UI policies, processes, and program outcomes, and suggested possible reasons for differences in outcomes among states. Findings from this review provided a framework from which we developed the research design, conducted the data review, and developed the protocols for the site visits.

### **2. Data Sources**

Most of the data presented in this report were compiled from monthly and quarterly statistical reports submitted by the State Employment Security Agencies to DOL’s Employment and Training Administration (ETA). Variation across states was used to select the eight states for further analysis.

We analyzed the following ETA reports:

- **ETA 203 (Characteristics of the Insured Unemployed)** provides information on the characteristics (sex, ethnicity, race, age, industry worked, and occupation) of UI claimants.
- **ETA 207 (Non-monetary Determination Activities)** provides information on the volume and nature of non-monetary determinations and denials.
- **ETA 218 (Benefits Rights and Experiences)** provides information on the number of monetary determinations on new claims, the number of new claims determined to have insufficient wage credits, and the number determined to have established benefit years. In addition, it includes information on duration of benefits, both potential and actual, the number of claimants who exhaust benefits, and the average number of weeks of benefits received.
- **ETA 5130 (Benefit Appeals Report)** provides information on the number of lower authority and higher authority appeals (total and by type of appellant), the issues involved, and the extent to which decisions were reversed or sustained.
- **ETA 5159 (Claims and Payment Activities)** provides information on the number of claims filed initially and the number of weekly continued claims.

### 3. Site Visits

In the summer and fall of 2001, the research team visited two states, Arizona and Pennsylvania, to learn more about UI non-monetary eligibility policies and practices and test interview protocols. Visits were made to the remaining six states—Delaware, Maine, South Carolina, South Dakota, Utah, and Washington—in the summer and early fall of 2002 after further refining the study design and interview protocols.

We considered several criteria before selecting states for site visits. First, because a key question was why there was variation in reciprocity rates, we considered only states with relatively high or low reciprocity rates. Second, we ruled out states that were part of another DOL-funded study that was collecting similar information, so as not to duplicate efforts and further burden the states already visited.<sup>10</sup> Third, we looked for diversity in terms of geography, methods for taking initial claims (e.g., in-person, telephone, and Internet), characteristics of the working population (e.g., we looked for at least one state with a sizable non-English speaking population), and union representation.

During the site visits, we met with state-level staff, UI line staff (e.g., intake staff and adjudicators) and their supervisors, staff from local employment service offices who provide services to UI claimants, and appeals staff.

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<sup>10</sup> Visits for another study were conducted in ten states—California, Indiana, Louisiana, Massachusetts, New Hampshire, North Carolina, Oklahoma, Rhode Island, Virginia, and Wisconsin. Findings from this study are included in Vroman (2001).

## **E. Outline of the Report**

The report is organized as follows:

- Chapter II provides an overview of UI programs in the eight study states.
- Chapters III and IV describe the study states' separation and non-separation policies and practices, respectively. These chapters relate these policies to determination and denial rates, reciprocity, and other UI outcomes.
- Chapter V explains the role of appeals in the study states.
- Chapter VI summarizes the study's major findings.
- Appendix A provides information on UI outcomes for all 50 states and the District of Columbia.
- Appendix B includes individual reports on each of the eight states, drawn from the site visits conducted as part of this study.

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## II. OVERVIEW OF THE UI PROGRAM IN THE STUDY STATES

This chapter provides a broad overview of the UI program in the eight study states. In order to understand how non-monetary policies and practices affect reciprocity outcomes, it is essential to understand how other factors might influence these outcomes in these states. This chapter essentially provides the context for the discussions of non-monetary policies and practices in subsequent chapters.

The chapter is divided into five sections. The first section examines the UI outcome measures for the eight states that will be referred to throughout the rest of the report. The second section describes the economic environment and characteristics of the claimant population in the states. The third section describes the outreach efforts conducted by the states to inform unemployed workers and employers of the UI program. The fourth section outlines the monetary eligibility policies in each state. The last section reviews the claims process.

### A. UI Outcome Measures in Study States

#### 1. Reciprocity in Study States

For this study, we selected eight states that had high and low rates of UI reciprocity, relative to the U.S. average (see *Exhibit II.1*). As mentioned in Chapter I, the reciprocity rate is the product of four other UI outcome measures: (1) the application rate, (2) the ratio of new claims to total claims, (3) the share of new initial claims paid, and (4) the duration index.

**Exhibit II.1: Reciprocity Measures for Study States: 1977 to 1998**

State	Reciprocity Rate	Application Rate	Ratio of New to Total Initial Claims	Share of New Claims Paid	Duration Index
<b>High Reciprocity</b>					
Delaware	35.0	59.6	45.6	1.02	1.297
Maine	36.5	83.2	53.9	68.9	1.237
Pennsylvania	41.6	78.9	45.3	86.1	1.362
Washington	36.6	60.7	49.2	76.7	1.595
<b>Low Reciprocity</b>					
Arizona	19.3	29.6	63.0	67.6	1.559
South Carolina	23.9	72.9	53.5	59.5	1.062
South Dakota	16.5	33.7	62.4	65.8	1.193
Utah	25.0	33.2	63.3	83.3	1.448
<b>U.S.</b>					
Median State	28.6	51.8	57.1	76.7	1.339

As this exhibit shows, the four high reciprocity states also have relatively high application rates. All low reciprocity states, with the exception of South Carolina, have low application rates. South

Carolina's low reciprocity is driven by its lower than average rate of new initial claims paid and duration measures, and not its application rate. This will be discussed further in Chapter III.

## 2. Determination and Denial Rates

*Exhibit II.2* lists the determination and denial rates by type of issue (separation or non-separation), and lower authority appeal rates (separation and non-separation determinations combined). As this exhibit shows, the determination, denial, and appeal rates vary substantially across the eight states, especially for non-separation issues.

One might expect high reciprocity states to have low determination and denial rates, and low reciprocity states to have high rates. This tends to be true only for separation determinations (with the exception of South Carolina). While the other measures directly affect reciprocity, the association is not clear from merely comparing the average rates. This is because other factors, discussed in the next sections, also affect reciprocity and must be taken into consideration.

**Exhibit II.2: Determinations and Denial Rates for Study States**

State	Separations		Non-Separations		Appeals Per Determination (%)
	Determinations per Initial Claim (%)	Denials per Determination (%)	Determinations per 10 Claimant Contacts (%)	Denials per Determination (%)	
<b>High Reciprocity</b>					
Delaware	14.6	60.0	6.5	89.8	20.5
Maine	17.1	49.7	47.4	96.3	12.6
Pennsylvania	12.8	44.6	20.5	45.2	14.8
Washington	16.2	48.6	17.2	75.2	13.9
<b>Low Reciprocity</b>					
Arizona	29.6	44.3	30.4	68.8	13.1
South Carolina	11.0	78.2	5.7	64.9	17.8
South Dakota	30.4	61.9	44.2	96.7	9.7
Utah	33.6	43.1	37.1	67.8	12.2
<b>U.S.</b>					
Median State	18.5	53.4	19.9	74.1	12.6

## B. State Environment

This section describes the economic environment, the type of employment opportunities, and the characteristics of UI claimants for the eight study states.

### 1. Economic Environment

Nationally, unemployment rates fell below 5 percent in 1997 and remained there through 2001, the most recent full year for which we have data. In 2001, as *Exhibit II.3* shows, South Dakota's unemployment rate was only 3.3 percent, the third lowest rate in the country, which might help explain its relatively low application rate. Delaware also experienced low unemployment, with a rate of just 3.5 percent, although this state has a relatively high application rate. Washington's unemployment rate, on the other hand, was over 6 percent, the second highest rate among the 50

states and District of Columbia.<sup>11</sup> South Carolina also experienced high unemployment relative to other states. Both states had higher-than-average application rates.

### Exhibit II.3: Annual Average Unemployment Rate, Industry of Employment, and Union Representation

State	Unemployment Rate (2001)	Industry of Claimants (1999) (%) <sup>a</sup>		Represented by Union (%) <sup>b</sup> (2001)
		Manufacturing, Construction, and Mining	Trade and Service	
<b>High Reciprocity</b>				
Delaware	3.5	20.9	49.4	13.4
Maine	4.0	28.5	36.9	14.5
Pennsylvania	4.7	26.4	35.7	18.3
Washington	6.4	31.7	33.5	20.0
<b>Low Reciprocity</b>				
Arizona	4.7	15.5	38.0	6.5
South Carolina	5.4	33.3	30.0	5.6
South Dakota	3.3	22.7	51.1	7.5
Utah	4.4	24.6	39.0	7.8
<b>U.S.</b>				
Median State	4.6	28.2	37.1	13.4

<sup>a</sup> Industry assigned to the last employer, when possible. If recent employer industry is not available, then the major base period employer was substituted.

<sup>b</sup> Refers to members of a labor union or an employee association similar to a union as well as workers who report no union affiliation but whose jobs are covered by a union or an employee association contract.

Source: BLS, Local Area Unemployment Statistics (LAUS), ETA 203, Current Population Survey (CPS),

## 2. Employment by Industry

In addition to the unemployment rates, the predominant industries in the state can affect reciprocity outcomes as well. As mentioned in Chapter I, the shift of workers from manufacturing to other industries is considered to be a primary cause for the decline in reciprocity rates during the 1980s. Therefore, it stands to reason that states which have high levels of manufacturing jobs will have higher rates of reciprocity, all else remaining equal. As *Exhibit II.3* shows, the states in this study with the highest share of claimants in manufacturing, construction, and mining are South Carolina, Maine, and Washington, while South Dakota and Delaware have relatively high shares of unemployed workers in the service and retail industries. Clearly, other factors are influencing reciprocity in Delaware and South Carolina. Also, as mentioned above, while South Carolina has a low reciprocity rate, its application rate, which industry trends are more likely to affect, is quite high.

<sup>11</sup> Washington's unemployment rate has continued to rise since 2001, after it experienced losses of jobs in the aerospace and high-tech sectors. In September 2002, the seasonally-adjusted unemployment rate was 7.4 percent (Washington State Employment Security News Release, October 15, 2002).

### **3. Type of Employment Opportunities**

With the exception of South Carolina, states with higher than average shares of manufacturing employment also have higher rates of union membership. *Exhibit II.3* shows the percent of workers who are members of unions or work in a job represented by a union or employee association. In Washington and Pennsylvania, about one out of every five workers is affiliated or represented by a union or employee association. In Maine, 15 percent of workers are union members or represented by a union. Union membership affects UI reciprocity in several ways. First, unions tend to be politically active and will push for changes in UI policies that favor displaced workers. Second, unions have traditionally provided information on UI to its members and have helped facilitate the filing of UI benefits. Finally, many states do not require members of labor unions who obtain employment through hiring halls to register for work, actively seek work, or participate in reemployment (“profiling”) workshops. Therefore, they are less likely to be denied benefits from non-separation determinations. However, it is important to note that union members on strike are typically ineligible for UI benefits.

### **4. Seasonal Employment**

States vary in their policies for seasonal employees. In states that distinguish seasonal employment from other types of employment, seasonal workers can generally only collect benefits during the months typically worked (so are ineligible in the off-season).

States differ in which jobs are defined as “seasonal.” For example, in Delaware, seasonal work refers specifically to the work involving the first processing of seafood or agricultural products. In Maine, seasonal employment covers a variety of work, including harvesting, packing, and processing of particular agricultural products, work associated with tourism (e.g., hotels and inns that operate fewer than 26 weeks in the year, the ski industry, and whitewater rafting organizations), Christmas-related work, and ice fishing. Pennsylvania state law defines seasonal work as fruit and vegetable processing work.

School employees are generally not eligible for benefits between academic years or terms, or during holiday periods, but policies vary for individuals who work at schools but are employed by other firms. Similarly, professional athletes are ineligible for benefits between successive seasons as long as there is a reasonable assurance that the individual will perform the work in the upcoming season.

### **5. Characteristics of the Claimant Population**

*Exhibit II.4* provides information on the characteristics of the claimant populations. As this exhibit shows, the eight states provide UI to a demographically diverse claimant population. In most states, the unemployed workers are divided roughly equally between males and females. A striking difference is in South Dakota, where 62 percent of the unemployed population is female. This might affect various unemployment reciprocity outcomes because in the past, female workers were less likely to be monetarily eligible for UI than male workers (Bassi and McMurrer, 1997) and, for those who were eligible, more likely to exhaust their UI benefits (Needels, Corson, and Nicholson, 2001).

**Exhibit II.4: Characteristics of Claimant Population (1999)**

State	Sex (%)		Race/Ethnicity (%)				Age (%)		
	Male	White	Black	Hispanic	Native American	Asian	Under 25	25-54	55 and Over
<b>High Recipiency</b>									
Delaware	47.4	55.0	38.5	3.4	0.9	0.3	7.6	79.5	12.8
Maine	50.7	96.7	0.3	0.5	0.8	0.9	8.3	78.4	13.4
Pennsylvania	52.4	85.4	12.3	1.8	0.2	0.3	10.9	74.6	14.4
Washington	59.7	78.4	4.3	11.1	1.6	4.8	8.7	79.5	11.8
<b>Low Recipiency</b>									
Arizona	57.9	40.7	3.3	47.0	7.1	1.0	6.7	79.8	13.4
South Carolina	43.1	48.9	49.5	0.6	0.2	0.4	4.4	61.6	34.0
South Dakota	38.0	69.7	0.7	1.2	28.0	0.4	5.4	48.7	45.9
Utah	53.9	84.6	1.6	8.2	2.8	1.8	13.1	77.9	8.9
<b>U.S.</b>									
Median State	51.7	65.5	9.8	2.0	0.4	0.8	7.6	77.8	13.8

In terms of racial composition, unemployed workers in Maine, Pennsylvania, Utah, and Washington are predominantly white, reflecting the composition of the workforce in these states. South Dakota is again unique in having a sizable Native American population (28%). In Arizona, almost half the unemployed population is Hispanic, while in South Carolina and Delaware, African Americans comprise a large share of the claimant population.

Most unemployed workers are between the ages of 25 and 54. Again, South Dakota stands out from other states, because it has a substantially older population. Almost half of the insured unemployed workers in the state are age 55 or older. South Carolina also has a high share of older unemployed workers, with over one-third at least age 55. UI affects older workers because if individuals are receiving Social Security or Railroad Retirement benefits, their benefits are deducted dollar for dollar from the UI benefit amount. In addition, many states deduct private pension payments (usually adjusting it for employee contributions). This is discussed further in Chapter IV.

### **C. Outreach Efforts of the State UI Program**

Because of low rates of application, researchers have questioned whether unemployed workers have adequate knowledge of the UI program. Analysis from a national household labor force survey found that over half of all unemployed workers who do not apply assume they are not eligible (Wandner and Stettner, 2000).

According to staff in states we visited, many claimants learn about the UI program through word of mouth. Most states conduct limited outreach efforts targeting potential claimants. More effort is made in informing employers about their rights and responsibilities, with the assumption that many workers will learn of their eligibility from their place of employment. Common efforts conducted by the study states include the following:

- **Posted Notice.** All employers are required to post a notice with information on the UI program in conspicuous places where workers are likely to see it. In the states that we visited, tax auditors would routinely look for the poster and advise employers to post it, if they had not done so. However, sanctions were rarely, if ever, imposed for violating this requirement.
- **Handbooks and pamphlets.** States have different handbooks and pamphlets for employers and claimants. The employer information explains tax liability, experience rating, claims and benefits, and the appeals process. The claimant handbook explains the process for claiming benefits and claimants' rights and responsibilities. Most states translate these into languages predominant in the state. The claimant handbooks are generally mailed to claimants after they have applied for benefits.
- **Rapid Response program.** When an organization lays off large numbers of workers, states send in rapid response teams, designed to connect dislocated workers with services. In the states we visited, these teams include UI staff who explain how unemployed workers claim UI benefits. In addition, most teams accept paper applications from claimants and provide them with copies of the claimant handbook.
- **Websites.** All sites we visited have websites to provide UI information to claimants and employers. These states allow claimants to download handbooks and information on UI regulations and laws.
- **Advisory councils.** At least three states have advisory councils comprised of staff from UI, unions, employer groups, and legislative staff to meet and discuss significant developments in the UI program. These councils might review proposed regulatory and legislative changes affecting the UI program.

Some states conduct additional outreach. For example, Maine produced a 30-minute video program that is shown twice a week on the local public broadcasting system (PBS) network. Claimants are encouraged to watch the video, which is also available at the local job service offices. The video provides information on obtaining UI benefits, as well as services offered at the local job service offices. Another special effort was conducted by Washington, after the state launched its Internet site. It began advertising the site on 15-second television spots during Seattle Mariners games. Later, the state created radio public service announcements with information on the new website.

## D. Monetary Eligibility

Even though the focus of this report is on non-monetary eligibility policies and processes, it is also important to consider the monetary eligibility requirements because these policies directly affect the flow of claimants into the state's program.

### 1. Eligibility Rules

To be monetarily eligible, UI claimants must demonstrate an "attachment to the labor force," which is defined differently by states. All states essentially require an individual to have worked

during at least two quarters during the base year.<sup>12</sup> Beyond that, there is substantial variation. Among the study states, as *Exhibit II.5* shows, the additional criteria for qualifying for UI are based on earnings in the high quarter(s), earnings in the base year (first four of the last five completed quarters), hours worked, or weeks worked, or a combination of these measures. Comparing the eligibility requirements across the states is not a straightforward exercise.

To give an example, a worker who had worked 20 hours per week for 26 weeks (540 hours), in two quarters, at the minimum wage (\$5.15 per hour), would be eligible in all states except for Washington, which requires 680 hours worked in the base year, and Maine, because of the base-period wage requirement. If the individual worked the same number of hours, but spread equally over all four quarters, he or she would be ineligible in Arizona and South Dakota, in addition to Washington and Maine, because of those states' high-quarter restrictions.

From this analysis, it might appear that Washington has the most restrictive eligibility requirement of the eight states. However, it is one of the few states that allows all claimants who are not eligible in the base year to use an alternative base period (the last four completed quarters).

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<sup>12</sup> In theory, claimants could be eligible for benefits in Washington if they worked in one quarter, but only if they worked 680 hours in the quarter, resulting in a 52-hour work week.

## Exhibit II.5: Monetary Eligibility Rules

State	Regular Eligibility Requirements	Alternative Base Period Requirements	Benefit Award Determination	Minimum and Maximum WBA	Total Amount Eligible in Base Year	Percent Monetarily Eligible (2001)
Arizona	(1) Earned at least \$1,000 in one of 4 quarters of base period, assuming the total base period wages is at least 1½ times the high quarter OR (2) Earned at least \$7000 in total wages in at least two quarters of the base period, with wages in one quarter equal to at least \$5112.50.	Limited to claimants who were totally disabled for a temporary period and receiving Workers' Compensation. Claimants must have attempted to return to work with the employer where the injury or disability occurred.	The highest-quarter wages in the base period quarter multiplied by 4 percent.	\$40 - \$205	The lesser of: 26 times the WBA or one-third the total base period wages.	97.3
Delaware	Earned at least 36 times the WBA during the base period.	State offers no alternative base period.	Earnings from the two highest quarters divided by 46.	\$20 - \$330	The lesser of: 26 times the WBA or 50 percent of base period wages.	98.1
Maine <sup>a</sup>	(1) During at least two calendar quarters in base period, earned at least two times the annual average weekly wage in Maine (\$1,091.88) AND (2) Over entire base period, earned wages totaling at least six times Maine's annual average weekly wage (\$3,275.64).	The last four completed quarters.	The average of the quarterly wages in the two highest quarters of the base period divided by 22.	\$49 - \$283	The lesser of: 26 times the WBA or one-third the total base period wages.	85.7
Pennsylvania <sup>c</sup>	(1) Earned wages in two or more quarters of the base period AND (2) at least 16 credit weeks (a week in which the claimant earned \$50 or more).	Limited to claimants with injuries compensable under the Workers' Compensation Act.	Determined by both the high quarter wage and total base period wages (provided in Benefits Chart)	\$35 - \$430	If have: 16 or 17 credit weeks, eligible for 16 times WBA; 18 credit weeks, eligible for 26 times WBA.	90.9

**Exhibit II.5: Monetary Eligibility Rules (continued)**

Regular Eligibility Requirements		Alternative Base Period Requirements	Benefit Award Determination	Minimum and Maximum WBA	Total Amount Eligible in Base Year	Percent Monetarily Eligible (2001)
South Carolina	(1) Earned wages for at least \$540 during the high quarter of the base period; (2) Earned a minimum of \$900 during the base period; AND (3) Total base-period wages must equal or exceed 1½ times the total of the high quarter wages.	State offers no alternative base period.	Approximately 50 percent of the average weekly wage.	\$20 - \$268	The lesser of: 26 times the WBA or one-third the total base period wages.	90.0
South Dakota	(1) Earned wages in the high quarter of at least \$728 AND (2) Earned wages in the other three quarters that exceed 20 times the WBA.	State offers no alternative base period.	High quarter wages divided by 26.	\$28 - \$241	The lesser of : 26 times the WBA. or one-third the total base period wages or	85.2
Utah	(1) Earned wages in two or more calendar quarters in the base period; (2) Have total base period wages of at least 1.5 times high quarter earnings <sup>b</sup> ; AND (3) Have earned \$2,400 during the base period.	State offers no alternative base period.	High quarter wages divided by 26.	\$23 - \$365	The lesser of: 26 times the WBA or 27% of the base period wages.	95.9
Washington	Has 680 hours of work during the regular base year	The last four completed quarters.	Average of the total wages paid to the claimant in the two highest quarters of the base year time multiplied by 4%.	\$107 - \$496	The lesser of: 30 times the WBA, or one-third the total base year wages.	98.0

<sup>a</sup> In addition to the WBA calculated above, Maine offers a dependency allowance equal to \$10 for each child under the age of 18. The dependency allowance is also provided for children over the age of 18 who are dependent and full-time students or are incapable of earning wages because of a mental or physical incapacity.

<sup>b</sup> In Utah, if a claimant does not have 1.5 times the highest amount of wages paid during a quarter of the base period, he or she may qualify by providing proof of 20 weeks of employment with at least \$120 earned in each week.

<sup>c</sup> In addition, Pennsylvania claimants may receive an additional \$5 weekly for a dependent spouse plus \$3 weekly for one dependent child. If no dependent spouse, claimants can receive \$5 weekly for one dependent child, plus \$3 weekly for a second dependent child. The allowance for dependents cannot exceed \$8 per week.

The far right-hand column of *Exhibit II.5* shows that in Delaware, Washington, and Arizona, the vast majority (97% to 98%) of claimants who apply for UI are monetarily eligible. These states are followed by Utah, Pennsylvania, and South Carolina. Only about 85 percent of claimants are monetarily eligible in Maine and South Dakota.

Other factors besides eligibility policies influence the extent to which claimants are eligible in a state, including the availability of jobs, the average wage rates, and UI coverage of work. South Dakota's relatively low share of monetarily eligible claimants might be driven by a combination of lower-than-average wages in the state, a high share of agricultural workers not covered by UI, as well as the high-quarter requirement, which is greater in South Dakota than all other states in the study, except for Arizona. Also, as we noted earlier, this state is unique in having higher shares of female unemployed workers (who are less likely to be monetarily eligible). Washington's high monetary eligibility rate is puzzling given its seemingly more restrictive eligibility policy. Perhaps the simplicity of Washington's rule results in more potential applicants understanding their eligibility before applying, resulting in a pool of applicants that is more likely to be eligible (it also highest percent who are male).

Differences in maximum benefit levels also vary substantially from a low of \$205 in Arizona to a high of \$496 in Washington. Maine and Pennsylvania also supplement the weekly benefit amount (WBA) with a dependency allowance. In Maine, the allowance is equal to \$10 for each child; in Pennsylvania, the allowance is equal to \$5 for a spouse and \$3 for one child (or \$8 for two children, if there is no spouse).

## 2. Potential Duration

Claimants are generally limited to 26 weeks of regular state UI benefits in a benefit year, and might be eligible for less, depending on their base-period wages. Starting in March 2002, the federal government allowed for an extension (Temporary Extended Unemployment Compensation or TEUC) that provides an additional 13 weeks of unemployment benefits to qualifying claimants. In addition to this program, the state of Washington offers two other programs that extend benefits. The Extended Benefits (EB) programs is a federal-state partnership that provides up to 13 additional weeks after TEUC for individuals who qualified for TEUC. Washington's Training Benefits program provides additional UI benefits paid to eligible dislocated workers enrolled in and making satisfactory progress in a full-time training program approved by UI.<sup>13</sup>

*Exhibit II.6* lists the average number of weeks for which claimants are eligible and the percent who are eligible for at least 26 weeks of benefits. The percentage of claimants eligible for the maximum number of regular benefits is dependent on the state's monetary eligibility policies. Pennsylvania provides 26 weeks to the vast majority of claimants who are eligible for UI (only requiring 18 weeks in which the claimant earned at least \$50); thus the average number of weeks is close to 26. Washington is the only state in this group offering more than 26 weeks of benefits

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<sup>13</sup> The WorkForce Development Council determines which occupations are in decline in each region. These dislocated workers are eligible to receive up to 52 times their WBA (not including their TEUC extended benefits). Workers in particular industries, such as aerospace, forestry, and finfishing, might be eligible for up to 74 times their WBA, depending on when they applied for UI.

in 2001 (from the state extension program), resulting in an average number of weeks that is greater than 26 weeks. Finally, in Utah, just 29 percent of claimants are eligible for the full 26 weeks. This reflects, in part, the monetary eligibility policy (limiting the amount eligible to 27 percent of base-period wages, rather than one-third, like most states) and the characteristics of the state's population.

### Exhibit II.6: Potential Duration of UI Among All Claimants

State	Average Weeks Eligible	Percent Eligible for 26 Weeks <sup>a</sup>
Arizona	23.9	68.1
Delaware	25.6	87.9
Maine	23.1	55.2
Pennsylvania	25.9	98.9
South Carolina	23.7	69.2
South Dakota	24.7	73.8
Utah	21.5	29.2
Washington	26.7	68.3

<sup>a</sup> Percent of all claimants eligible for at least 26 weeks.

### 3. Shared-Work Compensation Programs

Some states offer a shared work compensation plan that permits those who are not unemployed to obtain UI benefits, thus boosting the state's reciprocity rate. Essentially, it provides reduced benefits to employees whose employers reduce the weekly hours of work rather than lay them off. Both Arizona and Washington have implemented these shared-work programs.

## E. Overview of Claims Process

### 1. Methods Available for Filing Initial Claims

As mentioned in Chapter I, many states have moved to taking initial claims over the telephone. Among the eight states we visited, six have one or more call centers for taking telephone claims (see *Exhibit II.7*). All states that use call centers, except for South Dakota, use an Interactive Voice Response (IVR) system, in which recorded questions are asked of claimants who respond using the telephone key pad. After claimants answer a set of questions, the call will be forwarded to the next available claims agent who will complete the application with the claimant. In South Dakota, calls go directly to a claims agent.

**Exhibit II.7: Filing Initial Claims**

State	Main Method for Applying	Uses IVR System? <sup>a</sup>	Number of Call Centers in State
Arizona	Telephone	Yes	3
Delaware	In person	N/A	0 (4 local offices)
Maine	Telephone and Mail	Yes	3
Pennsylvania	Telephone and Internet	Yes	8
South Carolina	In person	N/A	0 (36 local offices)
South Dakota	Telephone	No	1
Utah	Telephone and Internet	Yes	1
Washington	Telephone and Internet	Yes	3

<sup>a</sup> IVR system is an automated system in which recorded questions are asked of claimants who respond using the telephone key pad.

Delaware and South Carolina are the only two states that still require claimants to apply in person at the local job service offices, although this is not required in all cases. Delaware allows claimants to pick up an application and mail it or drop it in a mail box outside of the One-Stop office (the website does not provide a form to download and mail, so claimants must come in person to pick up the application). In South Carolina, three exceptions are worth noting. First, employers who dismiss workers because of lack of work are able to file claims on the workers' behalf; employers can also file partial claims for employees during a week of reduced work hours or temporary business closure. According to state reports, in 2001, employer claims comprised 64 percent of all UI initial claims in South Carolina. Second, in the summer of 2002, the Columbia office began operating a pilot program that allowed individuals to complete their applications on-line, using the Intranet site in the Columbia office. Third, since 1998, the Charleston office has been operating another pilot program that allows individuals to complete their application over the phone by calling the office and speaking to a claims agent (not an IVR system).

As of our visits in 2002, several states were making plans to expand the methods for initial claims filing. Delaware was making plans to implement an Internet application option during the summer of 2003 (but had no plans to adopt a call center approach). Maine was exploring funding opportunities to develop an Internet system for taking claims. South Carolina was making plans to launch an Internet site that would begin accepting claims sometime in early 2003. It was also making plans to implement a "virtual call center" that would use an automated telephone center, although staff would continue to work at the local offices. They would be able to pick up calls in a statewide queue in the order received.<sup>14</sup>

The move to call centers and the Internet has transformed the way claimants are being served by UI, although it is too early to measure the long-term impact of this transformation on UI

<sup>14</sup> The state decided to implement a virtual call center rather than a centrally-located call center because of the concern that experienced staff would not be willing to relocate to a central call center location.

reciency and other UI outcomes. Staff suggested that the movement to call centers makes it easier for workers to file initial and continuing claims. They no longer have to go to a local office and wait in line to apply for benefits. Staff in Utah found that the reciency rate among professional workers has increased since the move to the call center and suggested this is due, in part, to the ability to file in the privacy of the home without the perceived stigma of going to the public employment office.

Staff also feel they are better able to accommodate individuals who have special needs. For example, all states have access to translation services. In addition, some call centers and local offices have installed telecommunications devices for the deaf (TDDs) so that hearing-impaired individuals could communicate with UI staff. Finally, in most states, claimants can request assistance from the local offices, although the level of support available varies by state.

## **2. Information Supplied**

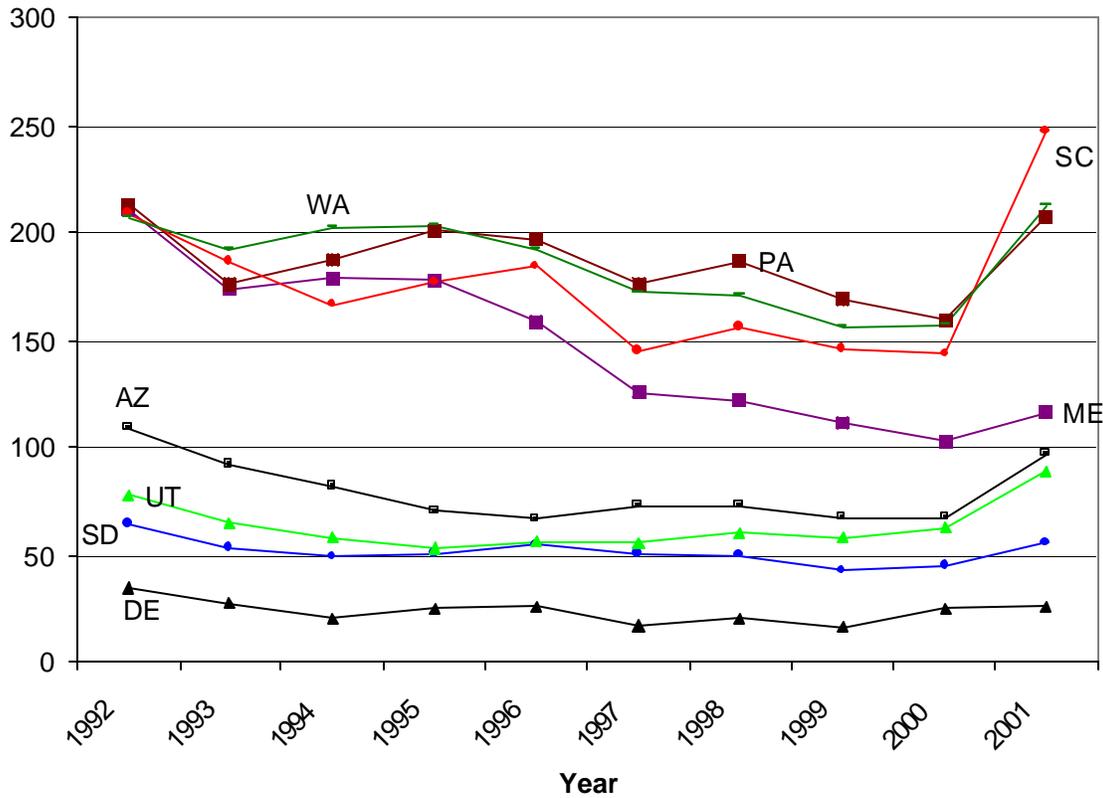
Regardless of whether the claim is filed in person or via another method, claimants have to supply basic information, including answering questions regarding their work experience in the base year, whether they are a member of a union, whether they are receiving Social Security or pension payments, whether they are able and available, and the reason for their separation from work. Some states that provide additional benefits to claimants with dependent children ask for the number of dependent children.

After completing the application, if any issues arise based on the responses to the IVR or the claims agent's questions, the worker will either schedule a fact-finding interview or pass the case to an adjudicator who will later schedule the interview. This process is discussed further in Chapter III. For example, if the claimant responded that the reason for separation was anything other than "lack of work" this will generate an issue, leading to a fact-finding interview.

## **3. Trends in Initial Claims**

*Exhibit II.8* presents the number of initial claims filed in each state per 1,000 in the labor force since 1992. Among the study states, Maine, Pennsylvania, South Carolina, and Washington received the most claims per thousand; Delaware received the least number of claims relative to its labor force. This exhibit shows graphically how initial claims increased substantially between 2000 and 2001, when the nation's economy went into a decline. *Exhibit II.9* provides the number of initial claims in 2000 and 2001. South Carolina saw the largest increase (70%), followed by Arizona and Utah. Delaware, on the other hand, experienced only a 4 percent increase.

**Exhibit II.8: Number of Initial Claims per 1,000 in Labor Force: 1992 to 2001**



**Exhibit II.9: Number of Initial Claims: 2000 to 2001**

State	2000	2001	Increase (%)
Arizona	157,107	233,399	48.6
Delaware	58,873	61,399	4.3
Maine	70,379	79,569	13.1
Pennsylvania	952,225	1,256,629	32.0
South Carolina	283,745	481,863	69.8
South Dakota	18,124	22,419	23.7
Utah	68,461	98,889	44.4
Washington	477,346	636,119	33.3

**4. Continuing Claims**

Claimants in all states must file weekly or bi-weekly (either by phone, mail, or Internet, depending on the state) and supply the UI office with pertinent information regarding their continued eligibility (see *Exhibit II.10*). They generally have to list the amount of income they received in the previous week, whether they were able to work and available each day, whether

they were actively seeking work,<sup>15</sup> whether they refused any job offer or referral to work, and whether they returned to work. Some states ask questions about attendance in school or training. Their response to these questions might generate an issue. For example, if they responded that they were not seeking work, were not able or available, or had refused work, UI would generally schedule a fact-finding interview with the claimant. This is discussed further in Chapter IV.

### Exhibit II.10: Filing Continuing Claims

State	Main Methods for Filing Continuing Claims	Time Period
Arizona	Telephone	Weekly
Delaware	Mail	Weekly
Maine	Mail	Weekly
Pennsylvania	Telephone	Bi-weekly
South Carolina	Telephone	Weekly
South Dakota	Telephone	Weekly
Utah	Telephone or Mail (85%/15%)	Weekly
Washington	Telephone, Internet, or Mail (biweekly)	Telephone and Internet: weekly Mail: can file weekly or bi-weekly

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<sup>15</sup> Pennsylvania does not require claimants to be actively seeking work, and thus does not ask this question.

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### III. SEPARATION ISSUES

As noted above, claimants are eligible for UI benefits if they lost a job through no fault of their own. Thus, the nature of the job separation is important in determining eligibility for benefits.

When an individual applies for benefits, UI staff explore the facts surrounding his or her job separation. In particular, the following separation issues are examined:

- Was the applicant laid off?
- Did the applicant quit? If so, did the applicant quit for good cause?
- Was the applicant discharged? If so, did the discharge involve misconduct?

If the applicant quit or was fired, a separation issue arises. Each state has administrative procedures to detect separation issues and to make decisions on them. A separation determination is the first step in approving or denying benefits. Once an issue has been detected, staff conduct fact-finding. Finally, state UI laws are used to decide whether or not benefits will be paid. Each of these steps will be described further below.

Policies regarding quits and discharges vary by state and are based on statute, administrative rules, and court cases. What is considered a voluntary quit for good cause in one state may disqualify an applicant in another (e.g., quitting for medical reasons). Similarly, states vary in terms of the circumstances in which benefits are granted following a discharge.

Researchers and policy makers hypothesize that the stringency of a state's separation policies affects UI program outcomes, including reciprocity, although the exact nature of the relationship is unclear. This chapter begins by summarizing research on separation issues. It then explores the "intermediate" outcomes in the eight study states (the determination process, fact-finding, and the decision to approve or deny benefits) and the effect on reciprocity.

#### A. Previous Research

Previous studies explored factors associated with determination and denial rates. One found that benefit denial was more contingent upon separation determinations than fact-finding or adjudication. That is, a state's denial rate<sup>16</sup> depends on its effectiveness in detecting separation issues rather than how often determinations lead to denials. States that cast the determination net widely, so to speak, should have higher denial rates. The study suggests that higher determination rates are associated with policies that: (1) enable multiple sources (e.g., claimants, employers, the agency itself) to initiate the determination process, and (2) obtain factual information from employers about the reasons for separation, as opposed to asking the employer if it has any reason to question a claimant's eligibility (Corson, Hershey, and Kerachsky, 1985).

More recently, Vroman (2001) explored how determination rates affect the UI application rate and first payment rate. He found that the misconduct discharge determination rate (but not the voluntary quit determination rate) had a large and negative impact on the application rate and the

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<sup>16</sup> Denials per initial claim.

first payment rate. In other words, the higher the misconduct determination rate, the lower the application and first payment rates.

Others explored factors that specifically affect denials. One study examined the effect of multiple variables on a state's denial rate, including non-monetary eligibility rules (length of disqualification for a voluntary quit or a discharge), solvency of the state's trust fund, benefit levels, state administration,<sup>17</sup> and labor force characteristics<sup>18</sup> (Chasanov and Cubanski, 1995). The study found that high separation denial rates were associated with:

- Non-monetary eligibility penalties for separation issues that disqualify individuals for *less than* the full duration of unemployment
- Lower weekly benefit amounts
- Lower percentages of job losers (i.e., laid off workers)
- Lower rates of unemployment

This Chapter describes the steps involved in detecting a separation issue, gathering factual information on the claim, and making a decision.

## **B. Determinations**

### **1. State Rates**

As noted above, when an issue arises that leads UI staff to assess eligibility for benefits, it is referred to as a *determination*. Researchers suggested a link between a high determination rate and UI reciprocity (Corson, Hershey, and Kerachsky, 1985). Our own conceptual framework hypothesizes that determinations are an intermediate program outcome, with the reciprocity rate the ultimate program outcome. Thus, we compared DOL administrative data for the groupings of high and low reciprocity rate states to see if there were systematic differences in determination rates.

As *Exhibit III.1* shows, determination rates per new unemployment spells for all study states rose between 1990 and 2001. The average annual increase ranged from 1.6 percent in South Carolina to 5.6 percent in Delaware. The median state determination rate rose about 1.5 percent annually during that time period.

In 2001, Utah had the highest separation determination rate; South Carolina the lowest. Both are low reciprocity rate states. However, South Carolina appears to be an outlier. It was unique among the eight states in that claims filed by employers do not generate a determination (64% of initial claims are filed by employers). All four high reciprocity rate states had determination rates below the national median (18.5%), while three of the four low reciprocity rate states had

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<sup>17</sup> Including timeliness of non-monetary determinations, extent to which Democrats control the state legislature, and the denial rate of claims.

<sup>18</sup> Including unemployment rate, percent of unemployed who are job losers, and the unionization rate.

determination rates above the median. Taken together, the low reciprocity states had an average determination rate in 2001 that was about 73 percent higher than the average rate for high reciprocity states (26% versus 15%).

**Exhibit III.1: Trends in Separation Determinations  
(Percent of Initial Claims)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Delaware	11.6	13.9	13.4	22.3	20.9	14.6	5.6
Maine	11.5	17.4	18.1	21.0	15.2	17.2	3.7
Pennsylvania	8.2	10.7	11.0	14.0	13.7	12.8	4.1
Washington	11.6	21.8	17.2	16.0	16.8	16.2	2.1
<b>Low Reciprocity</b>							
Arizona	26.6	30.7	32.6	35.3	31.1	29.6	1.9
South Carolina	11.3	14.4	12.4	14.4	14.2	11.0	1.6
South Dakota	18.6	23.4	20.7	28.2	29.8	30.4	5.4
Utah	24.5	27.4	33.9	40.0	40.9	33.6	3.2
<b>U.S.</b>							
Median State	16.8	18.7	17.4	21.0	20.9	18.5	1.5

One would expect that low reciprocity states would generate more determinations, since determinations are the first step in the process to deny benefits. With one exception, the determination rates of our study states are largely consistent with the literature on determinations, which suggests that high determination rates are a key factor in denials and low reciprocity.

*Exhibit III.2* shows the proportion of determinations that result from voluntary quits and for discharges of misconduct. In all states, the separation determination issue is more likely to be misconduct than a voluntary quit.

**Exhibit III.2: Separation Determination Rates, by Issue (2001)**

State	Percent Voluntary Quits	Percent Misconduct
<b>High Reciprocity</b>		
Delaware	28.8	65.4
Maine	47.1	52.9
Pennsylvania	39.5	57.3
Washington	48.4	51.6
<b>Low Reciprocity</b>		
Arizona	36.8	63.2
South Carolina	25.2	74.8
South Dakota	37.2	62.8
Utah	42.5	57.5
<b>U.S.</b>		
Median State	38.2	58.4

As noted above, Vroman (2001) found that the misconduct discharge determination rate (but not the voluntary quit determination rate) negatively affected the application rate and the first payment rate, thus reciprocity. As a group, the low reciprocity states had a higher proportion of determinations for misconduct than did high reciprocity states (65% versus 57%). The states with the highest proportion of misconduct determinations were South Carolina, Delaware, Arizona, and South Dakota. Of these, only Delaware is a high reciprocity state.

## **2. State Determination Processes**

Previous research suggests that the states that cast the net widely and conduct numerous determinations will have more denials. One question we explored on site was how states detect issues and if this process differed by whether the state had a high or low reciprocity rate. Based on the research, we hypothesized that states with low reciprocity rates might question more employers about reasons for the claimant's job separation, enable multiple sources to initiate a determination, or implement other policies that detect separation issues. Thus, among our study states, we would expect that Arizona, Delaware, South Dakota, and Utah had processes in place that detect more separation issues.

However, we found relatively few differences in the way in which the eight states detected eligibility issues. In each state, the general process was as follows: When a claimant applied for benefits, the UI intake worker asked about the reason for job loss. Depending on the state, this can occur during the initial call to the call center or during the in-person application process. Regardless of the application method, any claimant who reports a *reason for job loss other than a lay off* automatically raises an issue and generates a determination. Thus, any applicant who reports quitting a job or being fired will create an issue, regardless of the state.

Because states treat any claim that did not result from a layoff as a separation issue, the stringency of a state's separation policies (i.e., situations in which benefits are granted for quits or discharges) does not appear to affect the determination process. That is, a state may grant benefits for many types of voluntary quits, such as quitting to follow a spouse or to care for a family member, while another state might allow benefits only in cases where quits are directly tied to employment (e.g., sexual harassment). When referring a claim to adjudication, it is not necessary for the intake worker to secure further information about the reason for the quit.

## **3. Factors that Affect Applications**

The eight study states have similar processes for detecting separation issues and determinations, yet, as noted above, their determination rates vary considerably. If states, as a matter of policy, conduct fact-finding on any claim that does not result from a layoff, then it holds that the nature of the applicants (e.g., the proportion who were laid off from their jobs) likely differs between the high determination rate states and the low ones.

As mentioned in Chapter I, the application rate (initial claims divided by new unemployment spells) is one factor in the reciprocity rate. As *Exhibit III.3* shows, states with above-average application rates were Delaware, Maine, Pennsylvania, South Carolina, and Washington. Of these, only South Carolina is a low reciprocity state. As a group, the average application rate for

high reciprocity rate states exceeded the rate for low reciprocity states by 69 percent (71% versus 42%).

### Exhibit III.3: Application Rate (1977-1998)

State	Initial Claims as Percent of New Unemployment Spells
<b>High Reciprocity</b>	
Delaware	59.6
Maine	83.2
Pennsylvania	78.9
Washington	60.7
<b>Low Reciprocity</b>	
Arizona	29.6
South Carolina	72.9
South Dakota	33.7
Utah	33.2
<b>U.S.</b>	
Average	53.0

Source: Vroman (2001), Table III-1.

Interviews with state representatives revealed several factors that affect the number of claimants who apply for benefits. These include the mix of industries, economic conditions, knowledge of UI benefits, ease of filing claims, and population characteristics. Below, each is described in more detail. *Exhibit III.4* compares a number of factors across the states in the sample. The data, however, should be interpreted with caution. Descriptive statistics might indicate associations but do not suggest causation. Also, it is not possible to isolate the effect of one factor (e.g., the economy) from other factors. Additionally, it should be noted that factors that affect applications may not be independent of state UI policies (i.e., knowledge of a state's separation policies might discourage or encourage applications).

### Exhibit III.4: Factors Associated with UI Applicant Pool

State	Unemployment Rate	% Unemployed in Mining, Construction, Manufacturing Industries (1999)	Percent Labor Force Represented by a Union (2001)	Current Method for Filing Claim
<b>High Reciprocity</b>				
Delaware	3.5	20.9	12.2	In person, Mail
Maine	4.0	28.5	14.5	Call Center
Pennsylvania	4.7	26.4	17.0	Call Center, Internet
Washington	6.4	31.8	20.0	Call Center, In person, Mail, Internet
<b>Low Reciprocity</b>				
Arizona	4.7	15.6	6.5	Call Center
South Carolina	5.4	33.2	4.0	In person
South Dakota	3.3	22.7	5.9	Call Center
Utah	4.4	24.6	6.8	Call Center, Internet
<b>U.S.</b>				
Average	4.6	27.3	13.5	N/A

**Economic Conditions.** Staff from a number of states connect the strength or weakness of the local economy with the pool of applicants and, indirectly, determination rates. They suggest that when the unemployment rate is low, people who voluntarily leave work have less difficulty finding another job and thus are less likely to apply for benefits. If fewer job quitters apply for benefits, fewer separation issues arise and the determination rate will decline. In times of higher unemployment, individuals might be less likely to quit their jobs or more likely to apply for benefits once they quit. Employer actions also affect the determination rate. In times of economic downturns, staff are more likely to be laid off.

Only Washington and South Carolina had above-average unemployment rates in 2001. Not surprisingly, both states also had higher-than-average application rates. The fact that the two states have lower-than-average determination rates would suggest that a large number of applicants were laid off from their jobs, which would be consistent with business practices during an economic downturn.

**Mix of Industries.** Industrial states with a large proportion of jobs in manufacturing would be expected to have lower determination rates. Staff suggest that manufacturing is more sensitive to changes in the economy than other industries. Economic downturns produce a high proportion of “clean” claims (i.e., layoffs). They also note that claimants are more likely to be members of labor unions and thus knowledgeable about UI benefits. In the states we visited, the UI office dispatched rapid response teams to large employers undergoing mass layoffs and often simplify the application process by allowing employers to file on behalf of claimants or distributing applications at the work site.

The states with the highest share of unemployed<sup>19</sup> in mining, construction or manufacturing are Maine, Pennsylvania, South Carolina, and Washington (about 25%). Three of these are high reciprocity states. As a group, however, high reciprocity rate states have only a slightly higher percentage of unemployed in these industries (27% versus 24%).

We would expect that states with a large proportion of workers in industries sensitive to economic cycles would have higher application rates. In fact, Maine, Pennsylvania, and South Carolina have the highest application rates of the eight study states. We would also expect that workers in these industries would be more likely to be laid off. In fact, these three states also had the lowest determination rates in 2001. This finding is consistent with our finding that states do not adjudicate issues for claimants who are laid off.

**Unions.** Research and site visit interviews also suggest that labor unions are a key source of information about UI benefits for potential claimants. Thus, one would expect that states with a highly unionized labor force would have greater application rates than states with lower representation. We found that the states with above average unionization rates (Maine, Pennsylvania, Washington) have above average application rates. The one exception is South Carolina, which has a low proportion of workers represented by unions, yet a high application rate. While the state does not have a large unionized workforce, it does have a large proportion of

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<sup>19</sup> The figure represents the proportion of insured unemployed in various industries and does not include uninsured unemployed.

insured unemployed from the types of industries that are typically unionized (e.g., mining, construction, manufacturing). Also, as noted above, employers are actively involved in submitting claims on behalf of workers. (An employer would file a claim only if the individual was laid off. Claimants who quit or were fired would have to apply on their own.)

The association between reciprocity rates and unionization is also interesting. When the high and low reciprocity rate states are examined separately, a pattern emerges. Among the high reciprocity states, the percent of the labor force represented by a union is 1.7 times higher than among low reciprocity states (16% versus 6%).

The link between union representation and determinations is less clear. One could hypothesize that industries typically associated with unions (i.e., mining, manufacturing, and construction) are associated with clean claims; thus states with a large share of workers represented by unions would have lower determination rates. The states with large union representation—Delaware, Pennsylvania, Maine, and Washington—tend to have lower than average separation determination rates. Delaware is the exception.

**Knowledge of UI benefits.** States theorize that as more people learn about the UI program, more will apply, including those that quit their jobs or were fired who will be candidates for determinations. Unions traditionally have played a strong role in educating workers about UI benefits. A number of researchers attribute the decline in UI reciprocity to the decline in unionization.<sup>20</sup> As noted above, states with a high proportion of their labor forces represented by unions had higher application rates and, generally, lower determination rates. In addition to unions, potential claimants learn about the UI program from a variety of sources, including employers, One-Stop career centers, and advertisements.

Active outreach by the UI office in the states we visited was limited. All states provide employers with signs or posters to place in the work site that explains the program and how to apply for benefits. Three states (Delaware, South Dakota, and Washington) audit employers to determine if the signs are in fact posted, although sanctions generally were not imposed for non-compliance. In our eight states, the labor departments also includes information about UI on their websites. One-Stop career centers display pamphlets about the program. Only two states, Washington and Maine, reported advertising the program. As mentioned in Chapter II, Washington, after launching its Internet site, began advertising the new option available for submitting claims on 15-second television spots during Seattle Mariners games. Later, the state created radio public service announcements. Maine produced a video aired on PBS that describes the UI program, claims process, and employment services available. Interestingly, this state had the highest application rate (83%). Staff in both states, however, report that word of mouth remains a predominant methods for learning about the UI program.

One state noted that an advertisement campaign through print media, radio or television would increase knowledge about UI benefits much the way that advertisement of the State Children's

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<sup>20</sup> See Bassi and McMurrer in *Unemployment in the United States: Analysis of Policy Issues*, C. O'Leary and S. Wandner (eds.). 1997. Kalamazoo, MI: Upjohn Institute for Employment Research. Chapter 2.

Health Insurance Program (SCHIP) increased familiarity—and perhaps take-up rates—with that program.

**Ease of filing the claim.** Call centers are now the primary method for filing claims in six of the eight study states. Staff in the call center states suggest that enabling claimants to file for benefits over the telephone or Internet increases the application rate. Claimants no longer have to drive to an office and wait in line. They can dial the call center at any point in the day. Staff also noted that determination rates could be affected by the ease of filing a claim. More applicants, including those who trigger a determination, might apply for benefits than would have under a local office structure.<sup>21</sup>

The average determination rate for call center states (23%) is 77 percent higher than the rate for in-person states (13%), which might suggest that more people (including those who quit or were terminated) are applying for benefits. However, data limitations make this hypothesis difficult to test. The application rate is based on data collected prior to the implementation of call centers in our study states. A future study might examine application rates in the years before and following adoption of a call center, holding constant other factors (e.g., the unemployment rate).

**Population Characteristics.** UI staff suggested that the characteristics of the state population likely affect the applicant pool, although they noted that evidence is anecdotal. Staff hypothesized that state culture, two-earner families, and a highly mobile population contributed to a low inflow of individuals into the UI program.

Three low reciprocity states (Arizona, South Dakota, and Utah) noted that a pervading culture of “self reliance” might prevent unemployed individuals from seeking government assistance, even from an insurance program. South Dakota and Utah staff also suggested that two-earner families might contribute to the low reciprocity rate. Both states reported that they have a higher-than-average proportion of families with both spouses working, and these families might be able to rely on the second earner’s income after a job loss rather than applying for benefits. Finally, Arizona suggested that high in-migration into the state likely affects inflow into the program because many workers are new to the state and earned much of their base period wages elsewhere (thus file for benefits in another state). Other new residents have not accumulated the requisite base period wages to qualify in Arizona.

#### **4. Summary of Separation Determination Issues**

Through our site visits and analysis of the data we tested some of the hypotheses offered in the literature. Some of our findings were consistent with the literature:

- Low reciprocity states have higher determination rates

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<sup>21</sup> A previous report by Mathematica Policy Research explored the impact of telephone claims filing on UI initial claims in seven states. Of the states studied, one had a clear increase in the number of claims, one a decrease, and three had no change. In the two others, the evidence was mixed. Claimants in the states reported liking the call center method for filing claims and to prefer it to in-person filing. Karen E. Needels, Walter Corson, Tim Meier, Ira Harley, and Karen Blass. *Evaluation of the Impact of Initial Telephone Claims Filing. Final Report.* Mathematica Policy Research. March 2000. Document No. PR00-11.

- Low reciprocity states have higher misconduct determination rates

However, we did not find variation in policies or procedures used to detect separation issues. Rather, any claimant who quit or was fired raises an issue. This was true for all of the study states.

Variations in the determination rates likely are due to factors that affect applications. *Exhibit III.5* shows the likely effect of various factors on determinations. A positive (+) sign means that the factor is associated with a higher determination rate. For instance, a low unemployment rate suggests there would be fewer layoffs, thus fewer clean claims and a higher determination rate. A negative (-) sign suggests the opposite. An above-average unemployment rate would be related to more clean claims and a lower determination rate.

### Exhibit III.5: Hypothesized Association between Applicant Factors and Separation Determinations

State	Unemployment Rate		Industry: Manuf, Construc, Mining		Union Representation		Claim Filing Method: Call Center	
	% Above US	Effect	% Above US	Effect	% Above US	Effect	% Above US	Effect
<b>High Reciprocity</b>								
Delaware	N	+	N	+	N	+	N	-
Maine	N	+	Y	-	Y	-	Y	+
Pennsylvania	Y	-	Y	-	Y	-	Y	+
Washington	Y	-	Y	-	Y	-	Y	+
<b>Low Reciprocity</b>								
Arizona	Y	-	N	+	N	+	Y	+
South Carolina	Y	-	Y	-	N	+	N	-
South Dakota	N	+	N	+	N	+	Y	+
Utah	N	+	N	+	N	+	Y	+

We found a number of interesting associations:

- Looking generally at the high and low reciprocity states, the factors we identified as related to applications (unemployment, industry mix, union representation, and claim filing method) appear to be associated with lower determination rates in high reciprocity states, and higher determinations in low ones. That is, the fields in the low reciprocity effect boxes are populated primarily with (+) signs, suggesting that the identified factors are associated with higher determination rates. The opposite is true for the high reciprocity states.
- The four states with more than 25 percent of unemployed workers in construction, manufacturing and mining (Maine, Pennsylvania, Washington, and South Carolina) had lower determination rates; the same pattern held true for states with a larger-than-average proportion of workers represented by unions (Maine, Pennsylvania, and Washington).
- Three of the four states with higher-than-average unemployment rates (Pennsylvania, South Carolina, and Washington) had lower determination rates. Arizona was the exception to this rule.

- The call center states have higher determination rates than the states that only accept claims in local offices, perhaps suggesting that ease of filing is causing more individuals (especially those who quit or were fired) to apply.
- The states with the lowest application rates (Arizona, Utah, and South Dakota) report that a culture of self-reliance likely affects the behavior of unemployed individuals. Moreover, high proportions of two-earner families in two of these states (South Dakota and Utah) might decrease the need to apply for benefits.

### **C. Fact-Finding and Adjudication**

Once UI staff detect a determination issue, the next step in the process is fact-finding and adjudication. The information is used to decide whether to approve or deny a claim. Research suggests that fact-finding and adjudication are more administratively confined than other UI functions, thus states are less likely to have variation (Corson, Hershey, and Kerachsky, 1985).

The states visited represent a range of approaches to these activities. In some states these functions are centrally located in one call center. In others, adjudicators are dispersed across multiple call centers or local offices. States vary in terms of whether fact-finding is conducted over the telephone or in person and the extent to which employers and claimants are asked to fill out paper work (e.g., questionnaires). In all states, adjudicators assess statements from both claimants and employers.

#### **1. Adjudication Location and Staff**

**Location.** The study states locate adjudication units in a variety of places. Three states have centralized adjudication units in or near the state UI offices. South Carolina's adjudication unit is in the state office in Columbia. South Dakota and Utah co-locate adjudicators with the central call center.

The four states with multiple call centers (Arizona, Maine, Pennsylvania, and Washington) house adjudicators in each site. The adjudicators generally are responsible for claims that are filed in their own call centers. Two of these states also have free standing adjudication units not associated with the call centers. In Arizona, the Yuma office does not accept UI applications but does adjudicate claims for the counties that border Mexico. The counties have a large proportion of Spanish speakers; bi-lingual UI staff are hired accordingly. Washington has four adjudication offices in addition to the co-located staff in the state's three call centers. The state operates these units in order to retain staff who were unwilling to relocate to the call centers when the state adopted the new approach to filing benefits.

The final state, Delaware, co-located an adjudication unit in each of its four local offices. Adjudicators handle claims filed in their offices.

**Staff.** As indicated above, more than one staff person often is responsible for fact-finding. Intake workers in all states conduct some type of fact-finding, ranging from gathering information on the type of job separation to taking a detailed statement. In all but one state, the claim is transferred to an adjudicator to conduct more in-depth interviews with claimants and employers. The method for assigning a case to a particular adjudicator varies by site. In many of the call

center states, claims are assigned based on the last digits of the claimant's Social Security number. South Dakota is the exception, where claims are assigned by issue (i.e., one adjudicator will handle separation issues, another will handle non-separation issues, and so on. Adjudicators rotate issues every month.)

States that utilize local offices for UI applications tend to have a different procedure than the call center states. In Delaware, claims are assigned based on adjudicator availability (as will be discussed further below, adjudicators first meet with claimants at the time of the application). In South Carolina, the intake workers at the local offices collect information and interview claimants. The documentation is forwarded to the central adjudication unit. Adjudicators will conduct additional fact-finding if they believe it is necessary and make the decision on the claim.

## 2. Claimant Information

UI staff collect information from claimants during the application process through questionnaires and interviews (see *Exhibit III.6*). Each method is discussed below.

**Exhibit III.6: Claimant Information Collection**

State	Claimant Intake Statement	Claimant Questionnaire	Interview Scheduled with All	Interview at Staff Discretion
Arizona	X		X	
Delaware	X		X	
Maine	X	X	X	
Pennsylvania	X			X
South Carolina	X		X	
South Dakota	X			X
Utah	X	X		X
Washington	X	X	X	

**Intake Statement.** All states take a claimant statement at the time of the application. The level of detail varies by state. In five states (Arizona, Maine, South Carolina, Utah, and Washington) the information collected about the separation is limited. That is, the intake worker asks the claimant why he or she is no longer employed; if the answer is anything but job loss (i.e., lay off), the intake worker takes a brief statement, the claim is flagged, and referred to an adjudicator.

In three states (Delaware, Pennsylvania, and South Dakota), intake workers collect detailed statements at the time of the application from claimants who quit their jobs or were fired. Claimants in Delaware, for instance, write a statement about their job loss and sign it. In Pennsylvania, the questions vary according to the reason for job separation. Upon learning the reason for the quit or discharge, the intake worker pulls the relevant form (e.g., quit for medical reasons, was fired for insubordination) and asks the questions over the telephone. The information is forwarded to the adjudicator, who is responsible for contacting the employer. The intake workers in South Dakota follow a detailed script and type the claimant responses directly on the computer screen. As with Pennsylvania, the questions are dictated by the reason for the separation. For voluntary quits, the claimant is generally asked the reason he or she left work on

the last day of employment, what other options were available, and what attempts were made to have the employer resolve the issues. The discharge script focuses on the employer's policy on the issue in question (e.g., tardiness), the claimant's awareness of the policy, whether the employer had discussed the particular behavior with the claimant, and whether a warning had been issued.

**Claimant Questionnaire.** Not all states mail questionnaires to claimants. The three states that collect detailed information from the claimant at intake do not follow up with a mailing. Of the states that take briefer statements at intake, three send a form to the claimant to fill out and return to the adjudicator. Utah and Washington use questionnaires that ask the claimants to describe the job separation. Maine's form is tailored to the particular separation issue. In each state, claimants have one week to 10 days to return the form.

**Interviews.** States differ in terms of scheduling interviews with all claimants for whom an issue was detected. In some, an interview is scheduled with each claimant as a matter of policy. In others, the adjudicator weighs the information gathered through intake and the questionnaire to determine if an interview is necessary.

Five states have a policy of interviewing all claimants with a separation issue (Arizona, Delaware, Maine, South Carolina, and Washington). The timing and protocol (in person or via telephone) vary considerably. Three call center states schedule interviews at the time of intake. In Arizona, interviews are scheduled for two to three weeks following submission of the application, depending on the part of the state. Maine and Washington also schedule interviews with all claimants as a matter of policy, which occur five days and ten days following intake, respectively. All three states conduct interviews over the telephone. In two of these states (Maine and Washington) the claimant is sent a questionnaire and asked to return it prior to the interview, so the adjudicator might already have a good understanding of the issues. If the claimant is not available at the scheduled time, the adjudicator will try to reschedule the interview. If the adjudicator does not succeed in interviewing the claimant, the decision will be based on the available information.

Staff in Delaware and South Carolina, two in-person states, conduct or schedule interviews at the time of intake. When separation issues arise in Delaware, the intake worker asks the claimant to fill out and sign a statement, then the claimant is referred immediately to an adjudicator. The adjudicator meets with the claimant while he or she is still on site and reviews the cause of the separation and clarifies the claimant's statement. In South Carolina, the intake worker schedules an interview for eight days following intake. Local office staff (not the central adjudication unit) conduct the interviews.

In each state that schedules interviews, adjudicators ask the claimants variations on the following questions. If the claimant quit, adjudicators focus on:

- The reason for the quit,
- What happened on the last day of work,
- The conditions of hire and whether there were changes in the work conditions, and
- Whether efforts were made to resolve any problems.

If the claimant was fired, adjudicators ask claimants:

- The reason for the discharge,
- What happened on the last day of work in relation to the discharge,
- What was the employer's policy,
- Was the claimant aware of the policy, and
- Whether the claimant received warnings prior to the discharge.

Three states do not schedule interviews with claimants when a separation issue arises. Two of the states, Pennsylvania and South Dakota, take a detailed claimant statement at the time of intake if a separation issue arises. Adjudicators have a copy of the statement and will call the claimant for clarification if needed. The third state, Utah, sends claimants detailed questionnaires regarding the reason for job separation. Once the forms are returned, the adjudicators will call claimants on an as-needed basis to clarify issues.

Regardless of whether the states schedule interviews with the majority of claimants or not, many staff in call center states voiced strong feelings about the shift to telephone interviews. They noted that when interviews were conducted in person it was easier to get a sense of whether the claimant was being truthful in his or her answers. Others countered that telephone interviews were always the primary method for collecting information from employers and there was not a concern that they were untruthful.

### **3. Employer Information**

States gather information from employers through questionnaires and interviews. Each is discussed below.

**Employer Questionnaire.** All states notify employers that a claim has been filed and ask for information on the separation. The type and detail of information collected varies by state. Pennsylvania, for example, has a specific employer questionnaire depending on the type of separation (e.g., voluntary quit for health, voluntary quit for personal reasons, voluntary quit for transportation reasons, discharge for insubordination, discharge for dishonesty). One side of the questionnaire inquires about the facts surrounding the employment (e.g., dates of employment, wages paid, the job separation), while the reverse provides space for a written statement or additional information. Other states request more limited information on the employer response form. Delaware, for example, asks the employer to check a box on the reason for the job separation, last date of employment, claimant receipt of holiday/vacation/severance pay or pension, and contact information. The employer is given limited space to write the details of the job separation. In all states, employers are asked to provide documentation, particularly if the claimant was discharged (e.g., written warnings, performance reviews, copies of company policies).

States also vary in terms of which employers are contacted. Four states send a form to the last liable employer (Delaware, Maine, Pennsylvania, and South Carolina). Utah sends a form to the separating employer, unless the claimant did not earn six times the weekly benefit amount with that employer, in which case previous base period employers are contacted. South Dakota sends

a form to all base period employers and the last employer of 30 days (considered the separating employer and may or may not be part of the base period). Washington notifies all base period employers. The latter two states gather separation information only from the last employer; the others are notified because their accounts might be charged.

Employers generally are given 7 to 10 days to return the completed form. Adjudicators we interviewed noted that it is not uncommon for employers to fill out the questionnaires partially, or fail to send them back. They suggested a number of reasons that employers were remiss about returning separation information in a timely manner. One theme that emerged was the use of third party representatives. Often the UI staff are unaware of the representative and send the questionnaire to the employer, who then forwards it to the representative. In other instances, the paperwork is sent to the representative, but the representative cannot answer the questions about facts surrounding the separation and must contact the employer. Other adjudicators suggested that employers, or their representatives, simply do not want to invest the time and forgo the opportunity to provide information. Staff in all eight states noted that it is common for an employer not to respond to agency requests for information, but will appeal a decision made in the claimant's favor. If employers do not return the form, adjudicators make an attempt to contact them via phone. If they are still unable to get a statement, they make a decision is made based on the information available.

**Interviews.** One state, Maine, generally schedules interviews with employers. The adjudicator interviews the employer after the claimant, and asks the employer to verify the claimant's statement. The other states call employers as needed. For example, the adjudicator might need to clarify information submitted on the employer questionnaire or reconcile differences between claimant and employer statements. Additionally, adjudicators will call employers that have not returned their questionnaires. This is especially important when the separation issue is a discharge. Because the burden of proof is on the employer, states noted that it is crucial to get the employer's statement. Employers generally are given 48 hours to return the call before a decision is made based on the information available. Whereas some states conduct claimant interviews in person, employers are contacted via telephone in all states.

**Rebuttals.** If there is a discrepancy between the employer and claimant statements, the adjudicator will contact each party and offer the opportunity for a rebuttal.

#### **4. Summary of Adjudication Issues**

We did not find large variations in the fact-finding and adjudication processes in the eight study states. The differences we did identify were related to location of the adjudication unit, staff involved in fact-finding, and information gathering methods, and they are unlikely to systematically affect determinations or decisions. Areas where we found differences include:

- In four states (Delaware, Pennsylvania, South Carolina, and South Dakota) information about the claimant is gathered by the intake worker and the adjudicators. In three states, detailed claimant statements about the job separation are taken by the intake worker; the adjudicator follows up to clarify the statement and contact the employer. In the fourth state (South Carolina), the intake worker interviews the claimant and the adjudicator will continue

fact-finding on an as-needed basis. In the other four states, the intake worker takes a briefer statement and the fact-finding largely is conducted by the adjudicator.

- In some states, adjudication units are centralized. This is generally a function of whether the state has a central call center (as in the cases of Utah and South Dakota) or whether intake functions are dispersed across the state. South Carolina has a unique structure in that staff in the local offices conduct fact-finding but the final decision on a claim is issued by a central determination unit in the state capital.
- States vary in terms of whether fact-finding occurs in person or via telephone. In Delaware and South Carolina, intake workers interview claimants in person. In the remaining states, interviews are conducted over the phone.
- Adjudicators often have to make a decision based on limited information. Adjudicators always have at least limited information from the claimant (gathered at intake). In some instances, claimants and employers fail to respond to questionnaires or requests for interviews. In these cases, the decision is made based on the information available.

#### **D. Benefit Denials**

Once adjudicators conclude fact-finding, they must make a decision to grant or deny benefits. Adjudicators use state laws, administrative rules, and court precedent to make decisions on claims. While the stringency or leniency of a state UI program's rules regarding voluntary quits and discharges does not appear to play a role in the determination process (a claimant who reports quitting or being fired automatically generates a determination issue in each of our study states) the rules clearly affect denials.

There are two ways to compute denial rates—as a percent of determinations and as a percent of initial claims. *Exhibit III.7* shows the separation denial rates per determination for the eight states in the study. Generally, the rate remained fairly stable or declined slightly in the study states between 1990 and 2001. The average annual change ranged from negative 2.3 percent in Pennsylvania to 1.4 percent in Utah. The median state denial rate decreased an average of 0.4 percent per year over the time period.

**Exhibit III.7: Trends in Separation Denials (Percent of Determinations)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Delaware	72.8	75.0	73.0	60.3	60.6	60.0	(1.8)
Maine	44.8	40.0	40.9	41.5	53.6	49.7	1.1
Pennsylvania	55.8	49.4	46.0	43.2	44.7	44.6	(2.3)
Washington	54.6	49.6	53.9	48.7	46.9	48.6	(0.7)
<b>Low Reciprocity</b>							
Arizona	51.8	57.0	57.5	49.7	48.0	44.3	(1.7)
South Carolina	77.6	79.0	76.4	78.9	79.7	78.2	0.1
South Dakota	56.8	59.7	63.2	61.5	62.1	61.9	1.1
Utah	42.5	41.7	30.5	48.2	46.3	43.1	1.4
<b>U.S.</b>							
Median State	56.8	57.8	57.6	56.4	55.9	53.4	(0.4)

Note that in 2001, five of the eight states had denial rates below the national median rate (Arizona, Maine, Pennsylvania, Utah, and Washington). These include two low reciprocity states and three high ones.

Calculating denials as a percent of determinations suggests that state policies are not getting stricter. That is, claimants who raise a determination issue were not more likely to be denied in 2001 than in 1991.

However, when denials are calculated as a percent of initial claims, there is a clear upward trend. As *Exhibit III.8* shows, all states experienced an average annual increase in denials per initial claim. All of the high reciprocity rate states had a 2001 denial rate under the U.S. median, compared with only one low reciprocity rate state (South Carolina).

Calculating denials as a percent of initial claims indicates that the applicant pool is changing. For the denial rate to increase, more claims must result in determinations (and thus denials). This is consistent with previous exhibits, which show that the determination rate increased between 1991 and 2001 in all eight study states.

**Exhibit III.8: Trends in Separation Denials (Percent of Initial Claims)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Delaware	8.4	10.4	9.8	13.4	12.7	8.8	3.0
Maine	5.2	7.0	7.4	8.7	8.1	8.5	4.2
Pennsylvania	4.6	5.3	5.1	6.0	6.1	5.7	1.5
Washington	6.4	10.8	9.3	7.8	7.9	7.9	1.2
<b>Low Reciprocity</b>							
Arizona	13.8	17.5	18.8	17.5	14.9	13.1	0.2
South Carolina	8.8	11.4	9.5	11.3	11.3	8.6	1.8
South Dakota	10.5	14.0	13.1	17.3	18.5	18.8	6.5
Utah	10.4	11.4	10.4	19.3	19.0	14.5	4.6
<b>U.S.</b>							
Median State	9.0	10.5	9.5	11.4	11.8	10.4	1.9

These rates combine denials for voluntary quits and misconducts. However, the rules surrounding each type of separation issue vary greatly. Below, state policies and denial rates for voluntary quits and discharges due to misconduct are presented separately.

**1. State Policies: Voluntary Quits**

*Exhibit III.9* depicts the voluntary quit policies in the eight study states. In all states, a quit must be attributable to “good cause”; however, what constitutes good cause varies by state. The burden of proof is on the *claimant* to prove that he or she quit for good cause.

**Exhibit III.9: Examples of Voluntary Quit Policies**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Good cause defined	Must be attributable to work	Must be attributable to work.	Must have necessitous and compelling reason (reasonable person would have no other choice).	Generally must show a connection to work. The reason must be of such a nature that a reasonable person would quit. All reasonable alternatives must be exhausted.	In connection with employment—must show no other alternative but to end the employment relationship. Or for compelling personal reason (CPR)	Must be attributable to work. Generally situation changed to make it impossible to work.	Limited to hazard to health (must be certified), employee required to relocate, employer's conduct demonstrates disregard for standards, quit to return to regular job; religious beliefs mandate quit	Two standards: good cause and equity and good conscience. Good cause is when continuing employment causes adverse effect that claimant can't control/prevent. If good cause not satisfied, equity/good conscience applied—a harsh affront to fairness.
Illness	If doctor's note prior to quit, must be able and available for work.	Must inform employer of reason for absence, keep in contact w/ employer, request reemployment	Disability; if employer cannot provide other suitable work; Claimant must communicate prior to quit the health problem, burden shifts to employer to accommodate	Yes	Must make reasonable effort to correct the situation (e.g., requesting leave of absence); may be CPR if work aggravated condition that existed prior to job	No	If job presents hazard to health, must be certified by doctor prior to quit	Must be supported by evidence and alternatives (e.g., altering working conditions) must be exhausted

**Exhibit III.9: Examples of Voluntary Quit Policies (continued)**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Personal reasons (e.g., care for family member)	No	Illness or disability of immediate family member. Must take all reasonable precautions to protect employment status.	Must inform employer before quit and attempt to adjust work schedule, remain A & A	Illness or death of immediate family member	Compelling personal reason (CPR) if leave or absence or other reasonable alternative did not exist.	No	No	May be sufficiently compelling or create sufficient hardship; must make reasonable attempt to find alternatives prior to quitting
Domestic Violence	Yes, must provide documentation	Yes, if made all reasonable efforts to keep job	Yes, a necessitous and compelling reason	Protect self or immediate family member from stalking or DV	Not specified.	No	No	Not specified; could be a sufficiently compelling person circumstance
Sexual harassment	Could be good cause. Were all avenues exhausted? Documentation?	Yes	Yes, if the claimant tried to resolve the issue and reported the behavior to the supervisor.	Not specified	Not specified	Could be good cause if proof or employer does not dispute	If employer conduct demonstrates substantial disregard for standards of behavior	Yes, if employer given chance to take necessary action to alleviate objectionable conduct.
Follow spouse	No	Yes, but must seek work in new residence	If spouse's decision to move beyond his/her control and economic circumstances beyond claimant's control (e.g., long commute)	If spouse's employment outside local labor market area (spouse transfer must be employer-initiated)	May be CPR	No	No	No

**Exhibit III.9: Examples of Voluntary Quit Policies (continued)**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
New job	No	Yes	Yes, if job does not materialize through no fault of claimant	Yes	If left to accept job that would be better circumstances, CPR is job failed to materialize due to circumstance beyond control.	No	If claimant accepted employment while on layoff and quit to return to regular job	Claimant had assurance of work expected to be full-time and permanent
Risk to safety	No	Good cause	A factor in whether work was suitable	Yes	Must make reasonable effort to correct the situation (e.g., requesting a transfer)./	Could be good cause, burden of proof on worker	If hazard to health so long as doctor certifies prior to quit	Must be supported by evidence and alternatives exhausted
Change in job description	Change to job duties could be good cause. Need to prove administrative avenues exhausted.	Yes, although not specified in law.	Yes, if without employee's consent and employer refuses to transfer employee	Work connected reason?	Depends on whether changes substantial	Yes, could include change in work location, requiring lengthy commute, change in shift, reduction in wages or hours, or change in job description.	If employee must relocate to keep job; if employer breached or substantially altered contract for employment	If reduction in hours creates personal or financial hardship that person had to leave job

**Exhibit III.9: Examples of Voluntary Quit Policies (continued)**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Other			If left work because required to join union or prevented from doing so; transportation problems if lost transport through no fault of own		Pregnancy is CPR if no reasonable alternative such as taking time off or transferring to less stressful job; voluntary acceptance of layoff; transportation problems if employer moved		If work interferes with religious beliefs.	Lack of transportation if no other options available; may create A & A issue; discrimination provided employer given chance to alleviate conduct; voluntary acceptance of layoff

**Definition of “Good Cause.”** In six of the states, good cause must be attributable to work or narrowly defined reasons (e.g., domestic violence). This includes all four of the high reciprocity states and two of the low ones (South Carolina and South Dakota).

The states with the highest voluntary quit denial rates, not surprisingly, have the most stringent definitions of voluntary quits.

- South Carolina has perhaps the strictest definition of voluntary quits. Quits are allowed only when related to work. In general, this means that the situation at work has changed in some way to make it difficult or impossible to continue working. This definition is contained in the state’s administrative rules. The restrictive nature of the definition is reflected in the denial rate, which at 93 percent was the highest in the group of states.
- South Dakota’s statute indicates five allowable reasons for quits, all of which are related to work: risks to the employee’s health, required relocation, employer’s conduct demonstrates substantial disregard for standards of behavior, while on lay off quit to take another job, and the job interferes with religious beliefs. At 92 percent, the state has the second highest denial rate of the study group.
- Delaware’s UI statute requires a quit be job-related unless it is due to illness or domestic violence. Staff noted that illness and the risk of domestic violence must be documented prior to quitting. The denial rate (88%) is high relative to other study states and the national median (80%).

Three other states allow narrowly defined non-work related reasons for quitting.

- Maine and Washington have similar rules surrounding quits. Good cause must be related to work or one of the following non-work reasons: illness, leaving to accept a new job, or quitting to follow a spouse. The denial rates are 69.5 percent and 74 percent, respectively; both are lower than the national median.
- Pennsylvania’s law denies benefits to individuals unless they have a “necessitous and compelling” reason to quit, defined as “that in which a reasonable person would have no other choice.” The claimant must demonstrate that the behavior was consistent with prudence and common sense and was based on factors which were real, substantial, and reasonable. Staff suggested that this definition left adjudicators with considerable discretion in determining whether a claimant quit for good cause. The relative broadness of the definition is reflected in the lower-than-average denial rate of 65.5 percent.

The two remaining states offer more latitude in their laws regarding quits. Arizona and Utah are two of the low reciprocity states, yet their voluntary quit criteria are more lenient than those of the other study states. Their denial rates are 71 percent and 58 percent, respectively (both are below the national median).

- Arizona’s administrative rules distinguish between two types of voluntary quit separations. First, it considers whether a person separated in connection with employment. Alternatively,

the worker may have separated for a compelling personal reason (e.g., quit to care for a child or other family member).

- In Utah, two standards must be applied to voluntary quits: good cause and equity, and good conscience. According to statute, to establish good cause a claimant must show that continuing employment would have caused an adverse effect that the claimant could not control or prevent. The decision to quit must be measured against the actions of an average individual. However, if this standard is not met, the good conscience standard must be applied (unless the case involves quitting to follow a spouse, in which the claimant is ineligible for benefits). According to the statute, “If there are mitigating circumstances and a denial of benefits would be harsh or an affront to fairness, benefits may be allowed under the provisions of equity and good conscience standard.”

**Interpretation of Good Cause.** Adjudicators must decide, based on the information available, whether an individual quit for good cause. Staff in each of the states noted that while statutes sometimes do not provide much guidance, making a decision on a claim involving a voluntary quit is usually easier than one involving a discharge. They provided a number of reasons, including: statutes often spell out some reasons for allowing voluntary quits (e.g., domestic violence), while language for discharges is usually vague (as will be discussed below); and the burden of proof is on the claimant to prove the quit was for good cause, and adjudicators always have at least minimal information from the claimant (i.e., the intake statement). Some states, such as Pennsylvania, develop detailed adjudication manuals that include a number of scenarios related to quits and how the statute or court precedent has been applied in the past. Delaware offers statewide training for its adjudicators.

**Denial Rates.** Given the differences in policies surrounding voluntary quits, it is not surprising that the study states had a wide range of denial rates (from 58% of determinations to 93%). *Exhibit III.10* shows the proportion of determinations that resulted in denials for voluntary quits. Among the high reciprocity states, denial rates ranged from about 65 percent to 88 percent; among low reciprocity states, rates ranged from 58 percent to 93 percent.

**Exhibit III.10: Separation Denial Rates, Voluntary Quits (2001)**

State	Percentage of Determinations Resulting in Denials
<b>High Reciprocity</b>	
Delaware	87.7
Maine	69.5
Pennsylvania	65.5
Washington	73.9
<b>Low Reciprocity</b>	
Arizona	71.2
South Carolina	92.8
South Dakota	91.8
Utah	57.9
<b>U.S.</b>	
Median State	79.9

Our operating assumption at the start of this study was that low reciprocity states (Arizona, South Carolina, South Dakota, and Utah) had more stringent rules surrounding separation issues (e.g., little leeway regarding good cause for a quit), and that these policies would be reflected by high denial rates. However, we did not find that high and low reciprocity states fell along clearly demarcated lines of stringency or leniency. As a group, the low reciprocity states' average denial rate was only slightly above the high reciprocity state average (78% versus 74%). The denial rates were below the U.S. median in two low reciprocity states (Arizona and Utah) and three high ones (Maine, Pennsylvania, and Washington). These rates reflect the leniency of these states' policies. Utah has the lowest denial rate of the states in the study. This is likely due to the good conscience rule, which must be applied if claimants fail to demonstrate good cause for quitting. Arizona allows quits for personal (i.e., non-work related) reasons. The other three states allow quits for compelling reasons (Pennsylvania) or specific non-work reasons (e.g., to follow a spouse). The three states with above-average denial rates require that quits be specifically related to the job.

**Duration of Penalty.** Research suggests that high separation denial rates are associated with non-monetary eligibility penalties that disqualify the individual for less than the full duration of unemployment (Chasanov and Cubanski, 1995). *Exhibit III.11* shows the penalties for quitting without good cause.

#### Exhibit III.11: State Penalties for Voluntary Quit Separations

State	Penalty
Arizona	Working in covered employment and earning at least five times the WBA
Delaware	Working four weeks in covered employment and earning at least four times the weekly benefit amount
Maine	Working in covered employment and earning at least four times the WBA
Pennsylvania	Working in covered employment and earning at least six times the WBA
South Carolina	Working in covered employment and earning at least eight times the WBA
South Dakota	Working six weeks in covered employment and earning at least six times the WBA
Utah	Working in covered employment and earning at least six times the WBA
Washington	Working in covered employment and earning at least seven times the WBA

The eight states under study all disqualify the claimant for the duration of benefits and require him or her to become reemployed in covered employment and earn a specified amount before being eligible for benefits again. These range from four to eight times the weekly benefit amount. As noted above, the denial rates in the study states varied widely.

## 2. State Policies: Misconduct

*Exhibit III.12* shows the rules for misconduct in our study states. Unlike voluntary quit cases, the burden of proof is on the *employer* when the claimant is terminated for misconduct. Decisions addressing discharges for misconduct are based largely on the final act that resulted in termination. The adjudicator must decide whether the act was within the claimant's control and whether the claimant knew the behavior was wrong.

**Misconduct Defined.** Statutes and administrative rules do not provide adjudicators with much guidance. Generally, they reference “willful and wanton” behavior on the part of the claimant as ground for a misconduct dismissal. For example, misconduct is defined as:

- “Just cause in connection with the individual’s work” (Delaware);
- “A culpable breach of the employee’s duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer” (Maine);
- “Willful failure or neglect of duty” (South Carolina);
- “An act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer’s rightful interest” (Utah); and
- “An employee’s act or failure to act in willful disregard of the employer’s interest where the effect of the employee’s act or failure to act is to harm the employer’s business” (Washington).

The Pennsylvania and South Dakota statutes contain multi-point definitions that focus generally on wanton and willful disregard of the employer’s interest, carelessness or negligence, the deliberate violation of rules, and the disregard of standards of behavior or employer interests.

Arizona’s statute provides more detail on “willful or negligent misconduct connected with the employer.” It includes, but is not limited to, absence from work without good cause or notice to the employer, repeated intoxication, failure to pass or refusal to take a drug test, refusal or failure to perform reasonable and proper duties requested by the employer, insubordination, dishonesty or material falsification of records, admission or conviction of a felony, or violation of a company rule without good cause.

In all states, rules make a distinction between misconduct and unsatisfactory performance. Inefficiency or poor work performance are generally not grounds for misconduct dismissals. As Utah officials note, three elements must be in place to prove misconduct: (1) culpability (the worker’s conduct must be so serious that continuing employment would jeopardize the employer’s interests); (2) knowledge (the worker must have had knowledge of the conduct expected on the job); and (3) control (the conduct causing the discharge must have been within the claimant’s control). Proving these three criteria can be difficult and may explain the low misconduct denial rates relative to voluntary quits.

**Exhibit III.12: Examples of Misconduct Policies**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Definition	For just cause in connection with individual's work. Behavior must be willful and wanton.	Culpable breach of the employee's duties or a pattern of irresponsible behavior which manifests disregard for a material interest of the employer	Willful misconduct: (1) Wanton and willful disregard for employer's interest; (2) deliberate violation of rules; (3) disregard of standards of behavior; (4) negligence which manifests culpability, wrongful intent, evil design.	An employee's act or failure to act in willful disregard of the employer's interest for the effect of the act or failure to act harms the business; 4-part test: (1) rule must be reasonable; (2) conduct must be connected to work; (3) conduct must violate a rule; (4) conduct must be intentional	Willful or negligent misconduct in connection with employment. Accurate dates, warnings used to establish evidence.	Must be related to employment and due to willful failure to neglect of duty.	Failure to obey orders, discharge duties; substantial disregard of the employer's interests; conduct evincing willful or wanton disregard of employer's interests; careless or negligence of such degree to manifest culpability or wrongful intent	Deliberate, willful or wanton act adverse to the employer's rightful interest. A just cause discharge must include fault on the part of the worker. To prove just cause, 3 elements must be satisfied: (1) culpability; (2) knowledge; (3) control.
Violation of company rule	Not specified	Not specified	Must be deliberate violation of well-known rule and not motivated by good cause; rule must be uniformly enforced	The deliberate violation of a known and reasonable company rule is misconduct.	Yes	Yes	Not specified—could be considered disregard for employer's interest	If rule is reasonable and 3 elements are satisfied, benefits denied

**Exhibit III.12: Examples of Misconduct Policies (continued)**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Absenteeism/tardiness	Poor attendance may support just cause for dismissal	Failure to exercise due care for punctuality after warnings	Excessive and unjustified can be misconduct, even when properly excused; must warn employee prior to discharge	Repeated unexcused absences or persistent or chronic tardiness may be misconduct.	If employee has special responsibilities or repetition of tardiness. Absence due to capricious reason, intoxication or causes not substantiated is misconduct.	Yes	Not specified—could be considered disregard for employer's interest	If within the claimant's control and did not get permission per company rules
Intoxication	Yes, act of intoxication is a conscious act so as to foreclose claimant assertion that he or she was incapable of wanton or willful behavior	Intoxication or drug use while on duty	If it breaches a reasonable and known work rule or if work directly affected	Reporting to work under the influence of drugs or alcohol is generally considered misconduct. Prior notification or warning from employer not necessary.	Yes, if on the job	Yes	Not specified—could be considered disregard for employer's interest or carelessness or negligence	Proof of positive drug test or refusal to provide sample is violation of reasonable company rule
Insubordination	Single incident is not misconduct; multiple could be misconduct	Insubordination, abusive or assaultive behavior while on duty; refusal to perform reasonable duties assigned by supervisor	Yes, unless orders unreasonable and claimant had good reason for action		Refusal to follow reasonable instructions, insolence in actions/language, profanity, threats	Yes	Yes, failure to obey orders and discharge duties	Provocative remarks to supervisor, profane language may constitute insubordination if it disrupts routine and undermines authority.

**Exhibit III.12: Examples of Misconduct Policies (continued)**

Policy	High Reciprocity States				Low Reciprocity States			
	Delaware	Maine	Pennsylvania	Washington	Arizona	South Carolina	South Dakota	Utah
Unsatisfactory work performance	No	If isolated error of judgment, or good faith effort, no	No	No	No	No	Inefficiency, unsatisfactory performance is not misconduct	No

**Interpretation of Misconduct.** UI staff noted that the definition for misconduct is less specific than for voluntary quits. As a result, adjudicators have more discretion in making decisions. They seek to answer the culpability, knowledge and control questions. For instance, if the employee was fired for failure to obey orders, the adjudicator will ask a series of questions including: What exactly did the employee do? How did it affect the work environment? Was it a pattern or an isolated incident? What actions were taken to warn the employee? Were warnings written or verbal? Did the employee know that his or her job was at risk due to the behavior in question? Did others witness the behavior? The burden is on the employer to prove that the worker willfully disregarded the rules.

Employers are requested to send documents that support their case. Types of documentation include signed statements from employees that they read the employment manual (e.g., rules on tardiness or unauthorized absences), copies of written warnings issued to the employee, or any type of paper trail that shows willful disregard for the employer's interests.

**Denial Rates.** The denial rates for misconduct were considerably lower than those for voluntary quits. *Exhibit III.13* shows the proportion of determinations that result in denials for misconduct in 2001. Unlike voluntary quits, the majority of determinations for misconduct do not result in denials. Denial rates range from 25 percent in Washington to 73 percent in South Carolina (the only state with a denial rate over 50%).

**Exhibit III.13: Separation Denial Rates, Misconduct (2001)**

State	Percent Determinations Resulting in Denials
<b>High Reciprocity</b>	
Delaware	45.0
Maine	32.1
Pennsylvania	30.5
Washington	24.9
<b>Low Reciprocity</b>	
Arizona	28.6
South Carolina	73.3
South Dakota	44.3
Utah	32.2
<b>U.S.</b>	
Median State	36.2

Five states had denial rates lower than the national median, including two low reciprocity rate states and three high ones. Two additional states had rates around 45 percent (a high and low reciprocity state). The fact that the study states (with the exception of South Carolina) do not vary greatly in denial rates reflects the similar definitions of misconduct. Staff offered reasons for the low denial rates (relative to quits), including little guidance from administrative rules, statutes and court cases and, in many cases, limited information provided by the employer. Because the employer must prove that the claimant was fired for good reason, failure to provide evidence of the behavior in question (e.g., excessive tardiness) and of steps that were taken to inform the employee and discipline him or her will result in the granting of benefits to the claimant. If the

employer does not respond, which happens quite frequently, the adjudicator will often rule in favor of the claimant. Staff in a number of states find that it is not uncommon for employers to bypass the determination process (i.e., fail to provide relevant information to the adjudicator) and simply appeal an adverse decision.

**Duration of Penalty.** As *Exhibit III.14* shows, seven of the eight states disqualify a claimant for the duration of employment. In these states, the claimant must become reemployed in covered employment and earn a specified amount, ranging from four to seven times the weekly benefit amount.

#### **Exhibit III.14: State Penalties for Misconduct Separations**

<b>State</b>	<b>Penalty</b>
Arizona	Working in covered employment and earning at least five times the WBA
Delaware	Working four weeks in covered employment and earning at least four times the WBA
Maine	Working in covered employment and earning at least four times the WBA
Pennsylvania	Working in covered employment and earning at least six times the WBA
South Carolina	Not less than five weeks
South Dakota	Working six weeks in covered employment and earning at least six times the WBA
Utah	Working in covered employment and earning at least six times the WBA
Washington	Working in covered employment and earning at least seven times the WBA

The one exception is South Carolina. The law states that ineligibility for benefits begins with the effective date of the request for benefits and continues for a period not less than five weeks and not more than 26 weeks (in addition to the waiting week). Staff provided a number of examples: tardiness could result in 6 to 8 weeks of ineligibility, absenteeism could incur 8 to 12 weeks, and gross misconduct (fighting, alcohol, theft) could result in 22 to 26 weeks of ineligibility.

As noted above, one study found that denial rates are positively associated with penalties that disqualify claimants for less than the duration of unemployment. In the case of South Carolina, this seems to hold true. The state has the highest misconduct denial rate of the study states (62% higher than the closest state, Delaware). The denial rate is also twice the national median.

### **3. Summary of Denials**

Our site visits and analysis of administrative data found considerable variation in the way that states handle claimants who voluntarily quit their jobs or were dismissed for misconduct. Unlike the determination and fact-finding processes, state laws, administrative rules, and court precedence factor into the decision to grant or deny benefits. We found:

- With regard to voluntary quits, five states had denial rates below the national median, including three high and two low reciprocity states. All of these states allowed non-work related reasons for quits, and two of them allowed quits for personal reasons.

- Denial rates for misconduct were lower than rates for quits in all states. This is due to vague definitions of misconduct, difficulty proving claimant intent, and low employer response rates.
- Penalties for voluntary quits and misconduct are similar across states. With the exception of South Carolina, each state assigns the same penalty for a quit and a misconduct dismissal: disqualification for the period of unemployment followed by reemployment and a specified earnings threshold (e.g., seven times the weekly benefit amount). In South Carolina, claimants denied benefits due to misconduct are disqualified for a certain number of weeks, depending on the issue.

## E. Conclusions

This chapter explored state policies and procedures for determinations, fact-finding, and decision making. As noted above, the operating assumption at the beginning of this study is that high and low reciprocity states would vary systematically in all three of these areas. However, we found that state policies primarily affected the denial process; we saw more similarities than differences in the determination and fact-finding processes.

**With regard to determinations, there was no variation in state processes.** All eight states have a policy of raising a separation issue for any job separation reason other than a lay off. States exhibit variations in the determination rate; however, these are likely due to factors that affect applications. When comparing a state with a low determination rate to a state with a high one, we would expect the former would have more UI applicants who lost their jobs. Factors that are likely associated with lay offs include high unemployment rates, a high proportion of unemployed workers in construction or manufacturing industries, and high union representation (which also reflects the proportion of the labor force in industries sensitive to economic change). Factors that increase the applicant pool, such as policies that make filing claims easier (e.g., call centers), would be expected to be associated with higher determination rates.

**Minimal differences in adjudication methods were not likely to affect determinations or decisions.** For example, states differed in terms of where adjudicators are housed, who conducts most of the fact-finding (i.e., the intake worker or the adjudicator), whether questionnaires are sent to all claimants and employers, whether interviews are scheduled with all claimants and employers, and whether interviews are conducted in person or via phone. We did not see systematic differences in any of these areas between high and low reciprocity rate states.

**State policies differed systematically for voluntary quits but not misconducts.** We found that state policies are related to denials. States with more lenient policies surrounding quits (Arizona, Maine, Pennsylvania, Utah, and Washington) had lower denial rates than states that allow quits only for specific work-related reasons (South Carolina, Delaware, and South Dakota). Adjudicators suggested that decisions for voluntary quits are usually straightforward because they always have some information from the claimant and the rules and statutes are often clearer than for misconduct. Conversely, we did not see much variation in state policies for misconduct. Denial rates in seven of the eight states were below 50 percent (South Carolina, at 73%, was an outlier). Adjudicators noted that decisions are often difficult in misconduct cases because the statutes provide less guidance than for voluntary quits, and employers, who have the burden of proof in discharge cases, often do not provide adequate information on which to deny benefits.

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## IV. NON-SEPARATION ISSUES

In addition to meeting the monetary and separation requirements discussed in the preceding chapters, a claimant must meet a set of non-separation requirements to initiate and continue to receive UI benefits. These requirements are intended to ensure that claimants are attached to the labor force and are engaged in active efforts to secure employment. Non-separation issues may come to the attention of the UI system in a variety of ways:

- As part of the initial qualifying process for receiving UI benefits (e.g., during the initial interview with UI claims takers);
- As part of the weekly or bi-weekly continuing claims process, when claimants are asked to vouch that they are “able and available,” have not turned down “suitable” employment offers, and have conducted an active job search;
- As the result of eligibility reviews (in states where eligibility reviews are conducted), the profiling process, or other interactions between the UI program and claimant;
- As a result of information provided by employers (e.g., failure to take a job offer); or
- As a result of the claimant notifying the state UI agency of a specific non-separation issue.

When non-separation issues come to the attention of UI agency staff, they are typically sent to an adjudicator for determination. The adjudicator may need to contact the claimant (and perhaps other parties) for additional information and/or clarification before rendering a decision (much the same as is the case with separation issues, though involvement of employers in providing information is considerably less likely in the case of non-separation issues). If the adjudicator finds that an individual has failed to meet a specific non-separation requirement (e.g., was not able or available, did not conduct an active job search, or turned down a suitable job offer), the penalty can range from partial loss of benefits (e.g., being “held out for a week”) to total loss of UI benefits until the individual re-qualifies (e.g., through employment and again meeting monetary and non-monetary requirements). Claimants can also be required to repay benefits that they may have received, but were not entitled to because of a non-separation issue (e.g., if it is found after-the-fact that they were not available for a given week in which they claimed UI benefits).

The specific non-separation policies and procedures guiding determinations and denials in each state are based on statutes, administrative rules, and/or court cases. The policies and procedures regarding non-separation determinations vary substantially across the eight states we visited as part of this study. What might constitute meeting requirements for conducting an “active” job search in one state may lead to loss of UI benefits for one or more weeks in another state.

Researchers and policy makers hypothesize that the stringency of a state’s non-separation policies affects UI program outcomes, including recipiency and duration of benefit receipt, although the exact nature and intensity of the relationship is not always clear. In addition, while a state may have fairly strict requirements regarding specific non-separation rules, whether a state is aggressive in its enforcement of such rules (e.g., through conduct of frequent or infrequent

eligibility reviews) can impact on how often non-separation issues come into play in affecting claimant eligibility and duration of receipt.

This chapter begins with a brief discussion of previous research on non-separation issues and trends in the eight study states on non-separation determinations and denials. This is followed by a more detailed exploration of the ways in which non-monetary policies and procedures vary across the eight states and the extent to which differences may explain intermediate outcomes (determination and denial rates) and program outcomes (reciprocity rates and benefit duration).

## A. Previous Research

In two recent studies, Vroman (1995 and 2001) examined national trends in non-separation issues and possible factors affecting these trends. In his earlier report, Vroman (1995) examined national trends in non-separation determinations and denials between 1971 and 1993. He found substantial shifts in non-separation determination rates, both overall and by determination issue. Determination rates for non-separation issues (per 10 claimant contacts) declined during the period from 34 percent in 1971 to 21 percent in 1993. Determination rates by major issue also changed substantially over time—declining for able and available, refusal to work, and reporting requirements and other issues, while increasing for disqualifying and deductible income.

Vroman (1995) also examined changes in non-separation denials per determination over time. He found that non-separation denials per determination increased markedly since the early 1970s, from 38 percent in 1971 to 61 percent in 1993. Denial rates by issue also changed substantially over time, with the rates of denials per determination decreasing for refusal of suitable work, but increasing for able and available determinations and for disqualifying and deductible income.

In his most recent study for DOL, Vroman (2001) analyzed UI reciprocity rates, duration of UI benefits, and separation and non-separation determination rates by state for a 30-year period (from 1967-1998). Vroman's regression analyses of UI claims data suggest links between various non-separation policies and procedures and duration of UI benefits:

...Relative unemployment duration, i.e., duration of UI benefits relative to overall unemployment duration, was strongly linked to potential UI benefit duration, the partial benefits share, the non-separation determination rate, the non-separation denial rate, the rate of eligibility reviews, and the proportion of continued claims filed by employers. The negative effects of the non-separation determination rate and the eligibility review rate on relative duration show that active administration of continuing claims significantly shortens average duration.<sup>22</sup>

In addition to detailed multivariate analysis of UI claims data, as part of this study Vroman conducted qualitative assessments of UI program statutes/policies, administrative activities, and methods for filing for benefits based on visits to 10 states. Key findings from site visits with regard to non-separation include the following:

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<sup>22</sup> Vroman, p. ii-iii.

- Vroman finds substantial differences across states in non-separation issues. For example, in terms of the definitions and policies for “disqualifying and deductible income,” refusals of “suitable” work, extent of reliance on eligibility reviews, and profiling services provided.
- Disqualifying and deductible income denials are less likely in high reciprocity states.
- Eligibility reviews generally occur less frequently in high reciprocity states, while penalties for failure to meet reporting requirements are more stringent in low reciprocity states.

While Vroman provides perhaps the most recent and detailed examination of non-separation issues and their potential effects, earlier studies explored the importance of non-separation issues and procedures in terms of explaining cross-state differences in UI reciprocity rates. For example, Corson, Hershey, and Kerachsky (1985) used published data sets and in-depth administrative analyses of six states to understand how laws, regulations, and administrative practices at the state level affected non-monetary eligibility determinations and denials. The authors found that non-separation issue detection was important relative to fact-finding and adjudication. The authors suggested that administrative procedures may vary from office to office and are affected by a host of variables, including staff workloads and resources.<sup>23</sup> Corson, et al. suggest that determination rates for non-separation issues are affected by both policies and their enforcement. For example, a work search requirement can lead to determinations, but only when staff make an effort to monitor it. The authors also indicated states differ in terms of how often and rigorously they review ongoing claims.

Chasanov and Cubanski (1995) also examined state data to explain differences in denial rates across states. They used a number of variables in their analysis.<sup>24</sup> The authors found high non-separation denial rates were associated with (1) lower reserve ratios, (2) shorter duration of UI benefits, (3) lower rates of unemployment, and (4) lower rates of unionization.

## **B. Determinations and Denials**

*Exhibits IV.1* and *IV.2* display trends in non-separation determination rates (per 10 claimant contacts) and non-separation denials for the eight states visited as part of this study for the period 1991 through 2001. These two tables group the eight selected states according to whether states are considered to be high or low UI reciprocity rates.<sup>25</sup>

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<sup>23</sup> The part of the process that leads to denials—fact-finding and adjudication—tends to be more administratively confined; thus the authors found less variation.

<sup>24</sup> The authors examined: solvency (a state’s ability to raise taxes, the reserve ratio), non-monetary eligibility rules (e.g., length of time disqualification imposed for voluntarily leaving, treatment of misconduct discharge, refusal of suitable work), state administration (e.g., timeliness of non-monetary determinations, extent to which Democrats control state legislature, denial rate of UI claims), benefits (e.g., duration, ratio to state average weekly wage), and labor force characteristics (unemployment rate, percent of unemployed who are job losers, unionization rate). State dummy variables were used in an attempt to capture the fixed effect of each state on denials and appeals.

<sup>25</sup> The grouping of states into high and low UI reciprocity is based on Vroman’s analysis of reciprocity rates (using average WBTU for each state) for the period 1977 through 1998.

For the most recent year (2001), non-separation determination rates (per 10 claimant contacts) vary substantially, from less than 10 percent (South Carolina and Delaware) to over 40 percent (Maine and South Dakota). Five of the eight states exceed the U.S. median (19.9%). For 2001, there does not appear to be any discernable pattern between determination rates and reciprocity rates (i.e., high reciprocity states had determination rates ranging from 6.5% to 47.4% and low reciprocity states ranged from 5.7% to 44.2%).

**Exhibit IV.1: Trends in Non-separation Determinations, Sorted by Reciprocity Rate (Percent of Claimant Contacts)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Delaware	12.4	8.7	9.3	10.5	8.8	6.5	(7.9)
Maine	41.2	46.8	55.3	44.8	43.6	47.4	1.9
Pennsylvania	26.5	26.6	27.5	55.6	41.7	20.5	(0.6)
Washington	17.0	24.1	18.5	16.6	14.7	17.2	(1.5)
<b>Low Reciprocity</b>							
Arizona	52.9	44.2	44.6	40.6	32.9	30.4	(4.0)
South Carolina	8.4	11.7	9.0	8.5	7.0	5.7	(4.3)
South Dakota	38.5	50.3	54.1	62.4	44.0	44.2	1.9
Utah	77.7	85.9	78.2	60.1	33.4	37.1	(5.9)
<b>U.S.</b>							
Median State	20.0	20.6	20.1	23.7	23.0	19.9	(0.9)

Non-separation determination rates for the nation as a whole dropped slightly (an average annual change of -0.9 percent) between 1990 and 2001. Determination rates fluctuated slightly between 1991 and 2001 for the nation as a whole (within the range of 20.0% to 23.9%). Average annual change in determination rates increased in two and decreased in six study states. The average annual change ranged as high as 1.9 percent (in Maine and South Dakota) to average annual decreases over 5 percent in two states (Delaware and Utah). In terms of average annual change, once again there appears to be no discernable association between low and high reciprocity states.

In comparison to national trends, there was much more year-to-year volatility in non-separation determination rates between 1991 and 2001 in the eight states. The states with the greatest ranges between high and low determination rates were Utah (33.4% percent to 91.5%), South Dakota (38.5% to 62.4%), and Pennsylvania (20.5% to 55.6%). None of the states display a consistent upward or downward trend. Rather, rates tended to fluctuate year to year (though over the entire period there may be an overall average increase or decrease). Overall, no discernable patterns emerge with respect to determination rates and links to reciprocity rates in our eight states.

*Exhibit IV.2* displays patterns for non-separation denials for the eight study states. In 2001, six of the eight study states had denial rates above the 74.1 percent median denial rate for all states. Denial rates ran as high as in excess of 95 percent of determinations (in South Carolina and Maine) to less than half of determinations (in Pennsylvania). Similar to the non-separation

determination rate, there was no real discernable pattern with regard to high or low reciprocity states exhibiting higher or lower denial rates in 2001.

Over time (from 1991 to 2001), non-separation denial rates increased for the U.S. as a whole (from a median of 68.6% to a median of 74.1%, and an average year-to-year change of 0.7%). Similarly, denial rates on non-separation issues stayed the same (Arizona) or increased in terms of average annual change in seven of the eight study states (with the exception of South Carolina, which experienced a slight decrease in percent of non-separation determination denials over the period. The average annual change ranged from 1.7 percent (Washington) to over 10 percent in Pennsylvania. Similar to non-separation rates, there is considerable year-to-year fluctuation in denial rates at the individual state level. Though none of the eight states has a consistent upward or downward trend year to year, several of the states' trends are fairly consistently upward—notably Pennsylvania and Maine.

Finally, the high reciprocity states generally appear to have a higher annual change in denial rates than the low reciprocity states. For example, the three states in our study sample with the highest average change were high reciprocity states.

**Exhibit IV.2: Trends in Non-separation Denials, Sorted by Reciprocity Rate  
(Percent of Determinations)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Delaware	87.5	88.0	85.0	84.0	89.5	89.8	3.4
Maine	51.7	60.8	55.0	50.5	66.9	96.3	5.6
Pennsylvania	16.0	16.9	19.4	45.7	47.5	45.2	11.3
Washington	65.6	67.0	73.5	74.2	76.1	75.2	1.7
<b>Low Reciprocity</b>							
Arizona	61.4	71.0	69.0	64.2	66.0	68.8	0.0
South Carolina	71.2	65.0	59.6	64.9	60.7	64.9	(0.8)
South Dakota	74.4	73.0	78.9	80.5	92.5	96.7	3.0
Utah	59.5	52.6	53.0	59.1	66.6	67.8	2.0
<b>U.S.</b>							
Median State	67.5	67.6	68.2	71.6	70.8	74.1	0.7

*Exhibits IV.3* and *IV.4* display trends in non-separation determination rates (per 10 claimant contacts) and non-separation denials for the eight states visited with the states group sorted by high and low duration rates. These two tables group the eight selected states according to whether states have benefit duration above or below the U.S. median (for the period 1977-98).<sup>26</sup> As noted earlier, research by Vroman and others have linked higher non-separation rates (per claimant contacts) and higher denial rates generally with shorter duration of UI benefits. The data on non-separation determination rates for the most recent year (2001), are mixed in terms of

<sup>26</sup> The grouping of states into high and low UI duration is based on Vroman's analysis for the period 1977 through 1998.

supporting this hypothesis. For example, in 2001, while Maine and South Dakota had the highest determination rates among the eight states and shorter than average duration (supporting the hypothesis), the other two states with shorter than average duration (Delaware and South Carolina) had the lowest two non-separation determination rates in our study sample (not supporting the hypothesis). Trends with respect to denial rates are somewhat clearer for 2001. Three states with the highest denial rates (South Dakota, Maine, and Delaware) also had below average duration. Examining the final column in the exhibit (average change), there does not appear to be any distinctive pattern among the eight study states with regard to links between duration and non-separation determination or denial rates.

**Exhibit VI.3: Trends in Non-separation Determinations, Sorted by Duration  
(Percent of Claimant Contacts)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Duration</b>							
Arizona	52.9	44.2	44.6	40.6	32.9	30.4	(4.0)
Pennsylvania	26.5	26.6	27.5	55.6	41.7	20.5	(0.6)
Utah	77.7	85.9	78.2	60.1	33.4	37.1	(5.9)
Washington	17.0	24.1	18.5	16.6	14.7	17.2	(1.5)
<b>Low Duration</b>							
Delaware	12.4	8.7	9.3	10.5	8.8	6.5	(7.9)
Maine	41.2	46.8	55.3	44.8	43.6	47.4	1.9
South Carolina	8.4	11.7	9.0	8.5	7.0	5.7	(4.3)
South Dakota	38.5	50.3	54.1	62.4	44.0	44.2	1.9
<b>U.S.</b>							
Median State	20.0	20.6	20.1	23.7	23.0	19.9	(0.9)

**Exhibit IV.4: Trends in Non-separation Denials, Sorted by Duration  
(Percent of Determinations)**

State	1991	1993	1995	1997	1999	2001	Avg. Annual Change (%) 1990-2001
<b>High Reciprocity</b>							
Arizona	61.4	71.0	69.0	64.2	66.0	68.8	0.0
Pennsylvania	16.0	16.9	19.4	45.7	47.5	45.2	11.3
Utah	59.5	52.6	53.0	59.1	66.6	67.8	2.0
Washington	65.6	67.0	73.5	74.2	76.1	75.2	1.7
<b>Low Duration</b>							
Delaware	87.5	88.0	85.0	84.0	89.5	89.8	3.4
Maine	51.7	60.8	55.0	50.5	66.9	96.3	5.6
South Carolina	71.2	65.0	59.6	64.9	60.7	64.9	(0.8)
South Dakota	74.4	73.0	78.9	80.5	92.5	96.7	3.0
<b>U.S.</b>							
Median State	67.5	67.6	68.2	71.6	70.8	74.1	0.7

Finally, *Exhibits IV.5* and *IV.6* provide a more detailed breakdown of non-separation determination data for 2001 by major issue. Determination rates varied substantially across states for all of the non-separation issues (with the exception of refusal of referral for profiling services, which accounted for a very small percentage of determinations per 10 claimant contacts). For example, in 2001, non-separation determination rates per 10 claimant contacts varied as follows on key issues:

- *Able, Available, and Actively Seeking Employment (U.S. median, 5.2%)*: from less than 2 percent in three states (Delaware, Pennsylvania, and South Carolina) to 25 percent (South Dakota);
- *Disqualifying or Deductible Income (U.S. median, 5.0%)*: from less than 3 percent in three states (Delaware, South Carolina, and Washington) to above 15 percent in three states (Maine, South Dakota, and Utah);
- *Refusal of Suitable Work (U.S. median, 0.5%)*: from 0.2 percent in two states (Pennsylvania and South Dakota) to 1.7 percent in two states (Maine and Utah); and
- *Report Required Call-ins and Other (U.S. median, 2.3%)*: from less than two percent in three states (Delaware, South Carolina, and South Dakota) to 11.5 percent Arizona.

**Exhibit IV.5: Determination Rates by Non-separation Issue, 2001 (%)**

State	Able, Avail. & Actively Seeking	Disqualifying or Ded. Income	Refusal of Suitable Work	Report Req. Call-ins & other	Refusal Profil. Referrals	Other
<b>High Duration</b>						
Arizona	9.1	10.8	0.4	5.7	0.0	4.4
Pennsylvania	1.1	11.8	0.2	2.3	0.0	5.1
Utah	13.7	16.7	1.7	4.3	0.1	0.6
Washington	8.5	1.4	0.4	3.7	0.0	3.2
<b>Low Duration</b>						
Delaware	1.6	2.7	0.4	0.4	0.0	1.5
Maine	6.2	20.9	1.7	11.5	0.2	6.9
South Carolina	1.9	0.2	0.2	0.8	1.1	1.5
South Dakota	25.3	16.3	0.9	1.1	0.0	0.6
<b>U.S.</b>						
Median State	5.2	5.0	0.5	2.3	0.1	1.5

Similarly, as shown in *Exhibit IV.6*, denial rates for 2001 vary substantially across the eight states by key non-separation issue. For example, in 2001 non-separation denial rates varied as follows on key issues:

- *Able, Available, and Actively Seeking Employment (U.S. median, 70.8%)*: from 43.2 percent in Pennsylvania to over 90 percent in three states (Delaware, Maine, and South Dakota);
- *Disqualifying or Deductible Income (U.S. median, 87.7%)*: from less than 20 percent in two states (Pennsylvania and South Carolina) to over 95 percent in three states (Maine, South Dakota, and Utah);
- *Refusal of Suitable Work (U.S. median, 30.5%)*: from less than 20 percent in two states (South Carolina and Utah) to 60.2 percent in Washington; and
- *Report Required Call-ins and Other (U.S. median, 88.9%)*: from less than 20 percent in one state (Utah) to 100 percent (Delaware and South Dakota).

**Exhibit IV.6: Non-separation Denials per Determinations (%)**

State	Able, Avail. & Actively Seeking	Disqualifying or Ded. Income	Refusal of Suitable Work	Report Req. Call-ins & other	Refusal Profil. Referrals	Other
<b>High Duration</b>						
Arizona	70.6	67.6	28.5	76.7	N/A	61.6
Pennsylvania	43.2	18.7	31.7	67.1	N/A	41.7
Utah	59.2	96.1	9.5	18.7	12.6	8.6
Washington	69.7	87.7	60.2	72.5	N/A	29.9
<b>Low Duration</b>						
Delaware	97.6	89.5	53.0	100.0	N/A	89.0
Maine	96.4	100.0	29.3	99.2	60.6	98.1
South Carolina	68.3	0.8	15.7	73.7	43.1	84.0
South Dakota	96.8	99.9	48.7	100.0	N/A	73.7
<b>U.S.</b>						
Median State	70.8	87.7	30.5	88.9	86.0	72.6

The next section examines these trends in non-separation determination and denial rates by issue area and, where possible, attempts to link stringency of requirements with determination rates and denials, as well as UI reciprocity rates and duration.

**C. Analysis of Key Non-separation Issues**

As discussed earlier in this chapter, non-separation determination policies and procedures can have a significant effect on whether a claimant initially receives and continues to receive UI benefits. These policies and procedures vary substantially across states and can have a particular effect (according to the research) on duration of receipt of UI. The sections below examine key non-separation issues across the eight states visited as part of this study, with a particular focus on comparing specific policies, ways in which policies are enforced, and possible effects of specific policies on UI reciprocity and/or duration.

**1. Work Registration**

Work registration is the process whereby a claimant registers with the Employment Service (ES). This process typically involves completing a registration form that includes background information about the claimant (e.g., contact information, age, SSN, veteran's status), desired employment, employment history, education, and other information pertinent to job placement. Work registration of claimants usually occurs at the time of or within a week or so of filing an initial claim. The purpose of the work registration process is to help match claimants with appropriate and available job openings within their locality. If the claimant is required to register in person at a local UI office or One-Stop career center, the registration process may also provide an opportunity for the claimant to become familiar with training, employment, and support services available through the ES (and the One-Stop career system). Though work registration is not generally considered to be an important determinant of UI reciprocity rates or duration, stringent enforcement of work registration requirements could result in some claimants being

disqualified from receiving UI benefits for one or more weeks or eventually not receiving benefits altogether for failure to meet registration requirements. In addition, it is possible that claimants might receive job referrals from ES staff during the registration process that could result in job placement (i.e., leading to shorter duration of benefits) or fail to follow-up on job leads, which could lead to loss of UI benefits (i.e., for failure to conduct an active job search).

Our visits to sites revealed some variation with respect to work registration policies and practices. As shown in *Exhibit IV.7*, only one state (Pennsylvania) did *not* require claimants to register with the ES as a condition for receiving UI benefits. Though not requiring registration, when a claimant files for benefits in Pennsylvania, UI staff provide the claimant with the website address of Pennsylvania Careerlink (the state's One-Stop system) and the physical location of the nearest Careerlink office. Claimants are invited to explore the information and various employment and training services available through Careerlink.

In the other seven states, some or all claimants are required to register with the ES. Most states that register workers exempt some from registering for the ES, such as union workers (who obtain work through a hiring hall), claimants with a recall date, partially employed workers, and participants in approved training programs. In three states (Maine, South Carolina, and Washington) claimants are automatically registered (fully or partially) with the ES as part of the initial claims process. In the four other states (Arizona, Delaware, South Dakota, and Utah), claimants must register in person at the ES or a local career center within a specified period of time (ranging from five days in Utah to three weeks in South Dakota). When they report in person to a local office, the registration process may be as simple as completing a form (either a paper form or directly on-line into an automated system) or may involve a one-on-one interview with ES staff.

In the four states where there is a requirement to register in person, failure to register results in loss of UI benefits until registration occurs and may lead to disqualification from receiving UI altogether. For example, in South Dakota, as part of the process of making an initial claim, claimants are told to report within one week of filing their claims to their local One-Stop career center for orientation to UI and to register with the ES. Each One-Stop career center in the state receives electronic notification of the claimants required to report for registration within its service area. Those claimants that fail to report to the One-Stop by the end of the third week have a hold placed on their UI checks until such time as they report for orientation and work registration.

**Exhibit IV.7: Work Registration Process**

State	Requirement	Penalty
<b>Long Duration</b>		
Arizona	Unless temporarily laid-off, claimants must register in person with the ES within 2 weeks of filing for UI.	Disqualification from receiving benefits until claimant registers
Pennsylvania	No registration requirement; though UI staff provides web site information for Pennsylvania Careerlink and the location of the nearest Careerlink (One-Stop) office	None (no registration requirement)
Utah	Claimants must register in person at an employment center within 5 days of applying for benefits.	Disqualification from receiving benefits until claimant registers
Washington	Claimants – except standby workers, partially-employed workers, participants in Commissioner Approved Training, and union members -- are automatically registered for the ES when they apply for UI.	None (automatically registered)
<b>Short Duration</b>		
Delaware	Unless members of a labor union (where hiring occurs through a labor union) or they have a recall date, claimants must register in person with the ES.	Disqualification from receiving benefits until claimant registers
Maine	Claimants automatically (partially) registered for work when they apply for UI; UI does not require claimants to fully register at the ES local office	None (automatically partially registered)
South Carolina	Claimants are registered when they complete an application for UI ( in person with the ES at local career centers). Partial claims (claimants still attached to an employer) are not registered.	None (registered as part of filing process)
South Dakota	Unless union members or expected to be recalled by their employers, claimants are required to register with the ES in person at a One-Stop within 3 weeks of filing.	Disqualification from receiving benefits until claimant registers

Overall, in our interviews, the work registration process was not identified as a major factor affecting either reciprocity rates or duration of benefit receipt. States also noted that claimants generally comply with work registration rules. This is not surprising, as the process generally requires (at most) a short visit to a local UI office or One-Stop to complete a registration form and (in some instances) meet with ES or UI staff (depending on the state).

## **2. Able and Available Requirements**

To initiate a claim and continue to receive UI benefits in all of the states within our sample, claimants have to be both “able” and “available” for work. The purpose of the “able and available” requirement is to ensure that claimants are both physically “able” to work in suitable employment and that they are “available” to work for each benefit week in which UI is received.

UI programs capture information for making decisions on whether claimants are able and available usually at the time the initial claim is taken and when claimants submit continuing claims for each new week of UI benefits. In addition, such issues may be identified at the time of eligibility reviews and through statements taken from employers.

The basic requirements of being “able and available” are fairly similar across states we visited, but the stipulation of specific requirements and enforcement varies across states. *Exhibit IV.8* shows that in 2001, there was considerable variation in both the non-separation determination and denial rates across the eight states relating to claimants being “able, available, and actively seeking” employment. For example, determination rates on this issue ranged from 25.3 percent in South Carolina and 13.7 percent in Utah, to less than 2 percent in three states (South Carolina, Delaware, and Pennsylvania). Denial rates on this issue ran from above 95 percent (in Delaware, Maine and South Dakota) to less than half in Pennsylvania (43.2%). While no clear pattern emerged with respect to determination rates, the short duration states in our sample tended to also have higher denial rates (i.e., the states with the three highest denial rates were all short duration states) and the long duration states all had denial rates less than the U.S. median.

In terms of ability to work, all of the states stipulate that claimants must be physically and mentally capable of working at a job for which they are qualified. Physical and mental capability to work is typically defined in terms of not having an illness or other disability that would prevent an individual from taking a job for which the individual is qualified by experience, education, or training. In addition, states hold individuals ineligible from collecting benefits if they are on vacation or otherwise unavailable for work for some part or all of the week for which benefits are claimed (though the specific portion of a week a claimant must be available varies by state).

In three of the eight states (Arizona, South Carolina, and Utah), claimants must be available for full-time work. In four other states, though availability for full-time work is generally required, other mitigating factors are considered: in Delaware and South Dakota claimants who have a history of working part-time (e.g., earned wage credits to qualify for benefits working part-time) could qualify for benefits even if they are available for only part-time work; in Maine, claimants who are physically able to work only part-time are eligible for reduced benefits; and in Washington, claimants must be available for the hours and shifts that are customary for their occupations (i.e., though a claimant who is willing to accept only part-time work when a 40-hour week is customary for the occupation will be denied). Finally, in Pennsylvania, the statute does not require that a claimant be available for full-time or permanent work (rather claimants must be ready, willing, and able to accept some substantial and suitable work).

## Exhibit IV.8: Able and Available Polices/Procedures

State	Det. Rate (US= 5.2%)	Denial Rate (US= 70.8%)	"Able and Available" Requirements	Part-time Work Covered?
<b>Long Duration</b>				
Arizona	9.1%	70.6%	Claimants are able if they are mentally and physically able to work full-time at a job for which they are qualified by experience, education, or training. Claimants are not eligible for benefits if they are sick, totally incapacitated, or otherwise not able to work. Claimants are available if they are accessible to a labor market in which there are jobs for which they are qualified by experience, education, or training. They must also have transportation, proper clothing, licenses and tools required for their type of work.	No -- Claimants must be ready to accept full-time work when offered and report for work at the time employer requires.
Pennsylvania	1.1%	43.2%	"Able" to work refers to the mental or physical ability of a claimant to engage in gainful employment. While a disability may limit a claimant's work opportunities, it may not prevent him or her from engaging in any type of work. State law does not define "available for work", though the courts have stated that a claimant is available for work if he or she is ready, willing, and able to accept some substantial and suitable work. In addition, the courts have stated that registration for work at the local One-Stop (Careerlink) constitutes availability.	Yes -- Claimants not required to be available for full-time or permanent work.
Utah	13.7%	59.2%	Claimants must be attached to the labor force. This means the claimant can have no encumbrances to immediate acceptance of full-time work. Claimant must be actively engaged in efforts to obtain employment. He/she must have the necessary means to become employed including tools, transportation, licenses, and childcare. He/she must desire to obtain employment. In determining whether a claimant is <i>able</i> , a number of elements are considered, including: (1) claimant must show that he or she has no physical or mental impairments which would preclude immediate acceptance of full-time work, (2) claimant is not eligible if he or she is not able to work at his regular job due to a temporary disability, so long as the employer has agreed to allow him or her to return to the job, (3) while a claimant is hospitalized, he or she is not able to work, thus ineligible for UI benefits, unless the hospitalization is on an out-patient or residency basis and there is professional verification that the claimant is not restricted from immediately working full time.	No -- Claimants must be seeking full-time work.
Washington	8.5%	69.7%	Able to work means the claimant is physically able to work; available to work means the claimant must be willing to accept any suitable work that fits his or her training, experience, and ability. It also means the claimant has a way to get to work and get childcare. If a claimant is unavailable in a week, he or she is paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work. However, if unavailable for three days or more of a week, the entire weekly benefit is forfeited.	Yes -- Claimant must be available for the hours and shifts that are customary for his or her occupation.

**Exhibit IV.8: Able and Available Polices/Procedures (continued)**

State	Det. Rate (US= 5.2%)	Denial Rate (US= 70.8%)	"Able and Available" Requirements	Part-time Work Covered?
<b>Short Duration</b>				
Delaware	1.6%	97.6%	Able and available not defined in the law. A 1982 state Supreme Court case found "...the ability of a particular employee to secure work must be measured by the skill of that employee in an identifiable labor market." According to UI staff, "able" means having no illness, disability, or restriction (e.g., lack of transportation or child care) that prevents work. According to Supreme Court case, "the term 'availability' for employment incorporates both the requirement of ability to work and qualification through skill, training or experience for a particular occupation, commonly expressed in terms of 'an identifiable labor market.'" A claimant with an illness might still be deemed available for work so long as he or she was available more than three days per week and is under the care of a doctor.	Yes -- Claimants with history of part-time work could be found "available" if seeking only part-time work.
Maine	6.2%	96.4%	Being available for work means physically able to work, available to accept suitable full-time work without restrictions, having arrangements for child care and transportation, and if required by the occupation, being available to accept shift work. Exceptions are made to the last requirement if the shift is between midnight and 5:00 AM and the claimant is caring for an immediate family member. If a claimant is sick during a week, weekly benefit is reduced for the days when ill.	Yes -- Claimants physically able to work only part-time might still be eligible for reduced benefits.
South Carolina	1.9%	68.3%	"An unemployed insured worker is eligible to receive benefits with respect to any week only if the Commission finds that...he (she) is able to work and is available for work at his (her) usual trade, occupation, or business or in such other trade, occupation, or business as his (her) prior training or experience shows him (her) to be fitted or qualified; is available for such work either at a locality at which he (she) earned wages for insured work during his (her) base period or if the individual has moved to a locality where it may reasonably be expected that work suitable for him (her)...is available."	No -- Claimant must be seeking full-time work to be considered available, even if he or she had previously worked part-time.
South Dakota	25.3%	96.8%	A claimant must be physically able to work in his/her usual occupation or in other work for which he/she is reasonably fitted and physically able to work the majority of the week (more than three days). A claimant must also be "willing" to work, including: (1) available for full-time work (note: some exceptions), (2) have no personal reasons preventing acceptance of a job (caring for children, lack of transportation, vacation, etc.), (3) place no restrictions on the work he/she will accept so that the job desired is practically non-existent, (4) willing to do work for which he/she is fitted by education and experience and for which there are prospects in the local area, (5) if the claimant has worked in an occupation where different shifts are common, be available to work either day or night shift unless he/she has compelling personal reasons for not working a particular shift, (6) accept the going wage in the area, and (7) if has an established working relationship with an employer, must be willing to accept work or take positive steps to accept suitable work which the claimant reasonably knows is available with an employer. With regard to being available for work, claimants have to be available for work for 3½ days per week (based on a 7-day work week).	Yes - Claimants could be looking for only part-time work and still qualify for benefits, if they had earned wage credits to qualify for benefits through part-time work.

Note: Determination rates are per 10 claimant contacts for 2001 for "able, available, and actively seeking work" non-separation issues, median for U.S. is shown at top of the column.

To be eligible for UI benefits during a given week, claimants must have arrangements for transportation and childcare, which permit the individual to accept offers of employment. There are also a variety of other specific provisions that have evolved in various states we visited that govern determinations of whether a claimant is considered able and available: (1) pregnancy (e.g., relating to time prior to and after in which claimants are not considered available), (2) attendance in school or training, (3) availability for shift work, (4) temporary versus permanent disabilities, and (5) hospitalization.

The penalty for failure to meet “able and available” standards within a state is typically loss of benefits for a given week in which these conditions are not met and continued loss of benefits until the specific conditions are met. There are, however, some variances across states in terms of loss of UI benefits. For example, in Washington, claimant’s weekly benefit amounts are reduced by one-seventh for each of the first two days of unavailability; if unavailability continues for three days or more in a given week, the entire weekly benefit is forfeited.

Overall, in terms of non-separation determination rates for 2001, South Dakota (25.3%) and Utah (13.7%) stand out among the eight states we visited in terms of having much higher determination rates for able and available issues (and well above the median of 5.2% for the U.S.). One of these states (South Dakota) is a low duration state while the other (Utah) is a high duration one. It does not appear that the definitions applied for able and available are any more or less stringent than those found in other states. In addition, one of these states permits seeking of part-time work if wage credits are accrued working part-time (South Dakota) while the other state requires claimants to be seeking full-time work (Utah). As will be discussed in Section F below, it is possible that South Dakota’s high determination rates on “able and available” issues arises from more frequent eligibility reviews. However, in the case of Utah, eligibility reviews were discontinued in the mid-1990s. It is possible, that high determination rates in these two states has more to do with detection and enforcement, than the policies.

Finally, as noted earlier, three of the four states with short duration had the highest denial rates (in excess of 95%) on able and available issues. However, policies with respect to able and available issues do not appear to be any more or less stringent in these three states.

### **3. Refusal of Suitable Work**

Determinations concerning what constitutes “suitable” work arise when claimants receive job offers from potential employers that, if accepted, would result in termination of UI benefits. When such offers of employment are rejected by claimants and come to the attention of the UI system, UI adjudicators must render decisions as to whether the claimants rejected what might be considered appropriate (“suitable”) job offers. Rejections of offers of suitable employment are usually detected through self reports of claimants when they file weekly (or bi-weekly) for continuing benefits (for example, in South Dakota, as part of the weekly telephone filing process, claimants are asked to respond to the following question: “Did you refuse any offer of work or referral to a job?”). Refusals of suitable work may also come to the attention of UI staff during eligibility reviews, contacts with employers (who may have made offers of employment to claimants), or during other contacts with UI recipients.

In his recent study, Vroman (2001) reported that disqualifications for refusing suitable work have been declining for nearly all UI programs in recent years and that a variety of definitions of “suitable” are used by states. In addition, he notes that the most common suitability definitions across the ten states he examined consider four main factors: the level of wages, commuting distance, the shift offered, and occupation of the offer. Vroman indicates that the penalty for refusal to accept suitable work is usually disqualification for the duration of the current unemployment spell.

**Exhibit IV.9** displays key requirements with regard to suitability requirements in each of the eight study states, along with specific requirements relating to suitable wages. This exhibit also shows determination rates and denial rates in each of the states relating to refusal of suitable work. With regard to determination rates in 2001, three of the four long duration states had rates less than the national median compared with two of the four short duration states. The determination rates (per 10 claimant contacts) for refusal of suitable work ranged from 0.2 percent (in Pennsylvania and South Carolina) to 1.7 percent in Maine and Utah. The median for all states was 0.5 percent, an indication that determination issues surrounding suitable work are much less likely to arise compared with issues such as “able, available and actively seeking work” and “disqualifying and deductible income.” Denial rates for the eight states ranged from under 9.5 percent (in Utah) to 60.2 percent in Washington. The median denial rate for all states in the U.S. in 2001 was 30.5 percent (the lowest denial rate among the six main categories for which non-separation denial rates are reported). The relatively low denial rate nationally and generally found within the eight states in our sample (only two states had denial rates above 50%) may be an indication of the considerable discretion which is left to adjudicators in deciding whether “suitable” employment offers have been rejected by claimants.

Cutting across the eight states included in our study sample, the main findings that emerge with regard to suitability are the following:

- Similar to Vroman (2001), we found considerable variation with regard to how states defined suitable employment. In addition, in all states, adjudicators were afforded considerable latitude when it came to making decisions about what constitutes refusal of a suitable job offer.
- Key factors that typically are taken into account in making suitability determinations include the following: previous job experience and training, wages paid (both during the base period and prevailing for similar work), commuting distance, and shifts/hours. However, as shown in the exhibit, the specific criteria used by states vary considerably. For example, South Dakota and Utah take into consideration religious constraints that claimant may face in accepting job offers.

## Exhibit IV.9: Refusal of Suitability Work

State	Det. Rate (US= 0.5%)	Denial Rate, (US= 30.5%)	General Suitability Requirement	Wage Requirements
<b>Long Duration</b>				
Arizona	0.4%	28.5%	Suitability of job offer is based on several factors, including: past experience/training, wages, working conditions, distance from work, hours, and other factors. Claimant's prior training and experience are considered before being disqualified for refusing work beneath their highest skill. Claimants are allowed a reasonable adjustment period in which to find work in his or her customary occupation. Adjustment period is 4 weeks for unskilled, 7 weeks for semi-skilled, and 10 weeks for skilled workers.	Good cause for refusing job in customary occupation because wages offered are less than those earned previously depends on several factors: prospects of securing previous wages (suitable wage decreases after adjustment period); length of unemployment; and local labor market conditions.
Pennsylvania	0.2%	31.7%	Suitable work means all work for which the employee is capable of performing. In determining whether job offer is suitable, UI considers (1) degree of risk involved to the claimant's health, safety and morals, (2) claimant's physical fitness, (3) claimant's prior training and experience, (4) distance of the available work from the claimant's residence, (5) prevailing condition of the labor market, and (6) prevailing wage rates in the trade or occupation.	Staff considers whether job pays prevailing wage rate for similar work in locality.
Utah	1.7%	9.5%	Suitable work is a function of prior experience, prior training, prior earnings, length of unemployment, prospects for securing work in customary occupation, distance of the available work from his residence, and working conditions. Other factors that are considered in making determination of suitability of job offer include: risk to a claimant's physical or mental health, conflicts with honestly held religious or moral convictions, and whether claimant possesses physical capacity to perform work involved in job.	Initially, work paying less than highest wage earned by claimant during base period is <u>not</u> suitable (unless claimant has no real expectation of being able to find work at that wage). After filing continuously for 1/3 of entitlement weeks, any work paying wage earned during base period is suitable. After filing continuously for 1/2 of weeks of entitlement, work paying wages 10 percent less than the lowest wage earned by claimant during base period is suitable. After filing continuously between 1/2 and 2/3 of the weeks of entitlement, claimant must gradually reduce wage demanded until it reaches prevailing local wage for work in occupation.
Washington	0.4%	60.2%	State defines suitable work as "employment in an occupation in line with prior training, experience, and education, unless regular work does not exist in the claimant's area. Work would not be considered suitable if the wages, hours or other working conditions are not as favorable as the average for the claimant's occupation in the local labor market." In theory, the definition of "suitable" expands over time. After a period of time, any job for which the claimant is qualified might be considered suitable.	Work is unsuitable if the remuneration is substantially less favorable to the individual than that prevailing for similar work in the locality.

## Exhibit IV.9: Refusal of Suitability Work (continued)

State	Det. Rate (US=0.5%)	Denial Rate, (US=30.5%)	General Suitability Requirement	Wage Requirements
<b>Short Duration</b>				
Delaware	0.4%	53.0%	When determining whether a job is "suitable," UI staff considers wage level, shift, distance and occupation of job offer in relation to claimant's work history. Statute states that benefits are denied "If an individual has refused to accept an offer of work for which the individual is reasonably fitted." This does not apply if the individual, as a condition of hire, must join or refrain from joining a union; the position offered is vacant due to a strike; the work is at an unreasonable distance from the individual's residence; or the remuneration, hours, or other conditions of work are substantially less favorable than those prevailing for similar work in the locality.	Staff examine going rate for a particular job, which may or may not be the same wage the claimant earned at his or her last job. The general rule is that a 15 percent pay cut is reasonable.
Maine	1.7%	29.3%	Suitability of a job offer is based on several factors, including the degree of risk to health, safety, and morals; physical fitness; prior training; prior work experience and earnings; length of unemployment; prospects of finding work in the present occupation; and distance between the job and home. After 12 weeks of unemployment, the state greatly broadens the definition of suitability.	First 12 weeks, staff consider wages paid in prior job in determining suitability; after 12 weeks, if job offer pays wage equal to or more than prevailing wage (avg. weekly wage for occupation in locality), prior wages not considered.
South Carolina	0.2%	15.7%	According to the <i>South Carolina Employment Security Law</i> , "in determining whether or not any work is suitable for an individual, the Commission shall consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence."	Initially, staff considers whether job pays wages at level claimant was paid in his/her previous job; as spell of unemployment lengthens, claimants are expected to be more flexible with regard to wages offered.
South Dakota	0.9%	48.7%	In determining whether or not any work is suitable for an individual, according to the <i>Codified Laws</i> , the Department is to consider the following factors: (1) degree of risk involved to the individual's health, safety, and morals; (2) physical fitness and prior training; (3) experience and prior earnings; (4) length of unemployment and prospects for securing local work in the individual's customary occupation; and (5) the distance of the available work from the individual's residence	Initially, staff considers whether job pays wages at level claimant was paid in his/her previous job; as spell of unemployment lengthens, claimants are expected to be more flexible with regard to wages offered.

Note: Determination rates are per 10 claimant contacts for 2001 for "refusal of suitable work" non-separation issues; median for U.S. is shown at top of the column.

- Five of the eight states initially predicate suitability of wages on previous wage earned in prior work (either on the most recent job or during the base period). The three other states (Delaware, Pennsylvania, and Washington) base decisions about suitable wages in relation to prevailing wages for similar jobs/work in the locality.
- As dislocated workers draw closer to exhaustion of benefits, what is considered to be suitable work expands. Most commonly, claimants are expected to (1) reduce wage demands (e.g., from accepting hourly wages paid during the base period to perhaps prevailing wages in the locality for the particular trade/occupation in which they have formerly work or for which they are training, (2) expand the range of jobs/occupations being considered, and (3) expand commuting distance.
- The penalty for refusal to take a suitable offer is most likely to be disqualification of the current spell of receiving UI benefits and ineligibility for benefits until the claimant re-qualifies through addition employment (and subsequent loss of employment).
- When states are grouped by long and short duration, long duration states tend to have determination rates less than the national median. There was no clear pattern with respect to denial rates.

Overall, given the multitude and complexity of factors considered in rendering determinations on suitability issues and the considerable room for discretion on the part of adjudicators, it is difficult to distinguish between more stringent and less stringent states with regard to suitability. Of the main factors, suitability of wages—whether a state uses prevailing wages or wages the claimant earned in prior work as the standard—offers the possibility for distinguishing between states with more stringent and less stringent requirements. However, even in this area, it is difficult because as unemployment spells lengthen, most states require workers to gradually dampen wages they are willing to consider.

Even further, the relatively low level of determinations relating to suitable work (a much smaller portion of determinations than able and available issues) also suggest that such requirements have at most very modest effects on duration of benefit receipt. In our interviews, while state administrators indicated that there was considerable complexity and adjudicator discretion related to suitability determinations, no interviewees identified suitability requirements (or differences across states) as having any tangible effect on duration.

#### **4. Job Search Enforcement/Accountability**

Job search requirements, a standard requirement for UI claimants in most UI programs across the nation, are intended to keep claimants actively engaged in efforts to secure work and end their spell of receiving benefits before their weeks are exhausted. Job search requirements, which typically require claimants to make a specific number of contacts with prospective employers per week, are enforced to varying degrees by UI agencies. *Exhibit IV.10* shows the main job search requirements and enforcement procedures used by the UI programs in our eight study states.

**Exhibit IV.10: Job Search Requirements**

<b>State</b>	<b># of Job Contacts Required</b>	<b>Method of Job Search Permitted</b>	<b>Enforcement Method</b>	<b>Penalty</b>
<b>Long Duration</b>				
Arizona	Varies based on occupation and labor market area	Dependent on the claimant's occupation and current labor market (might include personal contact, submission of resumes, answering want ads, submitting applications, etc.)	During continuing claims, ask if active job search conducted; at ERI, claimants asked to provide log and evidence of last 5 contacts; employers may be contacted to verify work search	Generally given warning and rescheduled for another review. Potentially may be disqualified for duration of unemployment, but rare
Pennsylvania	None	N/A	N/A	N/A
Utah	2/Week	Method should be appropriate to occupation, employer, & industry (may include in-person, telephone, Internet)	At continuing claims, ask if active job search conducted; claimants responsible for keeping log of all contacts	Disqualification for each week in which job search requirement not met
Washington	3/Week	Method should be appropriate to occupation, employer, & industry (may include in-person, telephone, Internet)	At continuing claims, ask if active job search conducted; claimants responsible for keeping log of all contacts. About 10% of claimants selected for job search review; random sample selected to have contact confirmed with employers	Failure first time leads to "directive" by staff and rescheduled review. Failure to follow directive could lead to loss of benefits for weeks not following directive
<b>Short Duration</b>				
Delaware	1/Week	Method should be appropriate to occupation, employer, & industry (may include in-person, telephone, Internet)	During continuing claims, ask if active job search conducted; claimants encouraged to keep work search log	Disqualification for each week in which job search requirement not met
Maine	2/Week	Method should be appropriate to claimant's occupation, employer, & industry (may include in-person or Internet, but not telephone)	During continuing claims, ask if active job search conducted; random calls to employers to check validity of contacts	Generally, warning on 1 <sup>st</sup> offense; then disqualification for each week in which job search requirement not met
South Carolina	1/Week (more for some occupations)	Most methods acceptable (in-person, telephone, Internet)	During continuing claims, ask if active job search conducted; at ERI, claimants asked to provide log and evidence of at least 1 contact/week; timing of next ERI based on adequacy of job search	Disqualification for each week in which job search requirement not met
South Dakota	2/Week	Method should be appropriate to occupation, employer, & industry (may include in-person, telephone, Internet)	At continuing claims, ask if active job search conducted; at ERI, claimants asked to provide log and evidence of at least 2 contacts/week (strictly enforced). Following ERI, a form is mailed to at least one employer listed on log to verify job contacts.	Disqualification for each week in which job search requirement not met

As shown in the exhibit, with the exception of Pennsylvania, the states in our sample require an active job search on the part of claimants, though specific standards and enforcement procedures vary considerably. Six of the seven states have weekly job search requirements ranging from 1 to 3 job contacts per week. While South Carolina's requirement is typically one contact per week, more contacts are required for certain occupations. Arizona's job search requirement varies based on occupation and labor market area in which the individual is searching. Some claimants may be exempted by the state UI program from job search requirements (e.g., in Maine, claimants are exempt from job search requirements if they are expected to be recalled, have accepted new jobs that start within two weeks, are enrolled in approved training, are in a trade union through which they generally obtain work, or involved in a labor dispute).

In all states, acceptable job search methods are those that are considered to be customary and appropriate to the occupation and industry for which the claimant is qualified and seeking employment. For some employers, this entails mailing a resume. For others, it mean going in person and asking to speak to a human resources representative, applying for a job over the Internet, or making a contact via telephone. Several state UI programs in our sample indicated that they relaxed the requirement that claimants make in-person contacts. Increasingly they were permitting workers to submit resumes via the mail or Internet and made contacts by telephone. However, states still expect claimants to make contacts in a manner that is customary to their occupations and the employers from which they are seeking work (e.g., a waiter would be expected to "knock on doors" to find restaurant work, while an accountant would be expected to submit resumes).

Five study states require individuals to keep a formal log of job contacts (Arizona, South Dakota, South Carolina, Utah, and Washington). UI programs enforce job search requirements through two principal methods: (1) when claimants file continuing claims, they are asked if they have conducted an active job search and may be asked to furnish the number or actual contacts made; and (2) during eligibility reviews (if states conduct them), claimants may be asked about the number of contacts they have conducted and, in some cases, to produce a log to verify that actual contacts were made with employers. In some instances, UI programs may follow-up with one or several employers to make sure that contacts were made. South Dakota and South Carolina, for example, featured stringent policies with regard to job search and strictly enforce requirements. For example, in South Carolina, the decision of when the individual will be scheduled for his or her second eligibility review generally hinges on the UI staff person's assessment during the first eligibility review of how hard the individual has been searching for work. The individual could be re-scheduled for an eligibility review in as short a time as two weeks (e.g., if they had shown little in the way of job search activity) or as long as 13 weeks.

Four of the states we visited (Arizona, Maine, South Dakota, and Washington) indicated that follow-up contacts were made with employers to verify that claimants in fact made job contacts. For example, during eligibility reviews, claimants in Arizona are asked to provide evidence of their last 5 job contacts and these employers may be contacted by UI staff to confirm work search activity.

Penalties for failure to conduct an adequate job search vary across the states in our sample. Possible penalties range from warnings, to scheduling of more frequent eligibility reviews, to disqualification for weeks that the claimant did not meet requirements. When claimants are

found to have not conducted work searches during a given benefit week, they are likely to be disqualified for the week or weeks in question. In Arizona, Maine, and Washington claimants typically receive a warning for their first offense, but if they have subsequent lapses, they may be disqualified for a week or weeks of benefits

Links between more stringent job search requirements and enforcement with either reciprocity rates or duration are not easily proved. State officials did not single out stringency as a major factor, though they suggested that there may be some links between stringent enforcement of job search requirement and shorter duration. The data for the states are somewhat suggestive, but not definitive. For example, South Dakota and South Carolina, which had perhaps the most stringent enforcement of job search requirements, also had short duration. There is also logic behind this argument. Requirements for more job contacts and strict enforcement of claimants making such contacts would likely yield greater determinations, which may lead to lost weeks of receipt of benefits and, perhaps total loss of benefits. In addition, if claimants are aware that staff are more rigorously checking job contacts, they may be more likely to make at least the required number of contacts and maybe more, which may hasten re-employment and reduce the likelihood of exhaustion of benefits. Despite this underlying logic and anecdotal evidence, the links between reciprocity rate/duration of benefits and stringency of job search requirements/enforcement activities is far from certain.

## **5. Eligibility Review Interviews**

Eligibility review interviews (ERIs) provide UI staff with an opportunity to periodically review the ongoing eligibility of claimants based on receipt of disqualifying and deductible income, able and available status, and adequacy of job search efforts. As noted earlier, Vroman (2001) found that “eligibility reviews generally occur less frequently in high reciprocity states.”<sup>27</sup> He also found in his review of ERI policies and practices across his 10 study states “a wide range of reliance on eligibility reviews for determining continuing eligibility.” For example, he found that three of the high reciprocity states in his study sample (Massachusetts, Wisconsin, and California) had largely or completely stopped relying on ERIs; while at the opposite extreme, two low reciprocity states (North Carolina and New Hampshire) both indicated that ERIs were so important to the integrity of the claims process that they take place at set intervals (every 4 to 8 weeks). He noted that these two states that are more stringent with respect to ERIs, also are characterized by short durations in benefits.<sup>28</sup>

As shown in *Exhibit IV.11* and similar to Vroman’s findings, we found considerable variation across our study states in the extent to which they use eligibility reviews to determine continuing eligibility of claimants. The data presented in the exhibit on the number of eligibility reviews conducted per claimant contact in 2001 reveals what we found on our site visits—namely, that two of our study states (South Carolina and South Dakota) are much more rigorous than other states (and the nation as a whole) in their use of eligibility reviews.

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<sup>27</sup> Vroman (2001), p. 134.

<sup>28</sup> Vroman (2001), p. 130.

**Exhibit IV.11: Eligibility Reviews**

State	Frequency of Reviews	ERP per Claimant Contact, 2001 (U.S. Median= 0.6%)	Penalty for Failure to Appear
<b>Long Duration</b>			
Arizona	Initial and subsequent ERI's every 13 weeks (UI staff may schedule earlier if job search inadequate)	0.5%	Indefinite denial (until claimant complies)
Pennsylvania	No ERI	0.0%	None
Utah	No ERI (stopped in mid-90s). [Plan to reinstate ERI in Fall 2002, featuring random ERI after 6 weeks and subsequent random ERI after 7 additional weeks]	0.0%	None (until ERI policy reinstated)
Washington	Job Monitoring replaced ERI (in 1999); random selection of claimants after 6 weeks (10% of claimants on 6-10 weeks; 8% of claimants on 11-15 weeks; & 5% claimants on >15 weeks)	0.5%	Indefinite denial (until claimant complies); typically lose at least 1 week unless for "good cause"
<b>Short Duration</b>			
Delaware	Not systematic; claimants randomly selected for ERI if paid 10 or more weeks	0.0%	Indefinite denial (until claimant complies)
Maine	No ERI conducted (stopped in 1994). [Discussing possibility of reinstating ERI, but lack staff/resources to do so.]	0.0%	N/A
South Carolina	Initial ERI in 6 weeks; subsequent ERI's at 2-13 weeks (at discretion of UI staff depending on adequacy of job search)	7.1%	Indefinite denial (until claimant complies); typically lose at least 1 week unless for "good cause"
South Dakota	Initial and subsequent ERI's every 4-6 weeks (at discretion of local office)	9.9%	Indefinite denial (until claimant complies); typically lose at least 1 week unless for "good cause"

At the time of our visits, three states (Maine, Pennsylvania, and Utah) did not perform ERIs on claimants to determine continuing eligibility. As noted in the exhibit, one of these states (Utah) was planning at the time of our visit to reinstate ERIs and a second (Maine) was discussing the possibility of reinstating ERIs, but worried that the program lacked the staff and resources required.

The other five states have some form of ERIs, but the timing and methodologies employed varies considerably. The most stringent ERI requirements are in South Dakota, where initial and subsequent eligibility reviews are conducted every four to six weeks. When scheduled for an ERI, the claimant must report in person to a local One-Stop for a 10-15 minute interview. As part of the eligibility review, the One-Stop worker checks to make sure the individual has met his or her work search requirements. Following the ERI, the interviewer will send a form to at least one employer listed on the claimant's list of job contacts to verify that the individual did in fact look for work with that employer.

Next in terms of stringency among the eight study states is South Carolina, where all claimants are scheduled for an ERI after they have received six weeks of UI benefits. It is then up to the UI interviewer to make the determination of when the claimant will be scheduled again for another eligibility review. This decision generally hinges on the UI staff person's assessment of how hard the individual has been searching for work.

The three remaining states each employ some form of ERI, but less stringently than in South Carolina and South Dakota. Arizona conducts an initial ERI during the 13<sup>th</sup> week of UI reciprocity. Generally, the next ERI will occur in another 13 weeks. However, if the claimant has not conducted an adequate job search or needs additional services, a follow-up ERI is scheduled sooner. The other two states randomly select claimants for ERI.

In the five states with eligibility reviews, the penalty for failure to report when for a scheduled eligibility review is indefinite denial (suspension) of UI benefits until the individual complies with requirements (i.e., reports for eligibility review). Such failure to report generates a non-separation determination issue that is forwarded for adjudication. Typically, claimants are disqualified for one week (or longer if the failure to comply continues into an additional week or weeks), unless they can show "good cause" (e.g., that they were involved in a job interview or other job search activity).

Although it is a small sample from which to draw conclusions, similar to Vroman, the two states with the most stringent ERI requirements also had relatively short duration (South Carolina and South Dakota). In contrast, the three states with no ERI requirements, were among the states with long duration (Pennsylvania, Maine, and Utah). It is also possible that the relatively stringent ERI requirements in South Dakota also may provide some explanation as to why this state also has the highest determination rate within our sample of eight states. On the other hand South Carolina, which also had stringent eligibility reviews, also had the lowest determination rate among the eight states.

## **6. Profiling**

All states are required to institute procedures—commonly known as profiling—for identifying claimants who are most likely to exhaust their benefit entitlements and in need of job search assistance services to make a successful transition to new employment. Six states use some type of statistical model for assigning claimants at or near the time of filing with a probability of exhausting their UI benefits. Delaware uses a characteristics model and Utah uses responses to a series of intake questions. Typically, the model is based on the profiling regression model developed by the federal government, but may include a somewhat different blend of variables. South Dakota (which is most like the other states we visited) and Delaware provide examples of somewhat different types of models used to select claimants most likely to exhaust benefits:

- South Dakota uses a regression model, which, according to state UI administrators, has most of the factors used in the federal regression model. Among the variables included in the model are: county unemployment rate; change in industry of last employer (i.e., growth rate); occupational group; education level; months of experience in occupation; number of days between separation date and effective date; and the local One-Stop office. The model, which is applied to all initial claims except those claimants scheduled to be recalled by their

employers or members of referring unions, assigns each claimant with a probability of exhausting benefits. The state UI office sends a letter to each individual selected as part of the profiling model that indicates the individual is to report to his or her local One-Stop for profiling services within 10 days.

- Delaware uses a characteristics model to determine who is at risk of exhausting benefits. The model initially excludes claimants who: have a recall date, who are union members with a union hiring hall, and who have already received a payment. It then selects claimants who: were laid off from a slow-growth or declining industry, last worked in a slow-growth or declining occupation, and worked for their last employer for at least three years (i.e., long-term employment). Slow growth is defined as growing by less than 25 percent over five years.<sup>29</sup> All claimants who meet these criteria are referred to Delaware's Department of Employment and Training for services.

As noted in the South Dakota and Delaware examples, the profiling models are applied to new claimants, though claimants may already be receiving UI benefits when they attend profiling sessions. For example, in South Carolina, claimants remain in the pool of claimants identified as needing profiling services for four weeks. Local offices receive an updated list of the profiling pool each day for their local areas, listing claimants in order from those with the highest to the lowest probability of exhaustion. Local UI office staff work down the list to send out letters to claimants to attend a re-employment workshop.

States often exempt certain types of claimants from attending profiling services. Commonly exempted claimants include union members who obtain work through hiring halls, claimants with recall dates (i.e., claimants on temporary layoffs), and claimants that can show a firm date for hire in the near future. The state and local UI offices that we visited indicated that a relatively small proportion of all claimants are called in for services. For example, three states for which estimates were provided indicated that one-tenth or fewer initial claimants were referred for profiling services (Washington, Pennsylvania, and South Dakota).

Once selected, claimants are sent a letter explaining why they were selected, the types of services that are available, and a date and time at which to report for services. *Exhibit IV.12* highlights the general types of services that are made available. Profiling services typically involve reporting to a local UI office or One-Stop for an orientation to available employment, training, and ES services. Usually these are 1-2 hour group orientations. They may also include discussions about effective job search strategies and how to obtain job leads. In some states (including Delaware, Maine, South Dakota, and Utah), one-on-one meetings are scheduled for claimants with UI staff (which may or may not accompany a group workshop). In several states, service plans are developed for individuals selected for services (especially in those where one-on-one meeting are held). South Carolina (offering a group orientation session) and Utah (offering one-on-one consultations) represent somewhat different approaches to providing services (though both offer basically similar types of reemployment assistance):

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<sup>29</sup> This definition changes over time depending on the size of the profile pool. In the past, "slow growth" was closer to 15 percent. In an effort to boost the size of the pool, the definition was expanded.

- In South Carolina, each local office structures their profiling services. The two localities we visited as part of this study (located in Charleston and Columbia) offer profiling workshops (about one to two hours in length), which (1) review resources and reemployment services available through UI, ES, and One-Stops; (2) provide a quick review of effective job search methods; and (3) when appropriate, provide job leads suitable for claimants. In both localities, profiling services rarely extend beyond these workshops.
- In Utah, claimants are scheduled for a one-on-one orientation meeting with an employment counselor at a local One-Stop. During this meeting, which usually lasts about an hour, the claimant receives an overview of the services available through the employment center and an assessment. The assessment involves a discussion of work history and the reasons for job separation, as well as family-related and budget concerns and the need for supportive services. The employment counselor will determine what services are needed and will include them in an employment plan with specific tasks and goals. Types of follow-up services available include testing and assessment, vocational counseling, job placement, labor market/career resource information, job search workshops, and referrals to local service providers or trainers. At the conclusion of the meeting, the counselor will schedule a follow-up time to meet. For some claimants, this might be a few weeks after the orientation; for others, a monthly phone call suffices.

### Exhibit IV.12: Profiling Requirements

State	Det. Rate (US= 0.1%)	Denial Rate (US= 86.0%)	Profiling Services Received	Penalty for Failure to Report
<b>Long Duration</b>				
Arizona	0.0%	N/A	Services vary by locality, one local program offered one-day group workshop, which included overview of reemployment services, completion of service plan, and (if needed) referral to services	Disqualification until reports and meets requirement
Pennsylvania	0.0%	N/A	Group orientation, general employment information, registration with Career link system, notification of training opportunities	Claimants may be sanctioned for a single week or may lose benefits until they report
Utah	0.1%	12.6%	One-on-one orientation meeting lasting about 1 hour at employment center; includes overview of reemployment services, assessment, and development of service plan	Disqualification until reports and meets requirement
Washington	0.0%	N/A	Group workshop (3 hours in some localities) which covers effective job search techniques and available services	No sanction, but starting in 1/2003 claimants will lose benefits for a week

**Exhibit IV.12: Profiling Requirements (continued)**

State	Det. Rate (US= 0.1%)	Denial Rate (US= 86.0%)	Profiling Services Received	Penalty for Failure to Report
<b>Short Duration</b>				
Delaware	0.0%	N/A	30-minute group orientation to reemployment services available; one on one meeting with case manager to develop service plan	Disqualification until reports and meets requirement
Maine	0.2%	60.6%	Meet 1 on 1 with counselor and develop service plan; may attend subsequent workshop	Disqualification until reports, but not enforced
South Carolina	1.1%	43.1%	1-2½ hour workshop that provides overview of available services, effective job search strategies, and job leads)	Disqualification until reports and meets requirement
South Dakota	0.0%	N/A	Usually 30 to 60 minute, 1-on-1 meeting with UI staff at 1-stop that provides overview of 1-stop services, referral to training (if needed), and job leads	Disqualification until reports and meets requirement

Note: Determination rates are per 10 claimant contacts for 2001 for "refusal of profiling referrals" non-separation issues; median for U.S. is shown at top of the column.

As shown in **Exhibit IV.12**, the determination rate on refusal by claimants to report to profiling services is quite low both nationally (0.1%) and in our eight states. Only one state (South Carolina) had a determination rate in excess of 0.2 percent. Vroman (2001) offers a partial explanation for the very low determination rates for refusals to attend profiling service (which we confirmed in our discussions with site visits), observing that failure to report for profiling services may show up in state reports classified as more general "reporting" issues and not as profiling issues. Denial rates for the three states for which data are available on refusal to report for profiling services, range from 12.6 percent of determinations in Utah to 60.6 percent in Maine.

UI staff that we interviewed had varying perspectives about the utility and effectiveness of profiling services. Some felt that profiling effectively targeted individuals likely to exhaust benefits, other were not sure or did not feel the model was all that effective. Regardless of whether the model was effective in identifying those likely to exhaust their benefits, a number of state and local UI staff questioned whether the intensity of the profiling services offered (usually limited to a brief workshop and/or one-on-one meeting with an employment counselor) was sufficient to have much of an effect on whether a claimant did or did not exhaust benefits. In addition, if a state conducted frequent eligibility reviews, there was some question as to whether such profiling services added much value to services already being provided.

### **7. Treatment of Disqualifying Income**

Disqualifying and deductible income, such as earned income, severance pay, pensions/annuities, and holiday, vacation, and sick pay can affect claimants' initial and continuing eligibility for UI, as well as weekly benefit amount (WBA). Past research suggests that a state's treatment of disqualifying and deductible income may be linked with its reciprocity and duration rates. For

example, Vroman (2001) asserts that, with respect to disqualifying and deductible income, “state practices are quite varied” and suggests that disqualifying and deductible income denials are less frequent in high UI reciprocity states.<sup>30</sup> Similar to Vroman, we found substantial variation across our eight study states that we visited. **Exhibit IV.13** compares policies and practices on treatment of earned income; holidays, vacations, and sick pay; and severance pay. **Exhibit IV.14** examines policies and practices relating to pensions, retirement pay, and annuities.

With regard to earned income, all eight states within our sample reduce WBA by some portion of earned income above an initial disregarded amount. As shown in the exhibit, states vary in terms of the threshold amount disregarded and the amount/percentage of earned income above the threshold by which WBA is reduced. The initial weekly disregards are established either as dollar amount thresholds or as a percentage of WBA. Four states have dollar amount disregards (above which WBA is reduced), varying from \$5 in Washington to \$30.50 in Arizona. The other four states calculated the income disregard as a percentage of WBA, ranging from 25 percent (South Carolina) up to 50 percent (in Delaware).<sup>31</sup> WBA is reduced on a dollar-for-dollar basis for earned income in excess of the threshold disregard in six of the eight states in our sample (up to the WBA). In the other two states (South Dakota and Washington) WBA is reduced by 75 percent for earned income in excess of the threshold disregard. Typically, across the states, UI claimants are not eligible for UI benefits if they are working full-time or when earned income is equal to or more than WBA.

### Exhibit IV.13: Deductible and Disqualifying Income: Earned Income and Severance Pay

State	Det. Rate (US= 5.0%)	Denial Rate (US= 87.7%)	Earned Income	Severance Pay	Vacation, Holiday, and Sick Pay
<b>Long Duration</b>					
Arizona	10.8%	67.6%	No reduction in WBA for the first \$30.50 earned during a week; \$-for-\$ reduction in WBA for weekly earnings in excess of \$30.50	Severance pay is considered payment for past services and is not allocated to any period after a separation from work.	Vacation pay, holiday pay, and sick pay are deducted.
Pennsylvania	11.8%	18.7%	No reduction in WBA for earnings up to 40% of WBA; \$-for-\$ reduction in WBA for weekly earnings in excess of 40% of WBA	Severance payments not considered remuneration for services performed are not deductible from claimant's unemployment benefits.	Holiday pay treated same as other wages (i.e., deducted from the WBA). If vacation pay is received during a temporary layoff, it is deducted from WBA. However, if job separation is permanent, vacation pay is not deducted from WBA.

<sup>30</sup> Vroman, p. 134.

<sup>31</sup> For example, a claimant in Delaware with a weekly benefit amount of \$100 could earn \$50 in gross wages without being penalized. If the claimant earned \$75, the weekly benefit amount would be reduced by \$25.

### Exhibit IV.13: Deductible and Disqualifying Income: Earned Income and Severance Pay (continued)

State	Det. Rate (US= 5.0%)	Denial Rate (US= 87.7%)	Earned Income	Severance Pay	Vacation, Holiday, and Sick Pay
Utah	16.7%	96.1%	No reduction in WBA for earnings up to 30% of WBA; \$-for-\$ reduction in WBA for weekly earnings in excess of 30% of WBA	Claimants must report severance pay; claimants are not eligible for the waiting week credit or UI benefits for the weeks in which severance payments exceed WBA.	Claimants must report vacation or holiday pay; claimants are not eligible for the waiting week credit or UI benefits for the weeks in which vacation/holiday payments exceed WBA.
Washington	1.4%	87.7%	No reduction in WBA for the first \$5 earned during a week; 75% reduction in WBA for weekly earnings in excess of \$5	Severance payments generally do not count in determining eligibility of benefit amounts since they were assigned to a past period.	If the employer pays a claimant for sick leave, holiday pay, or vacation pay, the claimant must deduct these payments if they are assigned to a specific week when they are working part-time and claiming for UI. If the employer provides vacation as a lump-sum cash out, it is not deducted.
<b>Short Duration</b>					
Delaware	2.7%	89.5%	No reduction in WBA for earnings up to 50% of WBA; \$-for-\$ reduction in WBA for weekly earnings in excess of 50% of WBA	Severance pay treated as wages -- claimants must exhaust severance benefits before they can claim benefits.	Vacation and holiday pay not considered wages, so do not have to be exhausted for benefits to be paid. If claimant receives holiday or vacation pay while working part-time and receiving benefits, it is deducted from WBA in week accrued.
Maine	20.9%	100%	No reduction in WBA for the first \$25 earned during a week; \$-for-\$ reduction in WBA for weekly earnings in excess of \$25	Severance pay is deducted from the unemployment check for the week in which it is paid.	Vacation pay is deducted for a period that equals number of vacation pay days received; while holiday pay is deducted from the claim for the week in which the holiday occurs.
South Carolina	0.2%	0.8%	No reduction in WBA for earnings up to 25% of WBA; \$-for-\$ reduction in WBA for weekly earnings in excess of 25% of WBA.	Severance pay is not reportable and so is not considered with regard to eligibility or determining WBA.	Unknown
South Dakota	16.3%	99.9%	No reduction in WBA for the first \$25 earned during a week; 75% reduction in WBA for weekly earnings in excess of \$25	Severance payments are deductible on dollar-for-dollar basis	Vacation pay, annual leave pay, holiday pay, wages in lieu of notice, sick leave pay, are all deductible on dollar-for-dollar from WBA; UI benefits are postponed based on # of weeks payment represents, beginning with last day claimant worked, regardless of when payment was received.

Note: Determination rates are per 10 claimant contacts for 2001 for "disqualifying and deductible income" non-separation issues; median for U.S. is shown at top of the column.

With regard to severance pay, the eight states are evenly divided in terms of whether they do (Delaware, Maine, South Dakota, and Utah) or do *not* (Arizona, Pennsylvania, South Carolina, and Washington) deduct severance pay from WBA. In Delaware, for example, severance pay is treated as earned income, so claimants must exhaust severance benefits before they can claim benefits. In contrast, in Pennsylvania, severance payments are not considered remuneration for services performed and, thus, are not deductible from a claimant's UI benefits.

Most of the states in our sample had provisions relating to deductibility of vacation, holiday, and sick pay for purposes of determining claimant eligibility and/or WBA. Several states made the distinction between holiday and vacation time accrued prior to the unemployment spell and paid out in a lump-sum versus holiday and vacation time paid out for part-time work while receiving benefits. For example, in Washington, if the employer pays a claimant for sick leave, holiday, or vacation, the claimant must deduct these payments if they are assigned to a specific week when they are working part-time and claiming for UI. If the employer provides a lump-sum cash pay out, it is not deductible. In contrast, in South Dakota, if vacation pay is received in a lump-sum from a prior employer, benefits are postponed based on the number of weeks the payment represents, beginning with the last day the claimant worked, regardless of when the payment was received. If the payment is less than the weekly benefit amount, the claimant receives partial benefits. For example, if the claimant received two weeks of vacation pay when he/she left employment and filed his/her claim immediately after separation, benefits would be postponed for the first two weeks of the claim.

Pension, annuities, and retirement pay in all eight states are deductible in some form from WBA, but as shown in *Exhibit IV.14* there is considerable variation in how pensions are treated. Distinctions are made in most states between the portion of retirement payment being contributed by employers and that by claimants. In five states (Delaware, Maine, South Carolina, South Dakota, and Washington), the employee share of the pension contribution is not counted—deductions from WBA are made only on that portion paid by employers. In two other states, a portion of the pension paid by claimants is exempted. For example, in Arizona, if the claimant contributed less than 45 percent of the pension, then 100 percent of the pension is deductible from WBA; if the claimant contributed more than 45 percent of the pension, then 45 percent of the pension is deductible.

**Exhibit IV.14: Deductible and Disqualifying Income: Pensions/Annuities**

State	General Requirements on Pensions	Exempt Employee Share of Pension Contribution	Limit Deductions to Pensions Paid Only by Base Period Employers?
<b>Long Duration</b>			
Arizona	Pensions, annuities, and retirement pay are subject to a deduction. If claimant contributed less than 45%, then 100% of pension is deducted; if the claimant contributed 45% or more, then 45% is deducted. When payments are deductible, they are converted to a weekly rate. Any amount less than the WBA is deducted from the amount they would otherwise receive. If the claimant receives the pension in one lump-sum payment, it is allocated to the week it was received.	Partial employee share is exempted if claimant contributed more than 45%	Yes
Pennsylvania	If the pension is entirely contributed to by the employer, 100% of the prorated weekly amount of the pension is deducted from WBA; if pension is contributed to by the individual, in any amount, 50% of the prorated weekly amount of the pension will be deducted	Possible partial exemption (see explanation at left)	Yes
Utah	Retirement income from a base period employer is treated differently from other earned income, as WBA is reduced by 100% of the amount of the retirement income attributable to the week, including that portion which is based on the claimant's contribution to the retirement fund.	No	Yes
Washington	Payments under any government or private retirement pension are deductible from UI benefits if the pension is based on claimants work for a base year employer and that employer contributed to or maintained the pension plan. The amount deducted is based on the percentage of contribution made by the base year employer.	Yes	Yes
<b>Short Duration</b>			
Delaware	When determining the benefit amount payable to an individual in any week, lump sum payments for pensions are prorated and deducted from the individual's WBA until lump sum payment is exhausted. Pensions paid by base period employers are deducted dollar-for-dollar from WBA (e.g., if WBA was \$100 and claimant received pension of \$25/week, WBA would be reduced to \$75).	Yes	Yes
Maine	For each week receiving a pension, benefits are reduced by the prorated weekly amount of the pension after deduction of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by that individual; no deduction is made if the entire contributions to the plan was provided by the individual or by the individual and an employer, who is not a base period or chargeable employer.	Yes	Yes (base period or chargeable)

**Exhibit IV.14: Deductible and Disqualifying Income: Pensions/Annuities  
(continued)**

State	General Requirements on Pensions	Exempt Employee Share of Pension Contribution	Limit Deductions to Pensions Paid Only by Base Period Employers?
South Carolina	If individual has participated in pension plan of base period employer or chargeable employer by having made contributions to such plan, WBA payable to claimant is reduced by the pro-rated weekly amount of pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to plan by claimant (not deductible if entire contribution to plan made by claimant).	Yes	Yes (or chargeable)
South Dakota	Any lump sums that are received or will be received from the claimant's pension, annuity or retirement plan may be deductible from benefits. Pensions, annuities, and retirement payments are deductible if earned with a base period employer; only that portion of the pension, annuity, or retirement payment, which is based on payments made by the employer, is deductible on a dollar-for-dollar basis from the claimant's benefits.	Yes	Yes

With the small sample of states included in our study it is difficult to reach any firm conclusions about whether less stringency on earned income, pensions, vacations, and other sources of deductible income are associated with higher reciprocity or longer duration of benefits for states. Those states that are more stringent in deducting earned income, pensions, and vacation/holiday pay may delay the onset of benefit receipt, particularly where lump sum payments are prorated across initial weeks of benefit receipt. For example, if a lump sum payment for vacation or severance is prorated until it is exhausted over the first two or three weeks (so WBA is reduced to zero), it may be that the claimant may feel the urgency to secure a new job before he/she begins to actually receive UI benefits. Additionally, more stringent rules with respect to deductions (e.g., dollar-for-dollar reductions for earned income and pensions, lower thresholds above which deduction are made to WBA, and inclusion of claimant-portion of pension contributions) result in lower weekly benefits, which may create less incentive for the claimants to initiate and continue to receive benefits. By the same token, the rules with regard to deductible income are fairly complex, and it is not clear that claimants fully understand the rules when they first initiate claims or perhaps even once they begin receiving benefits. Vacation/holiday pay may delay the onset of benefit receipt, particularly where lump sum payments are prorated across initial weeks of benefit receipt.

State and local UI officials that we interviewed did not point to deductible and disqualifying income as key factors driving either reciprocity or duration of benefits. Any evidence that emerges is anecdotal and suggestive, but not conclusive. For example, of the eight states, the two states that are less stringent on deduction of earned income above the disregard (Washington and Delaware—reducing WBA by 75 percent of excess income rather than on a dollar-for-dollar

basis) had low determination rates on disqualifying and deductible income issues relative to other states and the nation as a whole. It turns out that these two states are also considered high reciprocity states, though only one (Washington) is considered a high duration state.

#### D. Conclusions

Non-separation policies and procedures in a state play a critical role in determining whether UI claimants initially qualify for UI benefits and continue to receive benefits. As discussed in this chapter, claimants must meet a diverse series of non-separation requirements that are intended to ensure that they are attached to the labor force and engaged in active efforts to become reemployed. As has been documented in considerable detail in this chapter, the non-separation requirements and the manner in which they are enforced vary substantially across states. It appears that cross-state variation in non-separation policies and procedures, and the stringency with which they are enforced, explain at least a portion of the wide differences across states in reciprocity rates and length of duration. However, even with in-depth analyses of non-separation policies and procedures as they exist in our eight study states, it is difficult to disentangle the effects of non-separation issues from the complex mix of other factors that may be driving UI reciprocity and duration (such as labor market conditions, perspectives of claimants and employers on UI, monetary eligibility policies, separation policies, appeals, and others).

The main findings from this study, like others that have preceded it, are exploratory and suggestive of several areas in which variation in non-separation policies and procedures may help to explain interstate differences in UI reciprocity and duration. Not surprisingly, in our in-depth studies of the eight states, we found substantially different policies and procedures with regard to the main non-separation issues: “disqualifying and deductible income,” refusals of “suitable work,” work registration and work search requirements, extent of reliance on eligibility reviews, and profiling services provided. Even states that appear to have similar policies generally have differing definitions of terms and adopt different approaches to enforcing requirements. Even when policies in a state appear to be more stringent in one area (e.g., number of job contacts required each week), they may be less stringent in other areas (e.g., what constitutes “suitable” employment). Even within a specific non-separation issue area, states may have fairly stringent policies (e.g., requiring workers to conduct three or more job searches each week), but little or no enforcement of the requirement. Hence, across the eight states in our sample, while it may be possible to identify states that appear to be more stringent on certain rules than others, it is very challenging to place states along a continuum between those states with the “most” and “least” stringent non-monetary policies overall.

With regard to specific non-separation policies, the clearest differences between states and possible links to reciprocity and duration rates appeared to be in three areas:

- **Eligibility Reviews:** Frequent eligibility reviews appear to be linked to shorter duration, and perhaps, reciprocity rates. Although it is a small sample from which to draw conclusions, the two states (South Carolina and South Dakota) with the most stringent ERI requirements also had shortest duration among the study states (ranking in the bottom 15 among all states). In contrast, the three states with no eligibility review requirements were among the 15 states with the longest duration (Pennsylvania, Maine, and Utah). The pattern is less pronounced with respect to reciprocity rates, though the two states that have the most stringent ERI

policies (South Carolina and South Dakota) are also ranked among the bottom 15 states in terms of reciprocity rates.

- **Job Search Requirements:** The data for the states are somewhat suggestive, but not definitive, on links between more rigorous job search requirements and shorter duration. For example, South Dakota and South Carolina, which had perhaps the most stringent enforcement of job search requirements, also had the shortest duration among study states. Requirements for more job contacts and strict enforcement of claimants making such contacts appears to yield greater chances of non-separation determinations and denials, which may lead to lost weeks of receipt of benefits and, perhaps, eventual loss of benefits entirely. Also, enforcement of job search requirements may provide incentives for claimants to actively search for work, leading to more rapid reemployment.
- **Disqualifying and Deductible Income:** Those states that are more stringent in deducting earned income, pensions, and vacation/holiday pay may delay the onset of benefit receipt, particularly where lump sum payments are prorated across initial weeks of benefit receipt. Additionally, more stringent rules with respect to deductions (e.g., dollar-for-dollar reductions for earned income and pensions; lower thresholds above which deduction are made to WBA, and inclusion of claimant-portion of pension contributions) result in lower weekly benefits, which may create less incentive for the claimants to initiate and continue to receive benefits.

In summary, our review of non-separation policies and practices points to the fact that enforcement of job search requirements is likely the most important lever in this domain that states might pull to increase or decrease reciprocity rates and/or duration. The actual enforcement mechanism is more important than the specific language governing “able and available,” “suitable work,” or the job search requirement itself (as long as the state has a job search requirement). States with stricter enforcement of their job search requirements not only create and monitor higher expectations for job search but also identify related non-separation issues when claimants are called in to review their job search logs. These states, all else being equal, have shorter benefit duration and lower reciprocity rates.

## V. APPEALS

In all states, a party dissatisfied with the initial decision by the state agency has the right to appeal the decision. The chapter begins with a brief presentation on the background of the appeals process and a review of the existing research plus some calculations we have made. Next, information is presented on the various stages of the appeals process—reconsideration, lower authority appeals, and higher authority appeals—and a discussion of the variation in the eight states we visited. The chapter concludes with analyses showing how appeals affect some of the outcomes of interest.

### A. Background

The right of claimants to appeal the denial of benefits is provided by the Social Security Act, and all states also provide employers the right to appeal adverse decisions. Based on a U.S. Supreme Court decision, claimants are entitled to continue receiving benefits if an employer has appealed a decision, but if the decision is reversed, the claimant must generally repay the overpayment.<sup>32</sup> In some states, when an appeal is filed the original decision is sometimes “reconsidered” before the appeal is processed. The number of appeals varies across states, with only three states having a single level of appeal and the remainder having at least two levels of appeal, generally referred to as “lower authority” and “higher authority” appeals. Parties dissatisfied with the results after exhausting the administrative appeal process can file suit in a state court, but states vary on whether such actions are considered part of the appeals process, the criteria available to file a suit, and whether courts are required to hear such suits.

Appeals have not been the subject of as much research as other aspects of unemployment insurance. Chasanov and Cubanski (1995) used regression analysis to identify the factors associated with employer and claimant appeal rates in the 1978 to 1990 period.<sup>33</sup> They found that higher employer appeal rates are associated with the following factors: 1) higher state taxable wage base, 2) more stringent penalties for misconduct discharges, 3) higher denial rates, 4) longer duration of UI benefits, 5) lower weekly benefit amounts, 6) lower unemployment rates, 7) lower unionization rates, and 8) a higher percentage of job losers among claimants. Higher claimant appeal rates were associated with: 1) higher effective UI tax rates, 2) less stringent penalties for refusal of suitable work, 3) more stringent penalties for misconduct, 4) higher denial rates, 5) longer duration of UI benefits, 6) lower average weekly benefit amounts, and 7) lower unionization rates. Although many of their findings correspond to what one would hypothesize, some, such as the effect of lower weekly benefit amounts on increasing appeals, are counterintuitive.

Chasanov and Cubanski (1995) also analyzed the determinants of employer and claimant success rates. For employers, their models had low explanatory power (i.e., the statistical analysis explained only a small portion of the variation in success rates across states), and the only variables with a statistically significant impact were lower effective tax rates and lower rates of employer appeals. The authors were more successful in identifying factors associated with

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<sup>32</sup> *California Department of Human Resources v. Java*.

<sup>33</sup> Appeal rates were calculated as a percent of initial claims.

claimant success rates: 1) lower effective tax rates, 2) lower state taxable wage base, 3) more lenient penalties for voluntary quits and misconduct, 4) a greater proportion of Democratic Party government officials in the state, 5) a lower quality of non-monetary determinations, 6) higher denial rates, 7) a lower unionization rate, and 8) a higher percentage of appeals filed by employers. The models analyzing claimant success had much more explanatory power—the  $R^2$  was .66 in the claimant success model, compared to .35 in the employer success model.

In an effort to gain more understanding about how appeals are related to background variables and outcomes, we computed the correlation coefficients between three appeals-related variables and several background variables and the reciprocity rate for 2001 data for the 51 UI jurisdictions. Because this work is exploratory, we estimated simple correlation coefficients rather than more complex regression models. The results are shown in **Exhibit V.1**.

For lower authority appeals as a percentage of determinations, we found a statistically significant correlation of -.419 with the percentage of separation determinations where the claimant quit. There was not a statistically significant correlation between lower authority appeals as a percentage of determinations and any of the other variables analyzed—denial rate for separations, the denial rate for non-separations, percent of the workforce represented by a union, the separation determination rate, or the unemployment rate. The correlation with the reciprocity rate was -.275, and this correlation was statistically significant at the .10 level.

The proportion of lower authority appeals initiated by employers had a statistically significant negative correlation with both the unemployment rate (-.313) and the reciprocity rate (-.337). Contrary to what one would expect, there was no statistically significant relationship with the denial rates or the proportion of claims where the claimant quit.

The share of lower authority appeals that favor workers had a negative statistically significant correlation with the denial rate for separations (-.469) and the denial rate for non-separations (-.321). Thus, states that are more likely to deny benefits to workers are also less likely to favor the workers in appeals.

The results presented above are only suggestive of possible relationships. Further work could make use of a more sophisticated statistical framework such as the regression models used by Chasanov and Cubanski (1995) and include more years. Our analysis suggests the following tentative conclusions for 2001:

- The greater the share of lower authority appeals that is filed by employers, the lower is the UI reciprocity rate.
- The proportion of lower authority appeal decisions favoring workers is not associated with the reciprocity rate. This finding is unexpected.
- There is a statistically significant negative correlation between both separation and non-separation denial rates and the share of lower authority appeal decisions favoring the worker, that is, higher denial rates for both separations and non-separations are associated with a lower share of lower authority appeals favoring workers.

**Exhibit V.1: Correlations of Appeals Variables with Selected Other Variables**

	Lower Authority Appeals as % of Determinations	Share of Lower Authority Appeals Initiated by Employers	Share of Lower Authority Appeals Favoring Workers
Reciency Rate	-0.275	-0.337	-0.110
	(0.051)	(0.016)	(0.443)
Unemployment Rate	0.243	-0.313	-0.222
	(0.086)	(0.025)	(0.118)
Separation Determination Rate	-0.223	0.311	0.182
	(0.115)	(0.027)	(0.202)
Percent Represented by Unions	-0.261	-0.196	0.074
	(0.064)	(0.169)	(0.604)
Denial Rate (separations)	0.032	-0.241	-0.469
	(0.826)	(0.088)	(0.001)
Denial Rate (non-separations)	-0.035	-0.164	-0.321
	(0.808)	(0.251)	(0.022)
Percent of Separation Determinations where Claimant Quit	-0.419	-0.128	-0.059
	(0.002)	(0.372)	(0.681)

Note: p-values in parentheses; shaded cells are statistically significant at the .05 level.

**B. Reconsiderations****1. State Variation in Use of Reconsiderations**

In some states, prior to processing a formal appeal, the findings are “reconsidered” or “redetermined” before the lower authority appeal is processed. We were unable to obtain published data on how many of the 51 UI jurisdictions have a reconsideration process, but in the eight states we visited, Arizona, South Carolina, and South Dakota have reconsiderations as part of their processes while Delaware, Maine, Pennsylvania, Utah, and Washington do not. None of the states making use of reconsiderations were able to provide us with data on the frequency or attributes of reconsiderations, but they appear to generally be part of the appeals process.

**2. Process**

The processes used for reconsideration vary somewhat in the three site visit states that had a reconsideration process. In Arizona, for example, parties dissatisfied with the initial decision have 15 days to file an appeal. All determinations that are appealed are first reviewed by a adjudicator other than the adjudicator who made the initial determination. The adjudicator must complete the reconsideration within seven days of the filing of the appeal. If the determination is not reversed, the determination is forwarded to the Office of Appeals. South Carolina permits claimants who are dissatisfied with a determination decision and feel that there is additional information to offer to have their decisions reconsidered if the request is made within 10 days of

the decision. In South Dakota, the adjudicator has the option of conducting a redetermination if additional information is received after the initial decision is made. If the findings are reversed or modified, the parties are notified so that they may appeal the new findings.

## C. Lower Authority Appeals

### 1. Data on Cases Appealed

Chasanov and Cubanski (1995) report that lower authority appeals as a percentage of initial claims increased steadily between 1971 and 1994, from 1.8 percent in 1971 to 5.6 percent in 1994. As shown in *Exhibit V.2*, we extended the series through 2001 and found that the series was basically flat through 2000, but in 2001 it dropped from 5.6 percent to 4.8 percent.<sup>34</sup> Given that a majority of the determinations that are appealed have the original decision upheld, the appeals process does not significantly modify findings based on initial decisions. For example, in 2001, the percentage of appeals favoring the appellant was under 40 percent for both employers and claimants, so the change in findings for cases is likely to change by less than 2 percentage points.<sup>35</sup>

**Exhibit V.2: Trends in Lower Authority Appeals as a Proportion of Initial Claims, 1989-2001**

	Total Initial Claims	Lower Authority Appeals	Lower Authority Appeals as a % of Initial Claims
1989	17,147,477	747,602	4.4%
1990	20,183,044	825,546	4.1%
1991	23,221,826	963,415	4.1%
1992	21,239,294	1,108,717	5.2%
1993	17,708,421	1,003,642	5.7%
1994	17,664,995	986,246	5.6%
1995	18,552,760	965,704	5.2%
1996	18,519,102	969,455	5.2%
1997	16,797,726	957,958	5.7%
1998	16,689,632	931,321	5.6%
1999	15,476,030	864,952	5.6%
2000	15,618,913	869,242	5.6%
2001	21,012,173	1,005,136	4.8%

<sup>34</sup> We were unable to exactly replicate Chasanov and Cubanski's data for 1994, but the data we used was very close, so it is likely that our conclusions are correct.

<sup>35</sup> To illustrate, suppose that 5 percent of the decisions in a given year are appealed and that 40 percent of the decisions favor the appellant; then percent of claims or approved will change by  $.4 \times .2 = .02$ .

When one looks at lower authority appeals as a percentage of determinations for the 1989-2001 period, as shown in *Appendix Exhibit A.3*, the clearest feature of the data is its volatility, both among states at a point in time and for individual states over time. In 2001, for example, 4.9 percent of determinations led to lower authority appeals in Alaska, but the corresponding figure for three states (the District of Columbia, Florida, and New Mexico) exceeded 25 percent. Over the 12-year period, 32 jurisdictions experienced a decline in the appeals/determination ratio, and 21 jurisdictions had an increase. Data for 2001 for the eight study states are presented in *Exhibit V.3*. The high reciprocity states in our sample tend to have somewhat higher appeals as a percentage of determination rates than our four low reciprocity rate states—15.5 percent on average for the high reciprocity states compared to 13.2 percent for the low reciprocity states.

**Exhibit V.3: Lower Authority Appeals as a Percentage of Determinations in Site Visit States in 2001**

High reciprocity States		Low reciprocity States	
Delaware	20.5%	Arizona	13.1%
Maine	12.6%	South Carolina	17.8%
Pennsylvania	14.8%	South Dakota	9.7%
Washington	13.9%	Utah	12.2%

A majority of lower authority appeals are initiated by claimants in all states, although the share varies widely among states. As shown in *Appendix Exhibit A.4*, in 2001 the share of appeals initiated by employers ranged from 10.0 percent in Alaska to 62.0 in Connecticut, with a median of 28.0 percent.<sup>36</sup> That exhibit also shows that over the past 12 years there has been a gradual trend of employer-initiated appeals increasing. The median share of appeals initiated by employers increased from 22.4 percent in 1989 to 28.0 in 2001, but 14 states experienced a decrease over the period. The shares of appeals initiated by employers (in 2001) for our study states are shown in *Exhibit V.4*. In this case, there is a fairly strong relationship, with employers in our low reciprocity states generally initiating a greater share of appeals than employers in high-reciprocity states—22.1 percent in our high reciprocity sample compared to 31.3 percent for the low reciprocity states.

**Exhibit V.4: Share of Appeals Initiated by Employers in Site Visit States in 2001**

High reciprocity States		Low reciprocity States	
Delaware	20.3%	Arizona	32.5%
Maine	21.5%	South Carolina	26.5%
Pennsylvania	23.8%	South Dakota	21.4%
Washington	23.1%	Utah	44.7%

<sup>36</sup> The share of appeals initiated by claimants is approximately equal to 100 percent less the share initiated by employers (less than one-half of one percent of all appeals are initiated by other parties).

Lower authority appeals most commonly deal with separation issues rather than non-separation issues. As shown in *Exhibit V.5*, appeals based on misconduct determinations were the most common in seven of the eight states we visited (Washington was the exception), as well as for the median state in 2001. This is what one would expect because misconduct definitions require interpretation more than other issues subject to determinations (as indicated in Chapter III). Voluntary quits was the second most common identified reason except in Washington, where it was first. These two categories were responsible for over half the appeals in the eight states we visited. Other potential issues for appeal were not as commonly used in the eight states we visited. Able and available issues were the next most common, and were responsible for between 0.4 percent in South Dakota to 14 percent of the appeals in Arizona.

### Exhibit V.5: State UI Decisions on Lower Authority Appeals

	Arizona	Delaware	Maine	Pennsyl- vania	South Carolina	South Dakota	Utah	Wash- ington	U.S. Median
<b>By Type of Appellant</b>									
<i>All UI Decisions</i>									
Total Number	16,439	2,777	5,267	55,064	11,707	1,327	8,178	28,025	12,678
In Favor of Appellant	35.3%	33.4%	31.5%	27.9%	31.4%	28.9%	37.2%	29.7%	31.6%
<i>Claimant</i>									
Total Number	11,092	2,192	4,132	41,978	8,609	1,043	4,522	21,551	8,542
In Favor of Appellant	33.2%	33.3%	30.9%	25.9%	28.0%	26.7%	36.2%	28.3%	30.1%
<i>Employer</i>									
Total Number	5,346	564	1,132	13,086	3,098	284	3,656	6,474	3,656
In Favor of Appellant	39.8%	33.5%	33.7%	34.1%	40.9%	37.0%	38.5%	34.4%	36.0%
<i>Other</i>									
Total Number	1	21	3	0	0	0	0	0	0
In Favor of Appellant	0.0%	33.3%	33.3%	N/A	N/A	N/A	N/A	N/A	23.8%
<b>By Issue</b>									
Total UI Decisions	16,439	2,777	5,267	55,064	11,707	1,327	8,178	28,025	12,678
Voluntary Quit	18.9%	27.9%	30.9%	28.7%	21.7%	24.5%	16.2%	34.7%	27.9%
Misconduct	39.0%	48.5%	37.4%	35.8%	54.2%	40.0%	39.1%	31.5%	40.8%
Refusal of Suitable Work	0.7%	1.5%	2.2%	0.6%	0.5%	1.2%	1.3%	0.8%	1.2%
Not Able or Available	14.3%	2.8%	6.5%	6.0%	1.6%	0.4%	4.5%	12.1%	5.5%
Labor Dispute	0.0%	0.0%	2.8%	0.7%	0.0%	0.0%	0.0%	0.1%	0.0%
Other	27.1%	19.3%	20.2%	28.2%	22.1%	33.9%	38.9%	20.9%	19.3%

Less than half of lower authority appeals are successful, regardless of who files the appeal. In 2001, the median success rates were 30 percent for claimant-filed appeals and 36 percent for employer-filed appeals. In the eight states we visited, claimant success rates ranged from 25.9 in Pennsylvania to 36.2 percent in Utah, and employer success rates ranged from 33.5 percent in Delaware to 40.9 percent in South Carolina.

## 2. Process for Appeals

The procedures for lower authority claims are similar but not identical across the states we visited. In this section we describe the general procedures used and some of the contrasts across

the states we visited. **Exhibit V.6** illustrates how the characteristics of the appeals process varies among the eight states we visited.

All states accept written appeals, and all except Delaware accept appeals filed by at least one other means as well. Pennsylvania includes an appeal form with all determination decisions—claimants or employers only have to check a box and return the form; state officials suggested that the ease of filing an appeal is partly responsible for increasing the number of appeals in the state. All eight states have time limits for filing lower authority appeals: 10 days in Delaware and South Carolina; 15 days in Arizona, Maine, Pennsylvania, South Dakota, and Utah; and 30 days in Washington.

### **3. Format of the Proceedings**

The setting for lower authority hearings varies among states. In some states a UI official called a referee hears lower authority appeals; in others the official is referred to as an administrative law judge (ALJ). More often than not, the hearing officers are attorneys, although some states do not require the officials to be attorneys. In many of the states we visited, the lower authority hearings were held before a body dedicated to UI appeals and other hearings: Office of Appeals (Arizona), Division of Administrative Hearings (Maine and Washington), and Appeals Tribunal (South Carolina). In Arizona and Washington, the agency that hears lower authority appeals also hears appeals for other programs such as Temporary Assistance for Needy Families (TANF), food stamps, and child support. (See **Exhibit V.6**.)

## Exhibit V.6: Characteristics of Appeals Processes

	Arizona	Delaware	Maine	Pennsylvania	South Carolina	South Dakota	Utah	Washington
Lower authority body	Office of Appeals	Referees	Division of Administrative Hearings	Referees	Appeal Tribunal	Administrative law judges	Administrative law judges	Office of Administrative Hearings
Time to appeal	15 days	10 days	15 days	15 days	10 days	15 days	15 days	30 days
Form of appeal	Phone, fax, mail, or in person at ES office	Written	Phone, fax, mail, delivery, Internet	Mail or fax	In person, mail, fax	In writing, mailed, faxed, or at One-Stop	Written, faxed, or Internet	Mail or fax
Format of hearing	Discretion of ALJ; 43% by phone	Most in person, but can be by phone at request of parties	Single party cases usually by phone; overall ~60% by phone	Usually in person	Usually In person but can be by phone	Telephone	Usually by phone but occasionally in person	Usually by phone but in person if requested (20% of cases)
Nature of hearing	De novo	De novo	De novo	De novo	De novo	De novo	De novo	De novo
Representation	Permitted; more by employers (24%)	Permitted	Permitted	Permitted	Permitted, but present in less than 20% for each party	Permitted	Permitted, often appear for employers	Permitted; 30% of employers, 5% of claimants
If appellant fails to appear	Dismissed	Dismissed	Dismissed	Dismissed	Generally results in dismissal	Probably dismissed, but may be decided on available evidence	Decided based on evidence	Dismissed
If other party fails to appear	Hearing held	Hearing held	Hearing held	Hearing held	Hearing held	Hearing held	Decided based on evidence	Hearing held
Time required to issue decisions	Unknown	7-10 days	10 days	Usually one week	Usually one week, up to 30 days	80% within 30 days. 98% within 45 days	2 to 3 weeks	Within 30 days after date of notification or mailing
Higher Authority	Appeals Board: 3-person panel	UI Appeals Board: 5-person panel	UI Commission	UC Review Board: 3 members	UI Commission	Secretary of Labor	Workforce Appeals Board: 3-person panel	UI Commission
Type of Procedure	Usually based on ALJ record; can hold hearing	Can review evidence or hold hearing—usually hearing	Generally does not take new evidence	No new evidence taken	No new evidence taken	Discretionary; review of record only	Review of record only	Review of record; occasionally sent back to ALJ
Additional Appeals	Can request 2 <sup>nd</sup> level review; file in Court of appeals	Appeals to Superior Court and Supreme Court	State Superior Court	Can request UC review	Appeal to Court	Appeal to Court	Can appeal to Court of Appeals, Utah Supreme Court	Superior Court

Lower authority hearings in the states we visited are all de novo (i.e., the presiding officer begins collecting evidence anew), and only evidence introduced at the appeals hearing is used to render a decision. Hearing officers may review the file to familiarize themselves with the issues, but evidence previously entered has no evidentiary value. The procedures at the hearings are fairly similar across the states we visited. Witnesses are sworn in and the proceedings are recorded. Both sides are asked to present their evidence, either with guidance from the hearing officer or on their own. In all the states where we attended appeals hearings, the parties are allowed to ask questions of the other side.

States have different policies on whether hearings are held by phone or in person, but in most cases the hearing examiner has some discretion. In four of the states in our sample—Maine, South Dakota, Utah, and Washington—a majority of the hearings are by phone, but in the other states most are in person. The DOL has set a timeliness standard that 60 percent of appeals must be decided within 30 days. In most of the states, the majority of the appeals were processed within 10 working days. Utah indicated that appeals typically required two to three weeks to complete, and only Washington indicated that it had trouble meeting the DOL standard.

## **D. Higher Authority Appeals**

### **1. Data on Cases Appealed**

As noted above, all but three states in the U.S. have higher authority appeals, and all eight states that we visited had higher authority appeals. Data on higher authority appeals for the eight states we visited are provided in *Exhibit V.7*.

**Exhibit V.7: State UI Decisions for Higher Authority Appeals**

	Arizona	Delaware	Maine	Pennsyl- vania	South Carolina	South Dakota	Utah	Wash- ington	U.S. Median
<i>All UI Decisions</i>									
Total Number	1,445	427	542	6,893	1,170	99	720	3,626	1,633
In Favor of Appellant	12.8%	26.5%	14.8%	12.5%	20.4%	19.2%	17.4%	33.1%	15.0%
% of Total Lower Authority Decisions	8.8%	15.4%	10.3%	12.5%	10.0%	7.5%	8.8%	12.9%	14.3%
<i>Claimant</i>									
Total Number	968	252	398	4,866	953	73	428	2,775	1,136
In Favor of Appellant	13.7%	32.1%	6.5%	10.5%	21.8%	8.2%	21.0%	32.8%	11.7%
% of Total Lower Authority Decisions	5.9%	9.1%	7.6%	8.8%	8.1%	5.5%	5.2%	9.9%	9.4%
<i>Employer</i>									
Total Number	475	162	134	2,016	217	26	285	851	548
In Favor of Appellant	10.5%	18.5%	35.1%	17.0%	14.3%	50.0%	12.3%	33.8%	14.6%
% of Total Lower Authority Decisions	2.9%	5.8%	2.5%	3.7%	1.9%	2.0%	3.5%	3.0%	4.1%
<i>Other</i>									
Total Number	2	13	10	11	0	0	7	0	1
In Favor of Appellant	100.0%	15.4%	70.0%	36.4%	N/A	N/A	0.0%	N/A	37.7%
% of Total Lower Authority Decisions	0.0%	0.5%	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%

In the eight states visited, the percentage of lower authority decisions appealed in 2001 ranged from 7.5 percent in South Dakota to 15.4 percent in Delaware. The median for all states was 14.3 percent. Note that because the median appeal rate for lower authority appeals was 12.6 percent, only about 1.8 percent (.143 x .126) of all initial decisions have higher authority appeals.

As is the case for lower authority appeals, a majority of higher authority appeals are filed by claimants. In the eight states we visited, the percentage filed by claimants in 2001 ranges from 59 percent in Delaware and Utah to 80 percent in South Dakota. In the states visited, the claimant success rate was lower for higher authority appeals than for lower authority appeals in all states except Washington. The claimant success rate in 2001 in the eight states ranged from 6.5 percent in Maine to 32.8 percent in Washington.

## **2. Process for Higher Authority Appeals**

All eight states that we visited have higher authority appeals available. Four of the states (Arizona, Delaware, Pennsylvania, and Utah) have review boards with 3 or 5 member panels,

three states (Maine, South Carolina, and Washington) use the Unemployment Insurance Commission for higher authority reviews, and one state (South Dakota) uses appeals to the Secretary of Labor for its higher authority review. Most of the states rarely or never hold hearings where new evidence is presented for the higher authority review; Delaware is the only one of the eight states that holds hearings in a majority of the cases. In Arizona and Pennsylvania, the parties can ask the reviewing body for additional review. In all states, parties that remain dissatisfied can file suit in court, and court decisions can be appealed to a higher state court. Staff we spoke with universally said that court involvement was extremely rare, both because the courts do not get involved in routine UI decisions and because court cases are very expensive for the parties because of the cost of representation.

### **E. Effect of Appeals Process (all levels) on Claimants and Outcome Measures**

Although appeals are an important part of the UI process in assuring due process for the parties, the bottom line is that once one nets out appeals won by claimants and employers, the result is a relatively small reduction in the proportion of claims that are denied. *Exhibit V.8* shows our analysis of how ultimate denial rates are affected by appeals in 2001 for the eight states we visited, and *Appendix Exhibit A.5* shows the results for all states for 2001. The initial denial rate is computed as the number of denials divided by the number of determinations. We then adjusted the denials to reflect the lower authority and higher authority decisions.<sup>37</sup> In 2001, the denial rate for the entire nation dropped from an initial level of 63.3 percent to 61.8 percent after taking account of appeals. Only two states experienced a drop of over 4 percentage points in 2001, the District of Columbia (-5.3 percentage points) and Delaware (-4.4 percentage points). Interestingly, the District of Columbia and Delaware are the only jurisdictions to consistently have their denial rate reduced by 4 percentage points or more every year. Most states have small negative adjustments. The overall mean adjustment to the denial rate for all jurisdictions for 1989 through 2001 is -2.0 percentage points. Among the states we visited, Delaware, as noted above, was the only outlier. The other states all had downward adjustments under 3 percentage points.

Our primary conclusion regarding appeals is that they do not have a major impact on denial rates; for the most part they result in fairly small downward adjustments to the denial rate. The two consistent exceptions are Delaware and the District of Columbia, where appeals reduce the denial rate by 4 to 5 percentage points on a regular basis. Although we do not know the reasons why these two states are outliers, staff in Delaware indicated that the higher authority body there might be favorably inclined toward claimants. When conducting quantitative analyses using denial rates, using appeal-adjusted denial rates is preferred to using unadjusted data because outcomes such as reciprocity depend on the denial rate after appeals rather than before the adjustments are made. The use of appeal-adjusted denial rates is also desirable because we learned in our site visits that some employers, particularly those with representatives, sometimes routinely ignore the initial fact-finding hearings and present their case at the appeals hearings; they can do this with impunity because the lower appeal hearings, at least in all the states we

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<sup>37</sup> The only exception is that a small number of appeals each year were filed by neither claimants nor employers, so it was impossible to adjust denials for these claims.

visited, are de novo hearings. This makes it somewhat surprising that the overall impact of appeals favors claimants in most states.

**Exhibit V.8: Effects of Appeals on Denial Rates**

State	Total Denials	Total Determinations	Adjusted Denials after Lower Authority Appeals	Adjusted Denials After Higher Authority Appeals	Original Denial Rate	Denial Rate after 2 Stages of Appeals	Difference
Arizona	70,673	125,640	69,121	69,038	56.3%	54.9%	-1.3%
Delaware	9,030	13,514	8,488	8,437	66.8%	62.4%	-4.4%
Maine	34,719	41,806	33,824	33,845	83.0%	81.0%	-2.1%
Pennsylvania	167,387	372,550	160,960	160,790	44.9%	43.2%	-1.8%
South Carolina	49,337	65,761	48,189	48,012	75.0%	73.0%	-2.0%
South Dakota	11,086	13,661	10,913	10,920	81.2%	79.9%	-1.2%
Utah	37,281	66,927	37,051	36,996	55.7%	55.3%	-0.4%
Washington	124,054	201,795	120,175	119,552	61.5%	59.2%	-2.2%

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## VI. SUMMARY OF FINDINGS

The percent of unemployed workers receiving unemployment insurance (UI) benefits varies substantially across the 50 states and District of Columbia. State UI policies and implementation practices, especially regarding non-monetary UI eligibility, might explain some of the differences in UI reciprocity rates among states. This study aimed to enrich the understanding of factors that appear to affect UI reciprocity through case studies of eight states. Information on policies and practices in the eight states was collected from documents supplied by the states, as well as interviews conducted during site visits. That information was examined within the context of existing research on factors that affect UI reciprocity and benefit duration. Our findings are outlined below in the context of the primary research questions outlined in Chapter I.

### A. Separation Policies and Processes

- How do separation policies differ across states? Is there variation in this process for making determinations and adjudicating these issues? What accounts for differences in separation determination rates across states?
- How do policies affect the rate of denial and ultimately, reciprocity?

#### 1. Separation Determinations

Through our site visits and analysis of the data we tested some of the hypotheses offered in the literature. Some of our findings were consistent with the literature:

- Low reciprocity states have higher determination rates
- Low reciprocity states have higher misconduct determination rates

Much of the literature seems to suggest that separation determination rates are a measure of how wide a net states cast in order to detect issues related to UI eligibility. Thus, when one observes an association between separation determinations and reciprocity rates, it is natural to assume that it is the state's ability to detect issues that affects the reciprocity rate. However, we did not find variation in policies or procedures used to detect separation issues. Rather, any claimant who quit or was fired raises an issue. This was true for all of the study states. The determination rate is more likely a measure of the characteristics of the UI applicants in a given state than a state's ability to detect separation issues.

We identified several factors that are associated with a state's applicant pool: industry mix, union representation, unemployment rate, and claim filing method.

- The four states with a higher than average percent of unemployed in construction, manufacturing and mining (Maine, Pennsylvania, Washington, and South Carolina) had lower determination rates; the same pattern held true for states with a larger-than-average proportion of workers represented by unions (Maine, Pennsylvania, and Washington).

- Three of the four states with higher-than-average unemployment rates (Pennsylvania, South Carolina, and Washington) had lower determination rates. Arizona was the exception to this rule.
- The state that allows employers to submit claims on claimants' behalf (South Carolina) has the second lowest separation determination rate in the country.
- The call center states have higher determination rates than the states that accept claims in local offices, perhaps suggesting that call centers make the application process easier and result in more applications (especially among those who quit or were fired)

Staff in the states with the lowest application rates (Arizona, Utah, and South Dakota) reported that a culture of self-reliance likely affects the behavior of unemployed individuals. Moreover, it is possible that high proportions of two-earner families in two of these states might decrease the need to apply for benefits.

## **2. Fact-Finding and Adjudication**

Once UI staff detect a determination issue, the next step in the process is fact-finding and adjudication. The states visited represent a range of approaches to these activities. In some states these functions are centrally located in one call center. In others, adjudicators are dispersed across multiple call centers or local offices. States vary in terms of whether fact-finding is conducted over the telephone or in person, and the extent to which employers and claimants are asked to fill out paper work (e.g., questionnaires). In all states, adjudicators assess statements from both claimants and employers.

We did not find large variations in the fact-finding and adjudication processes in the eight study states. The differences we did identify were related to the location of the adjudication unit, the types of staff involved in fact-finding, and the methods for collecting information and are unlikely to systematically affect determinations or decisions. Areas where we found differences include:

- In four states (Delaware, Pennsylvania, South Carolina, and South Dakota) information about the claimant is gathered by the intake worker and the adjudicators. In the other four states, the intake worker takes a briefer statement and the fact-finding is conducted largely by the adjudicator.
- In some states, adjudication units are centralized. This is generally a function of whether the state has a central call center (as in the cases of Utah and South Dakota) or whether intake functions are dispersed across the state. South Carolina has a unique structure in that staff in the local offices conduct fact-finding but the final decision on a claim is issued by a central determination unit in the state capital.
- States vary in terms of whether fact-finding occurs in person or via telephone. In Delaware and South Carolina (two states that have local offices), intake workers interview claimants in person. In the remaining states (all call center states), interviews are conducted over the phone.

- Adjudicators often have to make a decision based on limited information. Adjudicators always have some information from the claimant (gathered at intake). In some instances, claimants and employers fail to respond to questionnaires or requests for interviews. In these cases, the decision is based on the information available.

### **3. Decision Making**

Once adjudicators conclude fact-finding, they must make a decision to grant or deny benefits. Our site visits revealed considerable variation in policies surrounding voluntarily quits. There were more similarities in dismissals for misconduct. Unlike the determination and fact-finding processes, state laws, administrative rules, and court precedence factor into the decision to grant or deny benefits. We found:

- With regard to voluntary quits, five states in the study had denial rates below the national median, including three high and two low reciprocity states. This suggests that low reciprocity rate states do not necessarily have more stringent policies regarding quits.
- States with the highest voluntary quit denial rates (South Carolina, South Dakota, and Delaware) have strict definitions of good cause—quits must be attributable to work. The burden is on the claimant to prove good cause.
- Denial rates for misconduct were lower than rates for quits in all states. This is due to less specific definitions of misconduct (compared with voluntary quits) and difficulty proving deliberate and wrongful actions on the part of the claimant, as well as low employer response rates to questionnaires and calls (the burden of proof is on employers in misconduct cases, so non-response will often lead to approval of the claim.)
- Penalties for voluntary quits and misconduct are similar across the eight states. With the exception of South Carolina, each state assigns the same penalty for a quit and a misconduct dismissal: disqualification for the period of unemployment followed by re-employment and a specified earnings threshold (e.g., seven times the weekly benefit amount). In South Carolina, claimants denied benefits due to misconduct are disqualified for a certain number of weeks, depending on the specific issue.
- South Carolina has by far the highest denial rate for misconduct. This is consistent with studies that show that states with lower penalties are more likely to deny benefits.

### **4. Non-monetary Separation Policies and Practices: Conclusion**

We explored state policies and procedures for determinations, fact-finding, and decision making. As noted above, the operating assumption at the beginning of this study is that high and low reciprocity states would vary systematically in all three of these areas. However, we found that state policies primarily affected the decision-making process; we saw more similarities than differences in determination and fact-finding processes.

- **With regard to determinations, there was no variation in state processes—all eight states have a policy of raising a separation issue for any job separation reason other**

**than a lay off.** States did exhibit variations in the determination rate; however, these are likely due to differences in the applicant pool. When comparing a state with a low determination rate to a state with a high one, we would expect the former would have more UI applicants who lost their jobs. Factors that are likely associated with lay offs include high unemployment rates, a high proportion of unemployed workers in construction or manufacturing industries, and high proportion of unemployed workers with union representation (which also reflects the proportion of the labor force in industries sensitive to economic change). Factors that increase the applicant pool, such as policies that make filing claims easier (e.g., call centers) would be expected to be associated with higher determination rates.

- **Differences in adjudication methods were structural (i.e., related to the location of the adjudication unit, the types of staff involved in fact-finding, and the methods for collecting information) and not likely to affect determinations or decisions.** For example, states differed in terms of where adjudicators are housed, who conducts most of the fact-finding (i.e., the intake worker or the adjudicator), whether questionnaires are sent to all claimants with issues and employers, whether interviews are scheduled with all claimants with issues and employers, and whether interviews are conducted in person or via phone. We did not see systematic differences in any of these areas between high and low reciprocity rate states.
- **State policies differed systematically for voluntary quits but not misconducts.** We found that state policies related to voluntary quits are related to denials. States with more lenient policies surrounding quits (specifically Arizona, Pennsylvania, and Utah) had lower denial rates than states that allow quits only for specific work-related reasons (e.g., South Carolina, Delaware, and South Dakota). Adjudicators suggested that decisions for voluntary quits are usually straightforward because they always have some information from the claimant and the rules and statutes are often clearer than for misconduct. Conversely, we did not see much variation in state policies for misconduct. Denial rates in seven of the eight states were below 50 percent (South Carolina, at 73%, was an outlier). Adjudicators noted that decisions are often difficult in misconduct cases because the statutes provide less guidance than for voluntary quits and employers, who have the burden of proof in discharge cases, often do not provide adequate information on which to deny benefits.

## **B. Non-Separation Policies and Practices**

With regard to non-separation issues, we explored the following questions:

- How strict is the work search requirement and to what extent is the work search requirement being enforced? What is the role of profiling in the state? How much variation exists across the states in implementing these requirements? Do these policies affect benefit duration?
- How is “suitable work” defined by the state? To what extent are claimants penalized for refusing “suitable work?” Does this appear to affect benefit duration?

We examined six issues related to work search requirements as well as how states define and treat disqualifying income. Our findings regarding these non-separation policies and practices are outlined below.

### **1. Work Registration**

Work registration is the process whereby a claimant registers with the Employment Service (ES). This process typically involves completing a registration form that includes background information about the claimant, desired employment, employment history, education, and other information pertinent to job placement. Work registration of claimants usually occurs at the time of or within a week or so of filing an initial claim

Our visits revealed some variation with respect to work registration policies and practices. Only one state (Pennsylvania) did *not* require claimants to register with the ES as a condition for receiving UI benefits. In the other seven states, some or all claimants are required to register with the ES. In three states (Maine, South Carolina, and Washington) claimants are automatically registered with the ES as part of the initial claims process. In the four other states (Arizona, Delaware, South Dakota, and Utah), claimants must register in person at the ES or a local career center within a specified period of time (ranging from five days in Utah to three weeks in South Dakota). When they report in person to a local office, the registration process may be as simple as completing a form (either a paper form or directly on-line into an automated system) or may involve a one-on-one interview with UI or ES staff.

Overall, in our interviews, the work registration process was not identified as a major factor affecting either reciprocity rates or duration of benefit receipt. States also noted that claimants generally comply with work registration rules. This is not surprising, as the process generally requires (at most) a short visit to a local UI office or One-Stop to complete a registration form and (in some instances) meet with UI staff.

### **2. Able and Available Requirements**

To initiate a claim and continue to receive UI benefits in all of the states within our sample, claimants have to be both “able” and “available” for work. The purpose of the “able and available” requirement is to ensure that claimants are both physically able to work in suitable employment and that they are available to work for each benefit week in which UI is received. UI programs capture information for making decisions on whether claimants are able and available usually at the time the initial claim is taken and when claimants submit continuing claims for each new week of UI benefits. In addition, such issues may be identified at the time of eligibility reviews and through statements taken from employers.

The basic requirements of being “able and available” are fairly similar across states we visited, but the stipulation of specific requirements and enforcement varies across states. In terms of ability to work, all of the states stipulate that claimants must be physically and mentally capable of working at a job for which they are qualified. In addition, states bar individuals from collecting benefits if they are on vacation or otherwise unavailable for work for some part or all of the week for which benefits are claimed. In three of the eight states (Arizona, South Carolina, and Utah), claimants must be available for full-time work. In four other states, though

availability for full-time work is generally required, other mitigating factors are considered. To be eligible for UI benefits during a given week, claimants must have arrangements for transportation and childcare, which permit the individual to accept offers of employment. The penalty for failure to meet “able and available” standards within a state is typically loss of benefits until the specific conditions are met.

Overall, in terms of non-separation determination rates for able, available and actively seeking work for 2001, South Dakota (25.3%) and Utah (13.7%) stand out among the eight states we visited in terms of having much higher determination rates (and well above the median of 5.2% for the U.S.). One of these states (South Dakota) is a low duration state while the other (Utah) is a high duration one. It does not appear that the definitions applied for able and available are any more or less stringent than those found in other states. It is possible that high determination rates in these two states have more to do with detection and enforcement of the actively seeking work requirement than with their able and available policies.

### **3. Refusal of Suitable Work**

Determinations concerning what constitutes “suitable” work arise when claimants receive job offers from potential employers. When such offers of employment are rejected by claimants and come to the attention of the UI system, UI adjudicators must render often difficult decisions as to whether the claimants rejected what might be considered an appropriate (“suitable”) job offer. Rejections of offers of suitable employment are usually detected only through self reports of claimants when they file for continuing benefits. Refusals of suitable work may also come to the attention of UI staff during eligibility reviews, or from contacts with employers.

Given the multitude and complexity of factors considered in rendering determinations on suitability and the considerable room for discretion on the part of adjudicators, it is difficult to distinguish between more stringent and less stringent states with regard to suitability. Of the main factors, suitability of wages—whether a state uses prevailing wages or wages the claimant earned in prior work as the standard—offers the possibility for distinguishing between states with more stringent and less stringent requirements. However, even in this area, it is difficult because as unemployment spells lengthen, most states require workers to gradually reduce wages they are willing to consider.

Even further, the relatively low level of determinations relating to suitable work (a much smaller portion of determinations than able and available issues) also suggest that such requirements have at most very modest effects on duration of benefit receipt. UI staff rarely learn when claimants refuse an offer of work and thus have not basis to make a determination in this area.

### **4. Job Search Enforcement/Accountability**

Job search requirements, a standard requirement for UI claimants in most UI programs across the nation, are intended to keep claimants actively engaged in efforts to secure work and end their UI spell prior to exhausting benefits. Job search requirements, which typically require claimants to make a specific number of contacts with prospective employers per week, are enforced in varying degrees by UI agencies.

With the exception of Pennsylvania, the states in our sample require an active job search of claimants.<sup>38</sup> In all seven states, acceptable job search methods are those that are considered to be customary and appropriate to the occupation and industry for which the claimant is qualified and seeking employment.

UI programs enforce job search requirements through two principal methods: (1) when claimants file continuing claims, they are asked if they have conducted an active job search and may be asked to furnish the number of actual contacts made; and (2) during eligibility reviews (if states conduct them), claimants may be asked about the number of contacts they have conducted and, in some cases, to produce a log to verify that actual contacts were made with employers.

Penalties for failure to conduct an adequate job search vary across the eight study states. Possible penalties range from warnings, to scheduling of more frequent eligibility reviews, to disqualification for weeks that the claimant did not meet requirements.

Links between more stringent job search requirements and enforcement with either reciprocity rates or duration are not easily proved. State officials did not single out stringency as a major factor, though they suggested that there may be some links between stringent enforcement of job search requirements and shorter duration. The data for the states are somewhat suggestive, but not definitive. For example, South Dakota and South Carolina, which had perhaps the most stringent enforcement of job search requirements (primarily through eligibility reviews as discussed below), also had short duration.

## **5. Eligibility Review Interviews**

Eligibility review interviews (ERIs) provide an opportunity for UI staff to conduct periodic reviews of the ongoing eligibility of claimants to receive UI benefits, including receipt of disqualifying and deductible income, able and available status, and adequacy of job search efforts. We found considerable variation across our study states in the extent to which they utilize eligibility reviews to determine continuing eligibility of claimants. Two of our study states (South Carolina and South Dakota) are much more rigorous than other states (and the nation as a whole) in their use of eligibility reviews. At the time of our visits, three states (Maine, Pennsylvania, and Utah) did not perform ERIs on claimants to determine continuing eligibility. The other five states have some form of ERI, but the timing and methodologies employed varies considerably. This is reflected in the data. The percent of continuing claims in which the state conducted an ERI was 7.1 percent in South Carolina and 9.9 percent in South Dakota; the rate was between zero and 0.5 percent in the other study states.

In the five states with eligibility reviews, the penalty for failure to report when scheduled for an eligibility review is indefinite denial of benefits until the individual complies with requirements.

We found that the two states with the most stringent ERI requirements also had relatively short duration (South Carolina and South Dakota). In contrast, the three states with no ERI requirements were among the states with the longest duration (Pennsylvania, Maine, and Utah).

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<sup>38</sup> In these states, the job search requirement does not apply to claimants who have a specific date to return to work or who secure working only through a union hiring hall.

## **6. Profiling**

All states are required to institute profiling procedures to identify claimants most likely to exhaust their benefit entitlements and to provide them with information and services to assist reemployment efforts. Six states use some type of statistical model for assigning claimants at or near the time of filing with a probability of exhausting their UI benefits. Delaware uses a characteristics model and Utah uses responses to a series of intake questions. Typically, the model is based on the profiling regression model developed by the federal government, but may include a somewhat different blend of variables.

Once selected, claimants are sent a letter explaining why they were selected, the types of services that are available, and a date and time at which to report for services. Profiling services typically involve reporting to a local UI office or One-Stop for an orientation to available employment, training, and ES services. Usually these are one-to-two hour group orientations. They may also include discussions about effective job search strategies and how to obtain job leads. In some states (including Delaware, Maine, South Dakota, and Utah), one-on-one meetings are scheduled for claimants with UI staff (which may accompany a group workshop). In several states service plans are developed for individuals selected (especially in those where one-on-one meeting are held).

The determination rate on refusal by claimants to report to profiling services is quite low both nationally (0.1 percent) and in our eight states. Only one state (South Carolina) had a determination rate in excess of 0.2 percent. Denial rates for the three states for which data are available on refusal to report for profiling services range from 12.6 percent of determinations in Utah to 60.6 percent in Maine.

A number of state and local UI staff questioned whether the intensity of the profiling services offered (usually limited to a brief workshop and/or one-on-one meeting with an employment counselor) was sufficient to have much of an effect on whether a claimant did or did not exhaust benefits. In addition, if a state conducted frequent eligibility reviews, there was some question as to whether profiling services added much value to services already being provided.

## **7. Treatment of Disqualifying Income**

Disqualifying and deductible income—such as earned income, severance pay, pensions/annuities, and holiday, vacation, and sick pay—can affect claimants' initial and continuing eligibility for UI, as well as weekly benefit amount (WBA). Past research suggests that a state's treatment of disqualifying and deductible income may be linked with reciprocity and duration rates within states.

We found substantial variation across our eight study states. With regard to earned income, all eight states within our sample reduce WBA by some portion of earned income above an initial disregarded amount. States vary in terms of the amount disregarded and the amount/percentage of earned income above the threshold by which WBA is reduced. Typically, across the states, UI claimants are not eligible for UI benefits if they are working full-time or when earned income is equal to or more than WBA.

With regard to severance pay, the eight states are evenly divided in terms of whether they do (Delaware, Maine, South Dakota, and Utah) or do *not* (Arizona, Pennsylvania, South Carolina, and Washington) deduct severance pay from WBA. Most of the states in our sample had provisions relating to deductibility of vacation, holiday, and sick pay for purposes of determining claimant eligibility and/or WBA. Pension, annuities, and retirement pay in all eight states are deductible in some form from WBA, but there is considerable variation in how pensions are treated. Distinctions are made in most states between the portion of retirement payment being contributed by employers and that by claimants.

With the small sample of states included in our study it is difficult to reach any firm conclusions about whether less stringency on earned income, pensions, vacations, and other sources of deductible income are associated with higher reciprocity or longer duration of benefits for states. Those states that are more stringent in deducting earned income, pensions, and vacation/holiday pay may delay the onset of benefit receipt, particularly where lump sum payments are prorated across initial weeks of benefit receipt. Additionally, more stringent rules with respect to deductions result in lower weekly benefits, which may create less incentive for the claimants to initiate and continue to receive benefits. By the same token, the rules with regard to deductible income are fairly complex. And, it is not clear that claimants fully understand the rules when they first initiate claims or perhaps even once they begin receiving benefits.

State and local UI officials that we interviewed did not point to deductible and disqualifying income as key factors driving either reciprocity or duration of benefits. Any evidence that emerges is anecdotal and suggestive, but not conclusive. For example, of the eight states, the two states that are less stringent on deduction of earned income above the disregard (Washington and Delaware) had low determination rates on disqualifying and deductible income issues relative to other states and the nation as a whole. However, while both states are high reciprocity states, only one (Washington) is a high duration state.

### **8. Non-separation Policies and Practices: Conclusions**

Non-separation policies and practices in a state play a critical role in determining whether UI claimants both initially qualify for UI benefits and continue to receive benefits. Claimants must meet a diverse series of non-separation requirements that are intended to ensure that they are attached to the labor force and engaged in active efforts to become reemployed. The non-separation requirements and the manner in which they are enforced vary substantially across states.

With regard to specific non-separation policies, the clearest differences between states—and possible links to reciprocity and duration rates—appeared to be in three areas:

- **Eligibility Reviews:** Frequent eligibility reviews appear to be linked to shorter duration and, in turn, lower reciprocity. The two states (South Carolina and South Dakota) with the most stringent ERI requirements had the higher share of eligibility reviews conducted as a percent of claimant contacts and also had the shortest duration among the study states. In contrast, the three states with no eligibility review requirements were among the states with the longest duration (Pennsylvania, Maine, and Utah).

- **Job Search Requirements:** More rigorous job search requirements appear to be linked with shorter duration. For example, South Dakota and South Carolina, which had perhaps the most stringent enforcement of job search requirements, also had the shortest duration among study states. However, job search needs to be monitored to be effective. It is difficult to disentangle the effect of job search requirements and their enforcement through eligibility reviews.
- **Disqualifying and Deductible Income:** States with more stringent disqualification and deductible income policies may delay the onset of benefit receipt and result in lower weekly benefits.

In summary, our review of non-separation policies and practices points to the fact that enforcement of job search requirements and requirements to report for eligibility reviews or profiling are likely the most important policy tools in this area that affect reciprocity rates and/or duration. For job search requirements, the actual enforcement mechanism is more important than the specific language governing “able and available,” “suitable work,” or the job search requirement itself (as long as the state has a job search requirement). States with stricter job search requirements and enforcement of their policies not only create and monitor higher expectations for job search, but also identify related non-separation issues when claimants are called in to review their job search logs. These states, all else being equal, have shorter benefit duration and lower reciprocity rates.

### C. Appeals

With regard to appeals, we explored the following:

- Does the appeals process vary by state? What are the factors that increase appeals? How do appeals affect UI outcomes?

The right of claimants to appeal the denial of benefits is provided by the Social Security Act, and all states also provide employers the right to appeal adverse decisions. In some states, when an appeal is filed the original decision is sometimes “reconsidered” before the appeal is processed. The number of appeals varies across states, with only three states having a single level of appeal and the remainder having at least two levels of appeal, generally referred to as “lower authority” and “higher authority” appeals. Parties dissatisfied with the results after exhausting the administrative appeal process can file suit in a state court.

Because this work is exploratory, we estimated simple correlation coefficients rather than more complex regression models. Our analysis suggests the following tentative conclusions for 2001:

- The greater the share of lower authority appeals that is filed by employers, the lower is the UI reciprocity rate.
- The proportion of lower authority appeal decisions favoring workers is not associated with the reciprocity rate. This finding is unexpected.

- There is a statistically significant negative correlation between both separation and non-separation denial rates and the share of lower authority appeal decisions favoring the worker. That is, higher denial rates for both separations and non-separations are associated with a lower share of lower authority appeals favoring workers.

### **1. Lower Authority Appeals**

A majority of lower authority appeals are initiated by claimants in all states, although the share varies widely among states. Lower authority appeals most commonly deal with separation issues. Appeals based on misconduct determinations were the most commonly identified reason in seven of the eight states we visited (Washington was the exception), as well as for the median state in 2001. Voluntary quits was the second most common reason (except in Washington, where it was first). These two categories were responsible for over half the appeals in the eight states we visited.

Less than half of lower authority appeals are successful, regardless of who files the appeal. In 2001, the median success rates were 30 percent for claimant-filed appeals and 36 percent for employer-filed appeals. In the eight states we visited, claimant success rates ranged from 25.9 in Pennsylvania to 36.2 percent in Utah, and employer success rates ranged from 33.5 percent in Delaware to 40.9 percent in South Carolina.

The procedures for lower authority claims are similar but not identical across the states we visited. All states accept written appeals, and all except Delaware accept appeals filed by at least one other means as well. All eight states have time limits for filing lower authority appeals. The setting for lower authority hearings varies among states. In some states a UI official called a referee hears lower authority appeals; in others the official is referred to as an administrative law judge (ALJ). More often than not, the hearing officers are attorneys, although some states did not require the officials to be attorneys.

Lower authority hearings in the states we visited are all *de novo* (i.e., the presiding officer begins collecting evidence anew), and only evidence introduced at the appeals hearing is used to render a decision. In four of the states in our sample—Maine, South Dakota, Utah, and Washington—a majority of the hearings are by phone, but in the other states most are in person.

### **2. Higher Authority Appeals**

As noted above, all but three states have higher authority appeals, and all eight states that we visited had higher authority appeals. Only about 1.8 percent of all initial decisions have higher authority appeals.

As is the case for lower authority appeals, a majority of higher authority appeals are filed by claimants. In the states visited, the claimant success rate was lower for higher authority appeals than for lower authority appeals in all states except Washington.

Most of the states rarely or never hold hearings where new evidence is presented for the higher authority review; Delaware is the only one of the eight states that holds hearings in a majority of the cases. In all states, parties that remain dissatisfied can file suit in court, and court decisions

can be appealed to a higher state court. Staff we spoke with universally said that court involvement was extremely rare

### **3. Appeals: Conclusions**

Although appeals are an important part of the UI process in assuring due process for the parties, the bottom line is that once one nets out appeals won by claimants and employers, the result is a relatively small reduction in the proportion of claims that are denied. In 2001, the denial rate for the entire nation dropped from an initial level of 63.3 percent to 61.8 percent after taking account of appeals. Only two states experienced a drop of over 4 percentage points in 2001, the District of Columbia (-5.3 percentage points) and Delaware (-4.4 percentage points). Most states have small negative adjustments.

Our primary conclusion regarding appeals is that they do not have a major impact on denial rates; for the most part they result in fairly small downward adjustments to the denial rate. Among our study states, the one exception is Delaware, where the adjustment led to a 4 to 5 percentage point decline on a regular basis. Although we do not know the reasons why, staff in Delaware indicated that the higher authority body there might be favorably inclined toward claimants. When conducting quantitative analyses using denial rates, using appeal-adjusted denial rates is preferred to using unadjusted data because outcomes such as reciprocity depend on the denial rate after appeals rather than before the adjustments are made. The use of appeal-adjusted denial rates is also desirable because we learned in our site visits that some employers, particularly those with representatives, sometimes routinely ignore the initial fact-finding hearings and present their case at the appeals hearings; they can do this with impunity because the lower authority appeal hearings, at least in all the states we visited, are de novo hearings. This makes it somewhat surprising that the overall impact of appeals favors claimants in most states.

## **D. Key Findings**

Prior research indicated that much of the state-level variation in reciprocity is due to policies, processes, and practices that are not easily captured by administrative data. Thus, many of the questions we explored during the site visits focused on how UI operates at the ground level and how variation in UI operations helps explain some of the variation in outcomes across states. The report's key findings with respect to separation issues, non-separation issues, and appeals include the following:

### **Separation Policies and Processes**

- With regard to separation determinations, there is no significant variation in state processes—all eight states have a policy of raising a separation issue for any job separation reason other than a lay off and they appeared to be equally adept at detecting these issues.
  - The separation determination rate appears to be more a measure of the characteristics of the UI applicants in a given state than a state's ability to detect separation issues. States in which a large proportion of applicants were laid off and present "clean claims" will have low separation determination rates. Thus, the association between separation

determination rates and UI reciprocity is more a reflection of a state's applicant pool than its UI policies or practices.

- Differences in separation adjudication methods were related to the location of the adjudication unit, the types of staff involved in fact-finding, and the methods for collecting information and not likely to affect determinations or decisions.
- State policies differed for voluntary quits but not misconduct. States with more lenient policies surrounding quits had lower denial rates than states that allow quits only for specific work-related reasons. Conversely, there was less variation in state policies for misconduct. The one state that had a less severe penalty for misconduct, however, was more likely to deny benefits.

### **Non-Separation Policies and Processes**

- Rigorous job search requirements appear to be linked to shorter benefit duration (and, in turn, lower reciprocity).
- Frequent eligibility reviews, where the state UI agency tends to enforce the job search requirement, also appear to be linked to shorter benefit duration. It is difficult to disentangle the effect of job search requirements and their enforcement through eligibility reviews.
- States with more stringent disqualification and deductible income policies may delay the onset of benefit receipt and result in lower weekly benefits.

### **Appeals**

- Although appeals are an important part of the UI process in assuring due process for claimants and employers, they result in a relatively small change in the proportion of claims that are denied.

## **E. Implications for Future Research**

To understand further how state policies might affect UI program outcomes, the above analysis suggests areas for future research. These include:

**Factors that affect state separation determination rates.** Research suggests that reciprocity is related to determination rates. We found that our low reciprocity states did in fact have higher determination rates. However, a number of factors appear to be associated with a state's applicant pool, which affects the determination rate. These include industry mix, union representation, the unemployment rate, and the claim filing method. Future research should explore the relationship between these factors, the determination rate, and UI program outcomes.

**Variation in state voluntary quit policies.** We found that state policies differed systematically for voluntary quits but not misconducts. Among our study states, there was a clear association between "stringent" quit policies and reciprocity. Those states that allowed quits only for narrow work-related reasons had higher denial rates and lower reciprocity rates. Research should explore state variation in this non-monetary policy.

**Enforcement of work search requirements.** Strict enforcement of the work search requirements, such as frequent eligibility review interviews (ERIs), appears to be associated with shorter benefit duration in our study states. Further research should be conducted to ascertain whether this association is true for most states. Moreover, some states in our sample discontinued ERIs. Research could explore whether most states continue ERIs and, if so, their frequency. For states that discontinued the practice, it would be interesting to compare benefit duration post-ERI to duration pre-ERI, holding other factors constant (e.g., economic conditions). Another area that merits further exploration is the association between work search enforcement and the shift to call centers. The adoption of call centers has the effect of removing clients from the local offices and contact with UI and employment service staff. Are call center states more likely to discontinue ERIs? Finally, which state entities have the primary responsibility for enforcing the work search (i.e., UI, the employment service, workforce development programs)? Has this changed in states that adopted call centers?

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# **APPENDIX A**

## Exhibit A.1: Reciprocity Measures by State: 1977 to 1998

State	Application Rate	Ratio of New to Total Initial Claims	Share of New Claims Paid	Duration Index	Reciprocity Rate (WBTU)
Alabama	55.8%	56.6%	76.2%	1.005	23.9%
Alaska	80.2%	47.0%	105.8%	1.541	60.6%
Arizona	29.6%	63.0%	67.6%	1.559	19.3%
Arkansas	57.7%	54.3%	72.3%	1.256	28.1%
California	61.9%	56.3%	68.0%	1.529	35.8%
Colorado	30.7%	65.1%	75.0%	1.339	19.7%
Connecticut	69.2%	62.9%	81.2%	1.167	40.4%
Delaware	59.6%	45.6%	102.0%	1.297	35.0%
District of Columbia	44.3%	73.7%	83.1%	1.501	38.0%
Florida	23.6%	69.1%	72.3%	1.404	16.4%
Georgia	48.1%	68.3%	71.5%	1.008	23.1%
Hawaii	57.9%	52.6%	83.4%	1.464	36.2%
Idaho	61.2%	44.1%	90.0%	1.311	31.7%
Illinois	46.0%	62.1%	74.5%	1.524	32.3%
Indiana	45.4%	61.4%	66.1%	1.114	20.2%
Iowa	49.7%	60.3%	85.2%	1.211	30.5%
Kansas	47.3%	58.9%	81.1%	1.416	31.4%
Kentucky	57.6%	58.7%	72.5%	1.145	27.2%
Louisiana	35.1%	63.9%	69.0%	1.491	23.2%
Maine	83.2%	53.9%	68.9%	1.237	36.5%
Maryland	42.7%	61.8%	75.3%	1.344	26.2%
Massachusetts	63.2%	55.9%	86.1%	1.406	42.4%
Michigan	61.3%	60.3%	68.3%	1.223	30.4%
Minnesota	42.2%	56.7%	93.5%	1.496	33.3%
Mississippi	46.6%	52.7%	70.2%	1.243	21.2%
Missouri	64.6%	51.9%	70.9%	1.226	28.6%
Montana	47.6%	56.9%	82.7%	1.296	28.8%
Nebraska	41.3%	61.1%	81.9%	1.319	27.0%
Nevada	53.2%	54.6%	84.3%	1.417	34.3%
New Hampshire	44.1%	64.2%	86.6%	0.872	21.1%
New Jersey	61.6%	64.6%	80.3%	1.349	42.6%
New Mexico	25.9%	60.9%	72.7%	1.688	19.0%
New York	57.9%	56.6%	77.6%	1.466	36.8%
North Carolina	87.7%	47.2%	64.5%	1.002	26.1%
North Dakota	50.5%	59.6%	80.5%	1.385	33.0%
Ohio	51.8%	57.1%	73.5%	1.219	26.1%
Oklahoma	33.5%	65.6%	65.1%	1.344	18.9%
Oregon	66.8%	45.7%	83.4%	1.447	36.7%
Pennsylvania	78.9%	45.3%	86.1%	1.362	41.6%
Rhode Island	98.0%	52.6%	80.0%	1.249	49.3%
South Carolina	72.9%	53.5%	59.5%	1.062	23.9%
South Dakota	33.7%	62.4%	65.8%	1.193	16.5%

**Exhibit A.1: Reciprocity Measures by State: 1977 to 1998 (continued)**

<b>State</b>	<b>Application Rate</b>	<b>Ratio of Initial Claims to Total Claims</b>	<b>Share of New Claims Paid</b>	<b>Duration Index</b>	<b>Reciprocity Rate (WBTU)</b>
Tennessee	61.3%	54.1%	68.7%	1.228	27.5%
Texas	23.7%	69.4%	68.6%	1.595	17.9%
Utah	33.2%	63.3%	83.3%	1.448	25.0%
Vermont	61.0%	55.1%	91.1%	1.397	42.1%
Virginia	42.6%	56.8%	67.3%	1.108	17.6%
Washington	60.7%	49.2%	76.7%	1.595	36.6%
West Virginia	41.4%	69.5%	89.1%	1.056	27.0%
Wisconsin	70.1%	50.4%	88.6%	1.267	39.4%
Wyoming	39.0%	58.1%	76.7%	1.526	26.7%
Median State	51.8%	57.1%	76.7%	1.339	28.6%
Average of States	53.0%	57.9%	77.7%	1.321	30.0%

Source: Vroman 2001

**Exhibit A.2: 2001 Determination, Denial, and Appeal Rates by State**

	Determination Rate		Denial Rate <sup>c</sup>		Appeals Per Determination <sup>d</sup>
	Separation <sup>a</sup>	Non-Separation <sup>b</sup>	Separation	Non-Separation	
Alabama	11.7%	36.1%	76.1%	87.8%	10.9%
Alaska	22.7%	31.2%	63.8%	73.4%	4.9%
Arizona	29.6%	30.4%	44.3%	68.8%	13.1%
Arkansas	16.2%	11.8%	71.6%	90.5%	15.5%
California	22.4%	31.9%	47.5%	70.8%	13.1%
Colorado	61.4%	52.3%	70.7%	83.7%	9.0%
Connecticut	20.0%	21.2%	30.1%	43.6%	14.5%
Delaware	14.6%	6.5%	60.0%	89.8%	20.5%
District of Columbia	24.0%	5.7%	43.1%	78.1%	25.7%
Florida	32.6%	10.2%	59.3%	62.4%	25.5%
Georgia	15.3%	10.5%	62.6%	76.4%	18.9%
Hawaii	12.9%	25.7%	51.4%	73.0%	9.1%
Idaho	13.1%	32.6%	53.4%	97.2%	8.1%
Illinois	20.9%	14.3%	50.2%	66.5%	17.4%
Indiana	36.4%	15.9%	52.4%	84.4%	17.3%
Iowa	18.8%	18.5%	54.8%	52.3%	17.9%
Kansas	25.7%	22.8%	42.9%	60.7%	15.0%
Kentucky	13.0%	4.3%	64.5%	82.7%	22.6%
Louisiana	33.6%	21.4%	51.5%	93.2%	19.5%
Maine	17.1%	47.4%	49.7%	96.3%	12.6%
Maryland	68.3%	80.7%	39.2%	29.9%	7.8%
Massachusetts	14.6%	28.4%	52.7%	37.5%	8.8%
Michigan	11.5%	17.2%	53.6%	55.9%	7.8%
Minnesota	18.0%	17.1%	48.6%	96.9%	12.3%
Mississippi	22.6%	13.0%	76.0%	69.0%	20.9%
Missouri	36.0%	36.2%	57.7%	86.1%	9.3%
Montana	18.0%	19.9%	63.0%	62.5%	9.3%
Nebraska	90.0%	35.3%	83.7%	94.1%	3.5%
Nevada	29.8%	14.6%	45.5%	92.6%	11.7%
New Hampshire	15.4%	51.5%	48.7%	89.7%	8.0%
New Jersey	17.1%	12.8%	61.5%	53.4%	17.7%
New Mexico	25.5%	9.7%	57.3%	64.4%	25.2%
New York	11.9%	10.4%	61.6%	57.9%	11.6%
North Carolina	9.8%	14.2%	55.9%	75.5%	17.6%
North Dakota	17.5%	36.3%	66.6%	91.0%	12.4%
Ohio	12.6%	11.9%	54.9%	70.5%	8.0%
Oklahoma	30.0%	22.9%	52.2%	94.3%	13.7%
Oregon	18.1%	23.2%	42.4%	79.3%	9.4%
Pennsylvania	12.8%	20.5%	44.6%	45.2%	14.8%
Rhode Island	22.0%	19.8%	49.7%	74.1%	10.1%
South Carolina	11.0%	5.7%	78.2%	64.9%	17.8%
South Dakota	30.4%	44.2%	61.9%	96.7%	9.7%

**Exhibit A.2: 2001 Determination, Denial, and Appeal Rates by State (continued)**

	Determination Rate		Denial Rate <sup>c</sup>		Appeals Per Determination <sup>d</sup>
	Separation <sup>a</sup>	Non-Separation <sup>b</sup>	Separation	Non-Separation	
Tennessee	13.7%	2.3%	59.5%	78.1%	22.4%
Texas	36.4%	25.0%	52.4%	78.4%	14.4%
Utah	33.6%	37.1%	43.1%	67.8%	12.2%
Vermont	18.5%	21.4%	64.4%	77.1%	8.5%
Virginia	16.9%	11.6%	48.2%	90.8%	12.8%
Washington	16.2%	17.2%	48.6%	75.2%	13.9%
West Virginia	23.3%	11.8%	57.2%	66.7%	15.5%
Wisconsin	19.2%	30.8%	44.5%	69.2%	8.2%
Wyoming	18.5%	41.9%	31.4%	51.4%	10.9%
Median State	18.5%	20.5%	53.4%	75.2%	12.8%
Average of States	23.6%	23.4%	55.0%	73.9%	13.7%

<sup>a</sup> Number of determinations per new spells of unemployment

<sup>b</sup> Number of determinations per ten claimant contacts

<sup>c</sup> Denials per determinations

<sup>d</sup> Lower authority appeals per all determinations

**Exhibit A.3: Lower Authority Appeals as a Percentage of Determinations (2001)**

<b>Lower Authority Appeals Percent of Determinations</b>							
<b>State</b>	<b>1989</b>	<b>1991</b>	<b>1993</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2001</b>
Alabama	10.1%	9.7%	8.8%	10.2%	8.6%	8.2%	10.9%
Alaska	6.6%	7.8%	6.9%	6.3%	6.2%	5.1%	4.9%
Arizona	19.3%	12.6%	16.4%	15.3%	13.5%	13.6%	13.1%
Arkansas	13.8%	13.8%	16.3%	15.4%	15.0%	14.3%	15.5%
California	10.6%	10.8%	14.6%	11.2%	7.3%	8.9%	13.1%
Colorado	17.4%	18.2%	20.1%	17.9%	12.0%	11.1%	9.0%
Connecticut	15.1%	16.6%	15.0%	13.9%	17.4%	15.4%	14.5%
Delaware	16.3%	22.2%	27.6%	26.5%	21.5%	21.6%	20.5%
District of Columbia	24.2%	31.9%	54.1%	61.9%	30.4%	32.0%	25.7%
Florida	15.6%	20.8%	25.2%	29.0%	27.3%	27.3%	25.5%
Georgia	14.9%	17.9%	19.9%	20.0%	20.9%	22.5%	18.9%
Hawaii	10.2%	10.1%	13.3%	13.4%	12.3%	9.2%	9.1%
Idaho	3.7%	3.7%	4.6%	3.5%	6.5%	8.8%	8.1%
Illinois	16.1%	16.5%	22.8%	22.9%	24.4%	19.5%	17.4%
Indiana	12.2%	12.8%	16.9%	15.9%	15.7%	15.7%	17.3%
Iowa	25.1%	28.3%	29.7%	32.5%	23.4%	17.8%	17.9%
Kansas	18.5%	17.8%	18.6%	20.6%	17.0%	17.0%	15.0%
Kentucky	49.7%	22.8%	28.4%	26.3%	23.1%	19.4%	22.6%
Louisiana	17.2%	15.1%	18.8%	15.9%	16.5%	15.2%	19.5%
Maine	9.4%	7.2%	9.6%	9.0%	11.6%	13.9%	12.6%
Maryland	15.4%	17.0%	20.6%	19.7%	13.3%	7.9%	7.8%
Massachusetts	14.5%	13.4%	17.4%	15.6%	12.9%	10.7%	8.8%
Michigan	5.8%	5.9%	8.3%	7.2%	7.1%	6.9%	7.8%
Minnesota	16.9%	13.2%	15.8%	15.2%	14.4%	13.7%	12.3%
Mississippi	16.7%	21.6%	22.8%	19.3%	18.2%	16.8%	20.9%
Missouri	8.9%	10.1%	13.3%	12.4%	12.1%	10.9%	9.3%
Montana	9.9%	15.2%	6.9%	7.1%	5.1%	6.0%	5.4%
Nebraska	3.7%	3.3%	3.5%	3.7%	3.3%	3.5%	3.5%
Nevada	16.4%	16.3%	18.5%	18.0%	16.8%	12.4%	11.7%
New Hampshire	8.9%	13.0%	10.7%	7.4%	8.4%	9.3%	8.0%
New Jersey	23.2%	20.5%	23.4%	19.9%	17.9%	17.4%	17.7%
New Mexico	24.6%	20.5%	31.4%	27.3%	27.7%	27.5%	25.2%
New York	4.6%	10.2%	12.8%	10.9%	12.4%	11.4%	11.6%
North Carolina	14.5%	20.1%	20.7%	18.0%	16.7%	15.3%	17.6%
North Dakota	14.6%	15.7%	15.4%	14.8%	12.6%	10.9%	12.4%
Ohio	4.9%	7.3%	11.4%	9.7%	6.0%	9.2%	8.0%
Oklahoma	32.1%	26.5%	27.6%	22.6%	14.5%	14.2%	13.7%
Oregon	8.0%	7.7%	9.7%	11.7%	11.4%	10.8%	9.4%

**Exhibit A.3: Lower Authority Appeals as a Percentage of Determinations in Site Visit States in 2001 (continued)**

<b>Lower Authority Appeals Percent of Determinations</b>							
Pennsylvania	10.6%	10.2%	13.1%	12.7%	7.4%	8.9%	14.8%
Puerto Rico	5.8%	7.7%	7.8%	11.5%	8.3%	7.3%	9.6%
Rhode Island	8.8%	12.1%	12.0%	12.9%	16.2%	12.0%	10.1%
South Carolina	16.2%	18.7%	16.8%	18.7%	19.6%	17.0%	17.8%
South Dakota	10.8%	12.4%	10.9%	10.6%	9.6%	11.6%	9.7%
Tennessee	24.5%	30.7%	31.1%	29.7%	21.7%	22.5%	22.4%
Texas	15.6%	14.5%	16.0%	16.6%	17.1%	15.4%	14.4%
Utah	9.5%	9.5%	10.6%	9.2%	9.7%	12.8%	12.2%
Vermont	17.9%	15.7%	13.8%	14.8%	13.7%	11.8%	8.5%
Virginia	8.2%	8.5%	16.2%	13.6%	13.3%	15.1%	12.8%
Virgin Islands	7.9%	50.3%	1.5%	14.2%	15.1%	14.2%	12.2%
Washington	11.6%	15.0%	12.6%	13.4%	15.2%	17.3%	13.9%
West Virginia	18.8%	17.4%	23.8%	18.8%	14.9%	14.8%	15.5%
Wisconsin	9.7%	12.5%	12.6%	10.9%	8.5%	7.2%	8.2%
Wyoming	5.4%	12.2%	13.2%	12.0%	10.5%	12.0%	10.9%
US Median	14.5%	14.5%	15.8%	14.8%	13.7%	13.6%	12.6%

**Exhibit A.4: Lower Authority Appeals: Share Initiated by Employers**

<b>Lower Authority Appeals Share Initiated by Employers</b>							
<b>State</b>	<b>1989</b>	<b>1991</b>	<b>1993</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2001</b>
Alabama	20.60%	24.20%	30.20%	31.90%	34.10%	35.40%	36.00%
Alaska	6.80%	5.60%	5.20%	6.80%	8.70%	9.00%	10.20%
Arizona	16.60%	16.70%	24.10%	24.20%	27.30%	41.60%	32.50%
Arkansas	8.00%	8.50%	10.10%	10.70%	11.10%	13.80%	16.30%
California	16.60%	14.40%	16.20%	18.70%	20.00%	20.20%	19.00%
Colorado	34.90%	34.10%	32.70%	39.30%	39.90%	43.00%	44.10%
Connecticut	59.20%	60.60%	63.60%	63.10%	65.20%	61.50%	62.00%
Delaware	12.00%	10.50%	9.90%	10.10%	14.90%	16.50%	20.30%
District of Columbia	20.40%	28.50%	27.90%	33.50%	24.90%	32.70%	35.70%
Florida	22.40%	24.20%	29.70%	30.90%	32.80%	32.10%	32.50%
Georgia	47.90%	42.50%	38.50%	38.00%	37.90%	34.00%	39.00%
Hawaii	15.00%	13.20%	11.40%	12.90%	15.20%	15.40%	16.40%
Idaho	21.30%	20.60%	25.70%	24.90%	24.40%	23.50%	28.50%
Illinois	31.70%	36.30%	37.00%	38.90%	41.20%	38.70%	37.60%
Indiana	17.50%	18.60%	23.60%	31.50%	35.30%	35.60%	41.60%
Iowa	40.70%	43.00%	36.70%	25.00%	32.20%	37.00%	42.10%
Kansas	34.40%	33.60%	37.80%	31.40%	32.30%	33.20%	34.80%
Kentucky	19.40%	17.50%	19.10%	16.30%	20.60%	20.00%	17.00%
Louisiana	29.90%	29.00%	30.70%	30.30%	34.40%	30.30%	29.10%
Maine	28.60%	26.90%	27.70%	27.40%	25.30%	18.10%	21.50%
Maryland	19.30%	20.40%	24.10%	25.90%	27.20%	27.60%	29.00%
Massachusetts	31.90%	31.80%	26.80%	24.70%	28.30%	29.10%	27.90%
Michigan	22.70%	26.00%	25.00%	25.90%	26.60%	25.70%	32.40%
Minnesota	31.70%	35.50%	34.70%	35.20%	38.40%	36.50%	34.80%
Mississippi	10.90%	9.00%	8.90%	10.70%	11.60%	12.00%	15.60%
Missouri	24.30%	22.40%	22.00%	25.80%	26.30%	26.20%	28.00%
Montana	20.70%	17.50%	24.00%	13.50%	16.20%	13.10%	12.10%
Nebraska	25.00%	27.50%	27.30%	28.70%	35.00%	43.40%	48.30%
Nevada	19.90%	19.50%	20.70%	20.80%	20.80%	24.70%	26.40%
New Hampshire	12.60%	12.20%	15.20%	18.30%	19.40%	19.50%	15.50%
New Jersey	10.90%	13.70%	14.60%	13.70%	14.20%	13.80%	14.60%
New Mexico	33.10%	31.00%	35.90%	34.40%	38.50%	40.20%	43.00%
New York	15.70%	15.50%	16.60%	19.40%	21.30%	20.80%	27.70%
North Carolina	12.20%	17.10%	25.40%	18.90%	20.80%	30.80%	32.90%
North Dakota	20.40%	20.20%	21.90%	24.60%	23.80%	23.10%	25.30%
Ohio	38.20%	51.60%	43.60%	42.40%	44.80%	45.30%	46.50%
Oklahoma	27.60%	30.90%	28.00%	27.30%	28.10%	27.50%	30.20%
Oregon	20.50%	20.60%	21.20%	21.40%	22.00%	21.00%	20.30%

**Exhibit A.4: Lower Authority Appeals: Share Initiated by Employers (continued)**

<b>Lower Authority Appeals Share Initiated by Employers</b>							
<b>State</b>	<b>1989</b>	<b>1991</b>	<b>1993</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2001</b>
Pennsylvania	18.30%	22.60%	27.60%	31.20%	24.90%	21.90%	23.80%
Puerto Rico	0.00%	0.00%	1.60%	7.50%	10.50%	11.70%	13.20%
Rhode Island	10.20%	10.30%	12.00%	11.20%	12.10%	14.80%	12.30%
South Carolina	24.10%	28.40%	25.00%	28.80%	26.40%	20.50%	26.50%
South Dakota	26.30%	24.10%	19.80%	19.20%	22.20%	19.20%	21.40%
Tennessee	24.80%	23.10%	22.60%	22.80%	24.50%	27.40%	27.20%
Texas	28.70%	27.30%	28.60%	31.50%	32.10%	35.80%	32.50%
Utah	25.80%	26.10%	28.90%	29.60%	40.10%	43.40%	44.70%
Vermont	24.70%	20.50%	21.50%	20.50%	21.00%	20.90%	24.20%
Virgin Islands	32.70%	42.10%	29.00%	26.10%	28.10%	22.80%	20.00%
Virginia	23.40%	23.50%	28.00%	29.30%	30.60%	30.50%	37.00%
Washington	17.40%	17.20%	15.70%	21.50%	20.90%	23.80%	23.10%
West Virginia	16.60%	22.30%	23.70%	22.30%	24.50%	24.30%	27.70%
Wisconsin	29.00%	24.50%	27.00%	28.50%	34.30%	32.50%	35.10%
Wyoming	24.50%	25.20%	34.70%	43.30%	41.90%	41.40%	45.40%
US Median	22.4%	23.1%	25.0%	25.8%	26.3%	26.2%	28.0%

### Exhibit A.5: Effects of Appeals on Denial Rates for All States in 2001

State	Total Denials	Total Determinations	Adjusted Denials after Lower Authority Appeals	Adjusted Denials After Higher Authority Appeals	Original Denial Rate	Denial Rate after Two Stages of Appeals	Difference
Alabama	103,091	122,743	103,533	103,634	84.0%	84.4%	0.4%
Alaska	31,178	45,063	30,726	30,704	69.2%	68.1%	-1.1%
Arizona	70,673	125,640	69,121	69,038	56.3%	54.9%	-1.3%
Arkansas	53,606	68,412	52,200	52,097	78.4%	76.2%	-2.2%
California	844,407	1,379,726	799,648	799,363	61.2%	57.9%	-3.3%
Colorado	141,156	184,324	140,654	140,696	76.6%	76.3%	-0.2%
Connecticut	36,586	99,702	37,296	37,235	36.7%	37.3%	0.7%
Delaware	9,030	13,514	8,488	8,437	66.8%	62.4%	-4.4%
District of Columbia	5,079	9,757	4,568	4,561	52.1%	46.7%	-5.3%
Florida	125,024	207,957	119,119	119,026	60.1%	57.2%	-2.9%
Georgia	91,181	136,902	90,312	90,391	66.6%	66.0%	-0.6%
Hawaii	20,547	32,253	20,129	20,129	63.7%	62.4%	-4.4%
Idaho	38,443	46,800	38,101	38,079	82.1%	81.4%	-0.8%
Illinois	170,109	297,813	165,941	165,961	57.1%	55.7%	-1.4%
Indiana	117,174	192,493	116,919	116,886	60.9%	60.7%	-0.1%
Iowa	37,934	70,650	37,348	37,143	53.7%	52.6%	-1.1%
Kansas	33,214	65,524	32,087	32,075	50.7%	49.0%	-1.7%
Kentucky	35,173	51,875	33,390	33,305	67.8%	64.2%	-3.6%
Louisiana	60,452	90,173	58,383	58,333	67.0%	64.7%	-2.3%
Maine	34,719	41,806	33,824	33,845	83.0%	81.0%	-2.1%
Maryland	106,081	311,202	102,753	102,837	34.1%	33.0%	-1.0%
Massachusetts	92,389	218,225	88,406	88,180	42.3%	40.4%	-1.9%
Michigan	146,436	267,278	142,514	142,440	54.8%	53.3%	-1.5%
Minnesota	76,499	107,128	75,883	75,832	71.4%	70.8%	-0.6%
Mississippi	46,361	62,844	43,902	43,910	73.8%	69.9%	-3.9%
Missouri	178,423	251,236	175,335	175,066	71.0%	69.7%	-1.3%
Montana	11,725	18,695	11,366	11,381	62.7%	60.9%	-1.8%
Nebraska	79,548	92,213	79,702	79,702	86.3%	86.4%	0.2%
Nevada	45,895	77,005	44,545	44,282	59.6%	57.5%	-2.1%
New Hampshire	21,004	27,395	20,205	20,158	76.7%	73.6%	-3.1%
New Jersey	98,686	171,107	92,790	92,578	57.7%	54.1%	-3.6%
New Mexico	12,990	21,863	13,196	13,116	59.4%	60.0%	0.6%
New York	155,583	260,205	151,846	151,842	59.8%	58.4%	-1.4%
North Carolina	126,662	196,877	124,163	123,681	64.3%	62.8%	-1.5%
North Dakota	11,412	13,985	11,138	11,132	81.6%	79.6%	-2.0%
Ohio	112,251	181,623	112,789	112,741	61.8%	62.1%	0.3%
Oklahoma	42,711	61,872	41,912	41,908	69.0%	67.7%	-1.3%
Oregon	101,488	166,892	99,477	99,329	60.8%	59.5%	-1.3%
Pennsylvania	167,387	372,550	160,960	160,790	44.9%	43.2%	-1.8%
Puerto Rico	32,324	60,911	31,663	31,528	53.1%	51.8%	-1.3%
Rhode Island	22,434	37,106	21,415	21,358	60.5%	57.6%	-2.9%

**Exhibit A.5: Effects of Appeals on Denial Rates for All States in 2001 (continued)**

State	Total Denials	Total Determinations	Adjusted Denials after Lower Authority Appeals	Adjusted Denials After Higher Authority Appeals	Original Denial Rate	Denial Rate after Two Stages of Appeals	Difference
South Carolina	49,337	65,761	48,189	48,012	75.0%	73.0%	-2.0%
South Dakota	11,086	13,661	10,913	10,920	81.2%	79.9%	-1.2%
Tennessee	47,129	76,503	45,959	45,958	61.6%	60.1%	-1.5%
Texas	325,786	515,829	321,215	321,393	63.2%	62.3%	-0.9%
Utah	37,281	66,927	37,051	36,996	55.7%	55.3%	-0.4%
Vermont	11,324	16,056	11,290	11,266	70.5%	70.2%	-0.4%
Virgin Islands	482	737	465	465	65.4%	63.1%	-2.3%
Virginia	53,940	88,961	53,586	53,618	60.6%	60.3%	-0.4%
Washington	124,054	201,795	120,175	119,552	61.5%	59.2%	-2.2%
West Virginia	16,271	26,799	15,773	15,685	60.7%	58.5%	-2.2%
Wisconsin	162,552	284,537	159,995	160,025	57.1%	55.7%	-1.4%
Wyoming	4,719	10,501	4,665	4,674	44.9%	43.2%	-1.8%

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# **APPENDIX B**

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## Arizona Site Visit Report

To learn more about how states define and implement non-monetary policies and procedures, staff from The Lewin Group and Berkeley Policy Associates conducted a site visit to Arizona from October 17-19, 2001. We spent the first day with state-level staff at the Department of Economic Security (DES) in Phoenix. The second day, we visited the call centers, Job Service offices, and appeals offices in Phoenix and Tucson. This is the second pilot visit we conducted as part of the Non-Monetary Eligibility Study.

### I. GENERAL OVERVIEW OF Arizona's Unemployment Insurance PROGRAM

The general program philosophy in the state is to provide support so that workers can return to similar jobs or other suitable work, *as quickly as possible*. If training or retraining would greatly improve the employment circumstances of the claimant, this is encouraged. Claimants are required to search for work, although there is less emphasis on mandating a specific number of employer contacts while receiving benefits, and more emphasis on the quality of contacts and what level is appropriate given the industry.

In addition, while the state considers providing Unemployment Insurance (UI) to be a federal-state partnership, it considers the development of policies, rules, and regulations a state responsibility. For example, while the state pays low UI benefits relative to other states, which is one possible explanation for the state's relatively low reciprocity rate, the benefit levels are determined by the state, and not the federal government. The state is not looking for federal guidance on policy issues.

Administrative rules, as opposed to case law, play a large role in defining the program. UI suggested this gives less discretion to staff in terms of claims and adjudication. The Court of Appeals takes few UI cases. Thus, program staff, and not the courts, develop policy.

Overall, the state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is in the bottom one-third of all states. This is driven by a relatively low inflow rate, and not by duration (which is on the high side).<sup>39</sup> The state has a relatively high separation rate (27.6 percent of initial claims in 2001, versus a median rate of 18.1 percent among all states). It has a lower separation denial rate than most other states (44.3 percent in 2001, versus a median rate of 53.4 percent). The state's non-separation rate (of continuing claims) is also higher than the U.S. median (4.0 percent for Arizona and 2.5 percent for the U.S. median); the non-separation denial rate is also lower (68.8 percent for Arizona and 74.1 percent for the U.S. median).

#### A. Organizational Structure

The Employment Security Administration (ESA) within the DES' Division of Employment & Rehabilitation Services comprises two groups: UI and Job Service. The Job Service office assists

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<sup>39</sup> We are using Wayne Vroman's definition of inflow (ratio of first payments to new spells of unemployment), duration (the ratio of the average duration of benefits to the average duration of new spells of unemployment), and reciprocity (the product of inflow and duration).

employers with filling employment vacancies by matching and referring potentially qualified applicants to the employer using employer provided job requirements. It also provides assistance to jobseekers who are looking for suitable employment. The Office of Appeals is part of the Appellate Services Administration in DES and conducts hearings for all programs within DES.

## **B. Monetary Requirements**

To qualify for benefits, a claimant must have been paid wages of:

- At least \$1000 in one of the four quarters of the base period, assuming the total base period wages is at least 1½ times the high quarter, or
- At least \$7000 in total wages in at least two quarters of the base period, with wages in one quarter equal to \$5112.50 or more.

The state offers an alternate base period, if the claimant cannot qualify for benefits using the regular base period. However, it is limited to claimants who were totally disabled for a temporary period and receiving Workers' Compensation. Claimants may be eligible to base their claim on an alternate base period using wages earned prior to their disability. Before filing their claim for unemployment insurance, they must have attempted to return to work with the employer where the injury or disability occurred.

The benefit award is determined by multiplying the highest-quarter wages paid to the claimant in the base period quarter by 4 percent. To qualify for benefits, this computed amount must be at least \$40. The maximum weekly benefit amount (WBA), even if computed higher, is \$205. The total amount of benefits a claimant can receive in the benefit year is the lesser of: one-third of the total base period wages or 26 times the WBA.

Arizona has a shared work policy for employers faced with a reduction in force who prefer to instead reduce the hours of employees. The employees are eligible for partial UI while working. To be eligible, each employee must have been paid at least \$1,000 in wages in the six-month period immediately preceding the date the plan was submitted to the state. Also, an employee must have his or her normal weekly hours of work reduced by at least 10 percent but no more than 40 percent. During this time, the claimant is exempt from the active job search requirement.

## **C. Outreach Efforts**

The state outreach efforts include the following:

- State statutes require all employers to post a notice regarding Unemployment Insurance coverage for their employees. It also provides new employees with an employers' handbook.
- DES has an Internet web site through which an employer or worker can access the UI program. This site includes information, questions and answers, and contact information.
- The Department's Rapid Response team which travels to employer sites where a large layoff is about to commence provides information on UI as well as other departmental programs.

- Several times a year, the program sends an employer newsletter to all employers. This letter contains articles on new innovations, changes in law, and helpful hints.

## **D. Issues Pertaining to Union Members and Other Specialized Labor**

### **1. Union**

The state has a relatively low share of workers who are union members. In 2001, about 6.5 percent of Arizona workers were members of a labor union or employee association (or affiliated with a union or association). This is less than half the national average of 14.8 percent.<sup>40</sup> As is true elsewhere, union members engaged in labor disputes, strikes, or lockouts are disqualified for benefits.

### **2. Seasonal Workers**

The state makes a special distinction for wages earned by employees of “transient lodging establishments.” If claimants are an employee of a business with a transient lodging classification (e.g., a hotel, motel, RV park, or dude ranch), they may not be eligible to collect benefits that are based on their earnings from this business when their unemployment is due solely to a seasonal slowdown. Before their benefits can be reduced or denied, their employer, on a yearly basis, must apply to, and be approved by, the department for seasonal status. However, since 1996, only four to five employers have applied for seasonal employer status.

If a claimant is an employee of an educational institution or a private school bus contractor out of work between regular school terms, or during a vacation period, and he or she has a reasonable assurance of returning to work, he or she is not eligible for UI based on these wages.

## **II. Process for Submitting Initial and Continuing Claims**

### **A. Application Process**

Most individuals applying for UI benefits file a claim by calling into the Arizona Re-employment Rapid Access (ARRA) system. This is a computer-based, interactive voice response system, with instructions offered in English and Spanish. Claimants who visit the local Job Service office to apply for UI are encouraged to use one of the phones in the office to call the system rather than submit a paper form. The Job Service office will take paper forms from individuals who have difficulties with the phone system.

After the caller has answered a series of questions using the touch pad, the call is put in a queue and the next available claims agent – in either the Tucson or Phoenix call center – will take the call to complete the application. A basic statement as to the reason for separation or other potential eligibility issues is taken.

If any issues arise (highlighted by the system), the claims agent will schedule a fact-finding interview with an adjudication deputy. Claimants living in the Phoenix area are scheduled for an

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<sup>40</sup> From the Department of Census Current Population Survey (CPS).

interview three weeks later; Tucson is on a two-week schedule. Yuma also has a center that does not take applications but has adjudicators who work with the border counties that have large Spanish-speaking populations. The claims agent explains that the claimant needs to be available for a call from a deputy on the scheduled day. (If no issues arise, no interviews are scheduled.)

The claims agent will also explain the process for receiving benefits (e.g., filing for continuing claims, and registering at the local Job Service office). The claims agent will send the applicant a copy of the Unemployment Insurance handbook, a “Certification of Understanding” that certifies the claimant read and understood the handbook, and a reminder of the date and time for the interview, if one was scheduled.

## **B. Special Needs**

Hearing impaired individuals are able to connect with the ARRA claims filing system through a TDD. A significant segment of the Arizona population speaks Spanish as the primary language. Each call center has a number of Spanish-speaking claims agents. If a claims taker encounters an individual who primarily speaks another language, the claims taker has the capability of involving Language Line, the translation service, in the call.

## **C. Filing Continuing Claims**

Claimants generally file their continued claims by calling into the Telephone Information and Payment System (TIPS), which is available 24 hours a day, seven days a week. Claimants use the touch pad to reply to five questions:

1. "Were you able to work and available for work each regular workday?"
2. "Did you look for work?"
3. "Did you refuse any job offer or referral to work?"
4. "Did you work or earn any money?"
  - "What were your gross earnings before deductions?"
  - "Are you still working?"
  - "Was your separation due to lack of work or a reduction in force?"
5. "Have you returned to full-time work which will not require you to file any further weekly claims at this time?"

If any answers raise eligibility issues, the claimant is notified and must contact the department within five days to continue to receive benefits.

### **III. NON-MONETARY SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

Adjudication responsibilities are allocated to Phoenix, Tucson, and Yuma according to the geographic area. Yuma covers the border communities, Phoenix covers the metropolitan Phoenix area and interstate claims, and Tucson covers the City of Tucson and the balance of state. In addition, when an issue arises subsequent to an initial claims case in the border communities, Tucson (and not Yuma) handles the case. Adjudication occurs over the telephone.

About half of all initial claims require adjudication. The interview is generally scheduled at the time of the initial claim. The day following the processing of the initial claim, the individual is mailed a notice indicating the date and time he or she will be called for the fact-finding interview. The claims agent will call the individual approximately one week following the date the initial claim was filed. If the client is not available to take the call at the scheduled time, the deputy will leave a message and call back. If the deputy is unable to leave a message, he or she will try several times to call the claimant, before sending the claimant a notice. Failure to reach the claimant after several attempts generates a reporting requirement issue, and loss of benefits.

After reaching the claimant, the deputy seeks to obtain all the needed information in one call. If this issue involves the employer, the deputy will contact the employer to get additional information. When the employer provides information that differs from the claimant's, the deputy will contact the claimant again. At that point, the deputy generally has enough information to issue a determination. The determination is sent to the interested parties (i.e., the employer and claimant), along with information on how to appeal the determination.

Many employers rely on third-party representatives to respond to requests by UI regarding an individual's claim. Staff estimated that between 30% and 40% of employers have third-party representation. According to call center staff, employer representatives often ignore requests for information from UI deputies. When they respond, they often do not have first-hand knowledge of the employment situation. Employer representatives often wait until the appeals stage to become involved.

#### **B. Issues Pertaining to Voluntary Quits**

Arizona's administrative rules distinguish between two types of separations. First, it determines whether the worker separated "in connection with the employment." Alternatively, the worker may have separated for a "compelling personal reason" (CPR), which arises from a worker's personal circumstance rather than from a condition created by or relating solely to the employer. Unlike in some states, in Arizona, individuals may be eligible for benefits if they separate for personal reasons. In this case, employers' accounts are not charged (with the exception of reimbursed employers). The benefits come out of the general fund. While a person can be eligible due to a compelling personal reason, the claimant might still be ineligible if the personal reason prevents him or her from being able and available for work.

A worker who quits a job must present evidence to establish that he or she had no other alternative but to end the employment relationship. The burden of proof is on the claimant.

A claimant is ineligible if he or she voluntarily quit without good cause. In addition, there is a statutory provision which disqualifies individuals who participate in a labor dispute. Another provision disqualifies individuals who are temporarily out of work due to an employer's customary suspension of operations.

Below are examples of allowable voluntary quits, documented in the Benefit Policy Rules:

- **Care of children.** Leaving to provide care may be for compelling personal reasons (CPRs), depending upon the degree of necessity. State considers child's age, health, safety, availability of child care, leave of absence. The leaving may be good cause if the hours or place of work changed, or the employer without valid reason refused the leave of absence.
- **Home, spouse or parent in another locality.** The decision to move to accompany other spouse or parent may be considered a CPR.
- **Housing.** Factors considered are: availability of adequate housing within a reasonable distance to work, cost of housing in relation to wages, and prospects of other work offering a solution to housing problems.
- **Illness or death of others.** A worker who quit because of the death or illness of an immediate family member may have a CPR if a leave of absence could not be obtained or no other reasonable alternative existed.
- **Marriage.** If a worker quit to be married, the leaving was voluntary without good cause unless the employer terminated the employment because of a company rule prohibiting marriage with co-workers.
- **Health.** A worker who quit because of health or physical condition adversely affected by the conditions of work must have made a reasonable effort to correct the situation to avoid disqualification (e.g., requesting a leave of absence, requesting a transfer, or requesting conditions be corrected) unless efforts to correct would be impossible or impractical.
- **Pregnancy.** If a worker quit because her work became too difficult, she left for CPR provided she had no reasonable alternative such as taking time off or transferring to less strenuous work.
- **To seek other employment.** If a worker left to accept employment that would clearly better the claimant's circumstances, he had a CPR if the employment failed to materialize because of circumstances beyond his control. However, if the worker quit for self-employer, he left voluntarily without good cause.
- **Left part-time work to accept full-time work.** When hours and earnings have been reduced by the employer from full-time to part-time work, then the worker left with good cause. Other acceptable reasons are generally CPRs.
- **To attend approved training.** The worker may be eligible if training was approved and if the work was temporary employment during school breaks or hindered the worker from making satisfactory progress in school.
- **Transportation problems.** If the worker moved and quit for this reason, this is generally not good cause; if worker quit because the employer moved, it is generally good cause.

- **Volunteered for layoff.** The claimant is eligible if the employer asked workers to volunteer for the layoff or the volunteer accepted the employer's retirement plan. The claimant is ineligible if the worker requested layoff status prior to any specific announcement by the employer (unless worker established a CPR).
- **Change in working conditions.** If the worker left rather than accept conditions of employer that are different, eligibility depends on whether the changes were substantial.
- **Time.** The claimant left for CPR if working on Saturday or Sunday violated his religion. When a worker left because he was required to work irregular hours over an extended period of time and these hours unreasonably restricted his ability to maintain a normal private life, he left for good cause. If irregular hours were infrequent or for a short duration, leaving would result in disqualification. Leaving because the worker objected to short hours is normally disqualifying unless restrictions imposed by the employer prevent the worker from looking for full-time work.
- **Wages.** If a worker was aware of the rate of pay prior to accepting a job, he could not establish good cause for leaving due to wages, unless it could be shown that the rate was below the legal minimum. A worker who quit because his employer refused to grant him a pay increase left voluntarily without good cause unless he had been assigned more duties normally carrying a higher rate of pay. A worker who quit because wages were reduced generally left without good cause.

### C. Issues Pertaining to Misconduct

Claimants who were discharged from their last job for willful or negligent misconduct in connection with employment are ineligible for UI. Disqualification is for the duration of unemployment. The burden of proof is on the employer. Accurate records of dates of incidents or infractions leading to the dismissal, warnings, and disciplinary actions can be used to establish evidence.

Specific examples of situations where the claimant will be eligible are documented in the Benefit Policy Rules:

- **Tardiness.** Late arrival due to unavoidable delay in transportation, emergency situations, or causes not within the claimant's control is not misconduct. An isolated instance of tardiness usually is not misconduct. However, when an employee has special responsibilities, his failure to exercise a high degree of concern for punctuality may amount to misconduct. In the absence of pressing responsibilities, misconduct may be found in the repetition of tardiness.
- **Absence.** A claimant who is discharged due to absences beyond his control (e.g., illness, accident, or domestic responsibilities) is discharged for reasons other than misconduct. Failure to give notice of such absences may constitute misconduct. Absence due to a capricious reason, intoxication, or for causes he does not substantiate constitutes misconduct.
- **Competing with employer or aiding competitor.** Work engaged in a business that is in competition with the employer is considered to be misconduct.

- **Indifference.** Generally, a worker's lack of interest in the goals of his employer is not misconduct if the worker performs his own duties in a satisfactory manner. A worker discharged because he is not interested in a promotion is not discharged for misconduct.
- **Insubordination.** Refusal to follow reasonable and proper instructions, insolence in actions or language, profanity, or threats toward supervisor, or refusal to accept assignment to suitable work are considered to be misconduct.
- **Intoxication.** Intoxication on the job is considered misconduct; intoxication off the job is not disqualifying unless it can be shown that a claimant's off-duty intoxication is connected with his work.
- **Activity in union.** A worker who is discharged because of refusal to pay union fees or dues is discharged for a reason other than misconduct connected with the work.

#### **D. Trends Over Time**

During the site visit, several staff brought up the increase in the number of claims being filed in the state. Before July 2001, the state was getting about 3,000 calls per week; in October 2001, the state was receiving about 5,000 to 6,000 per week. UI was planning on increasing staff at the centers and extending the call center hours to handle the increased volume.

Staff believe that the increase in call volume is due primarily to economic conditions, although some of the spike after July was due to seasonal increases, when migrant workers were laid off.

#### **F. Variation Across State**

The border communities in the state have a greater share of migrant workers. Staff at the state level felt this population was not "embracing the call centers". At the time of our visit, the Phoenix and Tucson centers were conducting intake statewide, while the Yuma center was handling the adjudication for this area.

### **IV. NON-MONETARY NON-SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

The fact-finding and adjudication process for non-separation policies and practices is conducted by the call center adjudication staff, similar to the process described in Section III.

#### **B. Able and Available**

To receive benefits, the claimant must be able and available for work and file weekly claims in which work and gross earnings are reported. In addition, all claimants are required to attend an eligibility review interview and most are required to register for work. According to Arizona's UI Handbook, claimants are able if they are mentally and physically able to work full-time at a job for which they are qualified by experience, education, or training. Claimants are not eligible for benefits if they are sick, totally incapacitated, or otherwise not able to work. Claimants are available if they are accessible to a labor market in which there are jobs for which they are qualified by experience, education, or training. They must be ready to accept full-time work when offered and report for work at the time the employer requires. They must also have

transportation, proper clothing, licenses and tools required for their type of work. In addition, any domestic responsibilities (e.g., child care) must not present a barrier.

Specific examples of situations where the claimant will be eligible or ineligible are documented in the Benefit Policy Rules:

- **School attendance.** A full-time student is considered available if he or she shows a nine-month pattern of attending school and working and did not leave in order to attend school. Claimants who attend classes only at night and are available for full-time work during the day are considered available. Part-time students are considered available if there is full-time work available during hours other than the time the claimant attends classes and schooling is incidental to full-time employment or claimant will drop classes in order to accept full-time work.
- **Citizenship.** A claimant lawfully in the U.S. who will not be hired because of alien status is available for work provided work not requiring citizenship exists in reasonable quantity.
- **Distance to work.** There is a presumption of unavailability if an individual resides in a community in which there is no type of work existent for which he or she is qualified and he or she is unable to seek and accept work in other communities. An exception is when the individual can show he or she has an attachment to the community and that other suitable work exists.
- **Lack of transportation.** If the claimant cannot accept work opportunities that exist because of lack of transportation, the claimant is unavailable, although the fact that he or she may lack transportation to any specific employment does not require this result. A claimant who refuses to travel a reasonable commuting distance (less than 20 miles, less than one hour elapsed time, or commuting expense equal to less than 15 percent of gross wage) is not available for work unless there is a reasonable expectancy of his obtaining work in the restricted locality.
- **Domestic circumstances.** When the domestic circumstances are such that no work can be accepted for a temporary or permanent period, the claimant is unavailable.
- **Registration and reporting.** When a claimant fails to respond as directed to a job service call-in regarding a possible referral to employment, he or she is unavailable for work for the week in which he failed to respond, unless such failure was due to non-receipt of the message through no fault of his or her own.
- **Employer requirements.** When a claimant is unable to meet an employer's physical requirements, he or she may be presumed able to work if it can be established the ability to perform work for which he or she is reasonably qualified.
- **Illness.** When a claimant's employment was terminated by an illness or operation, but the n recovers and is able to return to work, he may rebut inability. A claimant may be presumed able to work when a physician certifies that the claimant can engage in full-time restricted work, provided the claimant is qualified to perform such work.
- **Pregnancy.** Previously, a claimant who is pregnant was presumed to be unable to work for a period of 8 weeks prior to the calculated date of delivery and for 6 weeks immediately

following delivery. In August 2001, the policy was changed. Individuals who are pregnant are treated the same as all others (i.e., they are able to work and eligible for benefits).

- **Leave of absence.** Generally, a claimant on leave of absence is unavailable.

### **C. Disqualifying and Deductible Income**

UI deducts all earnings within a calendar week of more than \$30.50 from the UI benefits. Vacation pay, holiday pay, and sick pay are also deducted.

Pensions, annuities, and retirement pay may be subject to a deduction. A partial deduction may be taken if the claimant contributed 45% or more to their pension, annuity, or retirement fund. When payments are deductible, they are converted to a weekly rate. Any amount less than the WBA is deducted from the amount they would otherwise receive.

### **D. Work Search**

Claimants must keep a log that includes the following information: date of contact, employer's name and address, name of person contacted, method of contact, type of work sought, and results of the contact. At the claimant's Eligibility Review Interview (ERI) (discussed below), claimants are asked to provide evidence of the last five contacts. Employers may be contacted by a department representative to verify the work search. Claimants who have been temporarily laid off must look for other temporary work pending recall to their former job. When work is not available in their usual occupation, they must seek work in a related field or other fields in which they are skilled.

### **E. Profiling**

Based on information collected from the UI application, job registration, and current job market, the state identifies claimants who are likely to exhaust their UI benefits.<sup>41</sup> These claimants are "profiled" and required to attend a reemployment orientation workshop. Thereafter, they may be referred to reemployment services such as job search assistance, testing, counseling or other services. If they fail to participate in any referred activity, they may be denied benefits. A limited number of determinations on this are issued.

The number required to attend an orientation depends on the number of slots available at the Job Service office. In the fall of 2001, Tucson saw only about five people in each workshop and offered only two workshops per month. Tucson reduced the number of slots from 15 per workshop because so many claimants were participating in the Rapid Response program. This is a program where teams of UI, Job Service, and WIA staff visit a company planning large layoffs to help workers apply for UI and provide them with reemployment services. The reemployment services offered by Rapid Response are almost identical to those offered from profiling.

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<sup>41</sup> The model for predicting who will exhaust benefits was in transition when we visited. Some factors were removed, such as industry and job tenure, which raised concerns among the Phoenix staff that they might not be targeting the right people.

Job Service must coordinate with WIA staff and the dislocated worker program in the One-Stop, because WIA provides some of the services in Tucson.

The workshop lasts three weeks in Tucson and consists of the following:

- First week: orientation. They are tested, using the TABE, and staff will sit down with each participant individually to complete a Service Plan.
- Second week: staff have three one-half day workshops where clients conduct practice interviews, work on resumes, learn decision making skills, and learn about community services and bus passes.
- Third week: claimants meet with a counselor at the One-Stop where they decide on their next steps. It might involve training or work search.

Three Phoenix Job Service offices conduct workshops. When we visited, they were each conducting about one workshop per month. The services are similar to those in Tucson. The North Phoenix site holds a one-day orientation. A Maricopa Community College representative presents on the services available from the county and does a brief resume workshop. The City of Phoenix (WIA provider) describes services and offers the opportunity to enroll. Then the Job Service representative explains the reemployment service plan (including what services the claimant expects to use). Claimants fill out their plans in a group setting, a copy of which goes to the call center, the WIA provider and the claimant. Some claimants are referred to a new Re-employment Project that involves more intensive case management.

Unlike Tucson, there are no one-on-one meetings. This was done in the past with JTPA and found to be unproductive.

## **F. Work Registration**

After a claimant files for UI, he or she has two weeks to register with Job Service in person, unless he or she was temporarily laid off. The idea is that claimants should be exposed to the array of services available in the Job Service. The penalty for non-compliance is benefit ineligibility until the claimant registers. Once registration takes place, UI is notified electronically.

Claimants are encouraged to self-register for services on the computer. One-on-one interviews are rare, especially in Phoenix. After claimants register, they can use the resources in the offices. In addition, when a job order comes in, Job Service staff will do an electronic search for possible candidates. Claimants whose names appear from the search as strong candidates will be sent a notice. If they fail to act on this notice, they will be considered a no-show, which could generate an issue. However, staff rarely have time to follow-up with employers to determine who followed through with the referral.

## **G. Eligibility Reviews**

All claimants are required to meet in-person with staff at their local Job Service office for an Eligibility Review Interview (ERI). The ERI generally occurs during the 13<sup>th</sup> week of unemployment. The ERI has two parts. First, staff will review the claimants' eligibility review

questionnaire, which was sent to them in advance of the meeting. This review takes about 15 to 20 minutes. On this form, claimants indicate the last five employers they contacted for work, the kind of job they had with their last full-time employer, and the kind of work they would accept. Claimants are advised if they need to adjust their work search practices. In addition, they answer questions regarding their ability and availability to work. Issues could arise based on the responses and some require adjudication automatically. These include claimants who are full-time students, have physical conditions that would limit their ability to work full-time, or have pensions.

After completing the questionnaire, the Job Service worker turns to the work search plan. This lasts another 20 minutes. Here the worker records what efforts the claimant will take to search for work, and schedules the next interview. Generally, the next interview will be in another 13 weeks. However, if the claimant had not conducted an adequate job search or needed additional services, a follow-up interview would be scheduled sooner.

While the state has an active job search requirement, it does not specify the number of job contacts required each week. Instead, it is up to the Job Service staff to assign the number, based on the claimant's occupation and the local labor market. For example, in Flagstaff, a recipient would be expected to contact one to three employers per week, whereas in Phoenix, the number would be higher because there are more opportunities and more diversity among employers. If a claimant has a specialized job (e.g., is a pharmacist) he or she might be expected to make fewer contacts per week. Individuals living on reservations, where there are few jobs, are also expected to make fewer contacts.

Because UI staff previously conducted ERIs (before they moved to call centers), Job Service staff were not as knowledgeable of the UI issues that they needed to know to complete the eligibility review questionnaire. Staff received a four-hour course on conducting ERIs, but several staff noted that they still had a lot to learn about the UI program. Most of their learning has been on-the-job.

## H. Suitable Work

What constitutes suitable work is described in detail in the Benefit Policy Rules:

- **Distance to work.** Offered work which is beyond reasonable commuting distance generally would not be suitable work unless the distance is customary for the claimant or most workers residing in the same area. Also, offered work which would require a claimant to move to a new locality would not be suitable work.
- **Experience or training.** Claimant's prior training and experience are considered before being disqualified for refusing work beneath his or her highest skill. If the claimant has been unemployed for a long time and prospects for work in the claimant's usual occupation are not favorable, he or she may be expected to take other work.
- **Interview and acceptance.** After accepting a referral, a claimant who indicates that he or she did not accept it in good faith may be disqualified. However, indications should be clear and definite.

- **Length of unemployment.** A claimant is allowed a reasonable adjustment period in which to find work in his or her customary occupation. The adjustment period is 4 weeks for unskilled, 7 weeks for semi-skilled, and 10 weeks for skilled workers.
- **Offer of work.** Before a claimant may be disqualified for refusing an offer of work, it must be established that: the job was open, the work was suitable, the offer was outright and unequivocal, the offer was genuine, the claimant received the offer, and the claimant received sufficient information concerning the employment.
- **Time hours.** Benefits are not denied if the hours offered are substantially less favorable to the individual than those prevailing for similar work in the locality. Prospective employment is not unsuitable merely because it requires work at hours that are unusual, inconvenient or socially less desirable.
- **Union relations.** A claimant may not be denied benefits for refusing a referral to or an offer of new work if as condition of being employed he or she would be required to join a company union or resign from or refrain from joining a bona fide labor organizations.
- **Vacant due to labor dispute.** Benefits cannot be denied for refusing to accept new work if the position offered is vacant due directly to a strike, lock out, or other labor dispute.
- **Wages.** Whether a claimant has good cause for refusing work in his or her customary occupation because wages offered are less than those earned previously depends on: the prospect of securing the wages; the length of unemployment; and the condition of the labor market in his area.
- **Working conditions.** A worker may reasonably expect working conditions which do not involve undue risk to his health, safety, or morals.

## V. NON-MONETARY DETERMINATION APPEALS

When the claimant or employer is in disagreement with the deputy's decision, he or she has the right to appeal it. There are four levels of appeal: (1) reconsideration by UI, (2) Office of Appeals, (3) Arizona Appeals Board, and (4) Court of Appeals.

### A. Reconsideration

After a fact-finding process, the local office deputy issues a determination to all of the interested parties in the case, usually a claimant and employer or a claimant alone. Any party adversely affected by the determination has the right to file an appeal within 15 days of the issuance of the determination. All determinations appealed are first "reconsidered" by a deputy. In both the Phoenix and Tucson offices, a deputy who had not made the original decision is asked to review the case. The deputy has 7 days of the filing of the appeal to reconsider the determination. If the deputy declines to reverse the determination, it is forwarded to the Office of Appeals.

### B. Office of Appeals

Arizona has four appeals offices – in Glendale, Phoenix, Flagstaff and Tucson. The appeals offices handle TANF, food stamps, and child support appeals, in addition to UI appeals.

When the appeal is received at the assigned office (assignments are based on the location of the claimant), the case is first docketed (which involves creating a case file, entering the information in the appeals database, and determining time lapse deadlines). After docketing, the case is scheduled for a hearing. Cases are assigned to Administrative Law Judges (ALJs) on a somewhat random basis, although there is some attempt to assign a similar proportion of difficult or complex cases to each ALJ. A particularly complex case may be assigned to a more experienced ALJ.

ALJs hear about five cases per day and have hearings on four days of the week, leaving Fridays free for making decisions and completing paperwork. At the time of the site visit, their caseloads had increased to 25 cases per week, due to the increase in appeals, and more judges were hearing cases on Fridays. The increase in appeals was likely due to the increase in claims being filed in the state, although a couple of changes – allowing parties to appeal by phone (since November 2000) and modifying the decision language so that more people understood the decision (about two years ago) – may have also contributed to the increase.

The types of separation cases they see generally focus on absenteeism, tardiness, insubordination, and work performance, while non-separation cases generally focus on able and available issues. Separation appeals make up the largest share of appeals – about 60 to 70 percent – perhaps because employers have an incentive to appeal a separation case. Able and available cases make up about 12 percent of all appeals. This might be high relative to other states, because Arizona is a non-union state, meaning a higher share of the claimant population is required to conduct a job search.

Once a hearing is scheduled, a notice is mailed to all interested parties at least 10 working days in advance of the hearing date. Hearings may be scheduled in person or by telephone, at the discretion of the ALJ, although he or she will consider the distance the parties are required to travel. In fiscal year 2001, 42.6 percent of the hearings were scheduled by telephone. Generally, the hearings last from 45 to 75 minutes, but can take several days, depending on the complexity of the case.

If the appellant fails to appear for the hearing, or cannot be reached by telephone, no hearing is conducted and the ALJ issues a default disposition that indicates that the local office determination remains in effect. In the Tucson office, the appellant does not show up about 25 percent of the time. (If the appellant shows, but the other party does not, they will continue the hearing.) The hearing may be reopened if the nonappearing appellant can establish good cause for nonappearance.

Either party may bring representation, although this is more common for employers than claimants. In fiscal year 2001, employers were represented in about 24 percent of cases involving their interests. One judge remarked that it is preferable when all parties bring representation – because representatives are generally professional, know how to zero-in on the relevant issues, and understand the procedures, which saves time. He would prefer it if more claimants brought representation as well.

While it is generally clear why claimants appeal, there was some question about the motivation behind employer appeals. Staff who work on employer tax issues suggested that employers are

not so concerned about the effect of a claim on their rates as the principle. They often do not think the claimant is entitled to benefits.<sup>42</sup>

### **C. Arizona Appeals Board**

About 8.7 percent of decisions made by the Office of Appeals are appealed to the Appeals Board. The Appeals Board, a three-member panel, reviews a transcript of the hearing and all documentation, and decides if the ALJ made correct findings of fact and correctly applied the law to those facts. The statute gives the Board the right to hold a hearing and consider new evidence, although this rarely happens. Usually the review is based solely on the record developed by the ALJ. The Appeals Board issues a decision that affirms, reverses, modifies, sets aside or remands the matter to the Office of Appeals.

Any party adversely effected by the Appeals Board's decision has the right to request a second level review by the Board. The request for review must be filed within 30 days of the date of issuance of the first-level decision. At the second level, the review is typically narrower than that at the first level, usually focusing on whether the Appeals Board erred in its initial review of the case. After the Appeals Board issues a second-level decision, any party adversely affected by it has the right to file an application for appeal to the Arizona Court of Appeals. This appeal must be filed within 30 days of the date of the second-level decision.

### **D. Court of Appeals**

Review by the Court of Appeals is discretionary, meaning the court may grant or deny the request. If the request is denied, then the Appeals Board's second-level decision becomes the final decision. If the Court grants the application, it reviews the record of the case without a hearing or consideration of new evidence. Only decisions made by the Court has precedential value – all other cases stand by their own merit.

## **VI. OTHER ISSUES**

### **A. Experience Rating**

Employers who paid wages to a claimant in the base period share the cost of the benefits paid to the claimant through "charges" made to their experience rating accounts. Charging the account for the payment of benefits to a former worker means that the total amount of taxes paid is reduced by the total amount of benefits charged when the tax rate for the next calendar year is calculated.

Benefits are charged in proportion to the percentage of wages an employer paid to the claimant in the base period compared to those paid to the claimant by other employers. All employers are liable, not just the last employer. As mentioned above, when individuals are eligible for benefits

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<sup>42</sup> The employer tax rate is based on taxes paid, benefits charged, and taxable payroll. Tax rates can increase for many reasons, including an expanding payroll. It is difficult to determine how much a charge will affect a tax rate. It depends on the number of weeks claimed and the size of the employer.

due to compelling personal reasons, the employers' accounts are not charged. These benefits come out of the general fund.

## **B. Role of Job Service**

As mentioned above, the Job Service offices registers claimants, conduct the ERIs, and conducting the reemployment workshops. In addition, the offices are open to all job seekers who can get help with their job search and access the Job Service Automated System which allows them to search for employment opportunities.

## **C. Changes Planned in State**

The state is currently working on two projects to improve the services provided to claimants. First, in October 2002, the state began a pilot project to allow a limited number of claimants to file their continued claims through the Internet. By early 2003, all claimants will be able to file both initial and continued claims by Internet. Those choosing not to use the Internet will still be able to file by telephone. Within a year, it is anticipated that parties will be able to file an appeal by Internet.

Second, the state anticipates providing claimants with the option of having their weekly benefits directly deposited into their banking accounts.

## **VII. Unique features of Arizona's program**

- A key topic of discussion during our visit was why Arizona has one of the lowest reciprocity rates in the nation. The state's policies did not, on paper, appear to be especially stringent relative to other states. According to the UI Administrator, the low benefits offered by the state (a maximum of \$205 per week) encourages people to look for a job and get reemployed quickly. In addition, the state has a transient population. Many people who file are new to the state and file in their previous state of residence. One ALJ offered another opinion. The state has a low reciprocity rate because people do not apply. They might view UI as "government welfare."
- Staff have some discretion in deciding whether to approve or deny a claim, although might have less discretion than in some of the other states. Arizona relies on administrative rules and statutes, rather than case laws. Many examples of the detailed rules were briefly described in Sections III and IV. According to staff at the state level, in states that rely on case laws, court rulings are generally broad and open to interpretation; thus adjudicators in these other states have more discretion when making determinations.
- Arizona experienced high staff turnover in recent years. UI must depend on the state legislature to pass raises and for years, Arizona workers had the worst pay of any state, making it difficult to attract and retain employees. (A Level 13 worker (entry-level UI deputy) was hired at \$18,587.) Staff turnover was especially high in Phoenix, where other jobs were easier to come by. In addition, many staff were seasonal and were not receiving fringe benefits. As soon as a full-time position with benefits became available elsewhere they left. The state hopes this situation will improve due to recent salary increases. After the

state passed Proposition 204, which converted county employees to state employees, county employees earned more than state employees. They had to adjust all state worker salaries to put their salaries in line with the converted county employee salaries. At the time of our visit, the legislature had recently approved a 5 percent increase and another 5 percent increase for the next year. Some were worried that because the state is in a deficit situation, the legislature will reverse their decision.

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## Delaware Site Visit Report

To learn more about how Delaware defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from The Lewin Group and Johns Hopkins University conducted a site visit to the state from October 2-3. We met with benefit and appeals state-level staff at the Department of Labor (DOL) and staff from the Wilmington local office.

This report provides an overview of Delaware's UI program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state and the role of the one-stop career centers. The report concludes with a discussion of the features of Delaware's program that we found to be unique to the state, some of which could help explain some of the UI outcomes for the state.

### I. GENERAL OVERVIEW OF Delaware's Unemployment Insurance PROGRAM

According to Delaware's Unemployment Compensation law, the public policy of the state with regard to unemployment insurance is as follows:

“Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people in this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure...”<sup>43</sup>

In practice, staff said the UI philosophy is two-fold: (1) stress customer service by providing claimants with customer service options and (2) administer the UI law with a “common sense” approach (i.e., bureaucratic roadblocks are not placed in the way of people who are eligible for benefits).

Both employers and claimants are regarded as customers. Recent changes to the UI law seek to address the needs of both stakeholders. For instance, a 2001 law cut taxes paid by employers and increased the maximum weekly benefit amount by \$15.

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<sup>43</sup> Delaware Unemployment Compensation law, Title 19, Section 3301.

U.S. Department of Labor administrative data indicates that, relative to other states, Delaware has a higher reciprocity rate, an average separation determination rate, and a lower-than-average non-separation determination rate. The state's reciprocity rate, defined as the ratio of weekly UI beneficiaries to weekly unemployment, is 35 percent, compared with a national average of 30 percent. In 1999, 23 percent of all new claims resulted in a separation determination (compared to 22 percent nationally); the percent denied, however, was higher than the national average (61 percent and 53 percent, respectively). The non-separation determination rate (1.2 percent of claimant contacts) was lower than the national average (4.1 percent of contacts). The percent denied (89 percent), however, exceeded the national average (59 percent).

## **A. Organizational Structure**

The UI program is housed in the Division of Unemployment Insurance within the state Department of Labor. The division has three main operational areas: benefit operations (including local office operations, interstate liable claims unit, and monetary eligibility/combined wage/federal claims unit), employer tax operations (including status determination, merit rating, account management, and field audit), and program integrity operations (including benefit payment control, quality control, and budget and performance management). The division director is assisted by two UI Administrators and an Executive Assistant. The appeals unit is a freestanding entity (i.e., not assigned to one of three main operational areas), and the chief referee reports directly to the UI director.

In addition to the three main operational areas within the division, there is a UI advisory council composed of the Secretary of Labor, the chairs of the Senate labor and small business committees, the chairs of the House labor and small business committees, two representatives of labor, and two representative of business. The council is chaired by the UI Division Director. The primary focus of the advisory council is to preserve the solvency of the trust fund. However, when DOL considers legislation pertaining to UI, staff will seek input from the advisory council. Attaining council buy-in helps the prospects of the legislation when it goes before the General Assembly.

Claimants apply for benefits in one of four local offices, located in Wilmington, Newark, Dover, and Georgetown. UI staff housed in each office include a local office manager, a senior claims deputy (adjudicator), claims deputies (adjudicators), claims processors (intake staff) and a UI interviewer, who is responsible for profiling and eligibility review issues. UI staff are co-located at local office sites with staff from the Division of Employment and Training (DET), who provide work registration and work search services.

## **B. Monetary Requirements**

The base period consists of the first four of the last five completed calendar quarters. Delaware does not have an alternate base period. Monetary eligibility is determined as follows:

- Earnings from the two highest quarters are added together.
- This sum is divided by 46 to calculate the weekly benefit amount.

- To be eligible for benefits, the claimant would have to have earned at least 36 times the weekly benefit amount during the base period.

In CY 2001, 98.1 percent of claimants were monetarily eligible. If monetarily eligible, the weekly benefit amount ranges from \$20 to \$330. In CY 2001, the average weekly benefit amount was \$222. The average duration of benefits recently increased from 11 weeks to 13.

The number of weeks a claimant can receive benefits depends upon the wages earned during the base period. A worker is eligible to receive a total benefit amount equal to 50 percent of base period wages or 26 times the weekly benefit amount, whichever is less.

### **C. Outreach Efforts**

According to state staff, claimants learn about UI through the following methods:

- UC 6 poster. All employers liable to the state for UI taxes are required to post the document in a conspicuous place. When auditing an employer, the field audit unit checks whether the poster is in fact posted and where it is located.
- The rapid response program. UI staff make a presentation at employment sites where mass layoffs (i.e., 50 or more workers) will occur. Employers distribute an application card that enables workers to apply for benefits via mail rather than in person at the local offices.
- Handbooks and pamphlets. Information about the program and how to apply, including the handbook, *Your Guide to Unemployment Insurance Benefits*, is available at the four local offices.
- The DOL website. The UI page contains information about how to apply for services.<sup>44</sup>
- Automated telephone system. The Delaware Division of Unemployment Insurance hotline explains how to file a claim. The telephone number is listed in the yellow pages.

The state also educates employers about the UI program. New employers receive a liability letter and a copy of *Unemployment Insurance Handbook for Employers*, which explains tax liability, experience rating, claims and benefits, and the appeals process. In addition, DOL holds an employer conference at least once per year. Topics include UI claims, taxes, labor market information, and the Workforce Investment Act. Finally, the manager in each of the four local offices maintains contact with the larger employers in the region to get a sense of whether layoffs or hirings are imminent.

### **D. Issues Pertaining to Union Members and Other Specialized Labor**

According to the 2000 Current Population Survey, 12.2 percent of Delaware workers are members of labor unions, relative to a national average of 13.5 percent. As will be described

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<sup>44</sup> <http://www.delawareworks.com/divisions/unemployment/welcome.htm>

further below, some claimants who are members of labor unions do not need to register for work. Instead, they must report to their union hiring hall.

Workers are ineligible for benefits if there is a stoppage of work due to a labor dispute other than a lockout. A lockout exists when:<sup>45</sup>

- The contract between the employing unit and the individual's bona fide labor organization has expired and contract negotiations are continuing;
- The individual, through a bona fide labor organization, has offered to continue working for a reasonable time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations; and
- The employing unit has refused to permit work to continue and maintain the status quo for a reasonable time pending further negotiations.

With regard to seasonal workers, claimants can only collect benefits during the months typically worked. "Seasonal" in Delaware refers specifically to the first processing of seafood or agricultural products. Other industries, such as tourism, are not seasonal by definition; thus workers would be able to collect benefits during non-peak periods (e.g., the winter months). Delaware follows federal law with regard to school employees (so long as they are state employees and not contract employees), professional athletes and individuals with alien status.

## **II. Process for Submitting Initial and continuing claims**

### **A. Application Process**

The majority of claimants (90 percent) apply in person for benefits at one of four local UI offices (Wilmington, Newark, Dover, and Georgetown). We observed the process in the Wilmington office. Claimants arrive at the Department of Labor site, go to the UI division's claims area, and take a number. When the number is called, the claimant meets a claims processor at the counter. The processor asks to see a copy of the claimant's Social Security card.<sup>46</sup> The number is typed into the computer and the screen is populated with wage information. The processor fills out the UI application form, asking the claimant for his or her name, address, date of birth, education, last employer and contact information, last period of employment, and all employers in the past 24 months. The claimant is asked why he or she is unemployed. If the reason is anything other than layoff, the interviewer asks the claimant to fill out a fact-finding statement. Claimants also fill out an income questionnaire at the time of intake, which asks about the receipt of an employer pension, workers' compensation, disability pay, severance/bonus pay, and holiday or vacation pay. If the claimant received severance pay, the interviewer conducts fact-finding. (*Section III.A* describes fact finding in more detail.)

Before the intake concludes, the claimant receives the following forms:

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<sup>45</sup> See Delaware State Unemployment Compensation Law, Title 19, Section 3315.

<sup>46</sup> If the claimant does not have a Social Security card, he or she can show a picture identification and a pay stub that includes the SSN.

- The claimant reads and signs the *Claimant Notice of Receipt of Benefit Rights and Responsibilities*, which explains overpayments and disqualification for benefits, and a statement regarding claimant rights under the law.
- The *Eligibility Review Form* asks the claimant about the kind of work he or she is looking for, the minimum starting wage that is acceptable, hours and shifts preferred, dates available for work, transportation methods, work limitations, and school attendance. The form also asks the claimant to describe his or her proposed work search, including types of employers that will be contacted. The claimant is directed to mail the form to UI with the first pay order form (continuing claim).
- The first *Pay Order Form*, which is used for continuing claims, asks the claimant to describe availability for work and employer contacts (see *Section II.C* for more information on continuing claims). Delaware has no waiting week, so the claimant is instructed to fill out the form and return it the next calendar week.
- Claimants who do not have recall dates and are not members of a union receive an *Intake Interview Notification* form instructing them to register for work search with the Division of Employment and training (DET), which is co-located in the local office. Claimants are encouraged to register while on site. DET returns a copy of the form to UI once the claimant registers.
- The claimant receives a handbook entitled *Your Guide to Unemployment Insurance Benefits*, which explains eligibility, monetary determination, active work search, appeal rights, and work search. The handbook includes a work search log where claimants are encouraged to record employer contacts.

When the intake interview is completed, the claims processor mails a notice to the last employer that a claim has been filed and asks the employer to submit information on the reason for the job separation and amount of holiday, vacation, or severance pay received. The employer is asked to return the form within seven calendar days.

The claims processor does not determine monetary eligibility. A “pseudo monetary screen” gives the processor a sense of what the weekly benefit amount will be. Monetary eligibility is determined by UI staff in the benefits unit, a component of the benefit operations area. A copy of the determination is mailed to the claimant.

While most claimants apply in person for benefits at the local office, there are two other applications methods. As noted above, claimants involved in mass layoffs (i.e., more than 100 workers) can receive application cards from their employers. Claimants also have the option of picking up an application at the local office and returning it via mail. They still need to register for work on site. The state is planning to implement an Internet application option in Summer 2003. There are not plans to adopt a call center.

## **B. Special Needs**

Translation services are available to claimants during the application and appeals processes. UI staff can call InterpreTalk for translation services on the spot or arrange for a translator to appear at the local office. In addition, instructions for how to handle the continuing claims form are printed in Spanish. The agency has plans to print additional forms in Spanish.

## **C. Filing Continuing Claims**

As noted above, claimants receive their first continuing claim form (the pay order form) when they apply for benefits. They are instructed to fill it out and mail it on Sunday (envelopes are provided) or drop it off at one of four local offices. The claim form asks the following questions:

- Enter below any income you had for the week ending date shown above, report earnings, before deductions, in the week worked.
- Were you able to work and available for work each day? (If no, explain in remarks on back.)
- Did you actively seek work? (If yes, list employers contacted for work during the week(s) claimed. If no, explain in remarks on the back.)
- Did you refuse any work, or refuse or fail to go for a job interview? (If yes, explain in remarks on back.)
- Did you attend school or training?
- Since your last claim, have you applied for retirement, a pension, or Social Security, or has your pension or Social Security changed?
- If you have returned to work, check box and complete item 10 on back. [Item 10 asks about the date returned to full-time employment, the employer, and the employer's address.]

The claimant then certifies that the responses are true and correct by signing the form.

## **III. SEPARATION POLICIES AND PRACTICES**

### **A. Fact-Finding and Adjudication Process**

As noted above, the claims processor conducts initial fact-finding for separation issues at the time of the application. The claimant is asked why he or she is unemployed. If the reason is anything other than layoff, the processor asks the claimant to fill out a fact-finding statement. If the separation was due to a discharge, the statement asks the claimant to give details on why he or she was discharged; whether there were warnings and, if so, the dates; and the details of company policies. If the claimant quit, he or she is asked to give details regarding the reason for the quit; what was done to resolve any problems; and the company policies involved. If the quit was due to a medical condition, a doctor's statement must be submitted. The claimant certifies the fact-finding statement by signing it.

If an issue was detected by a claims processor, the claimant is referred immediately to a deputy (adjudicator). The deputy meets with the claimant while he or she is still on site and reviews the facts of the employment situation, such as the dates of employment; rate of pay; employer name and address; and the supervisor's name. The deputy then clarifies the cause of the separation. For instance, if the claimant was discharged, the deputy might ask for more information regarding company policies on discharges, the number and nature of the warnings issued to the claimant (e.g., verbal or written), and the claimant's understanding of the company's policy.

The claimant is advised to file for the next week (the pay order form). The deputy then contacts the employer to discern the cause of the separation and to request documentation (e.g., written warnings). Although separating employers are sent a fact-finding statement as part of the application process, deputies find that forms often are not returned, and when they are, they often lack detail. Thus, follow-up calls are important to the adjudication process. The deputy will make two calls within 48 hours. If the employer does not respond, the deputy will write the decision based on the information available.

If the employer and claimant statements contradict each other, the deputy will call the claimant and offer the opportunity for a rebuttal. In very difficult cases, the deputy might consult with the Senior Claims Deputy or an appeal referee to determine if there is a precedent case.

Deputy decisions are mailed to both parties. Instructions on how to appeal the decision are included in the mailing.

## **B. Issues Pertaining to Voluntary Quits**

Quits for good cause must be attributable to work. The statute notes, "An individual shall be disqualified for benefits for the week in which the individual left work voluntarily without good cause attributable to such work and for each week thereafter until the individual has been employed in each of four subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than four times the weekly benefit amount."<sup>47</sup> The statute spells out two reasons for quits that does not disqualify the claimant: illness and domestic violence.

- According to the law, "If an individual left work involuntarily due to illness, no disqualification shall prevail after the individual becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability."<sup>48</sup> Staff note that the claimant must be able and available for the work that he or she is qualified to do. For instance, if the claimant drove a tractor-trailer in the previous job, he or she must be available for that type of work and able to do it.
- The law also recognizes domestic violence: "If an individual has left work due to circumstances directly resulting from the individual's experience of domestic violence, as that term is defined in Section 703A(a) of Title 13, no disqualification shall prevail."

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<sup>47</sup> Title 19, Section 3315 (1).

<sup>48</sup> Title 19, Section 3315 (1).

Claimants must provide documentation to support domestic violence. According to the statute, “When determining whether an individual has experienced domestic violence for compensation purposes, the Division shall require the individual to provide documentation to the Division of the domestic violence involved, such as a police or court record, or documentation of the domestic violence from a shelter worker, attorney, member of the clergy or medical or other professional from whom the employee has sought assistance in addressing domestic violence and its effects.”<sup>49</sup>

Determining good cause for a job-related quit involves some discretion on the part of the deputy. According to UI staff, if a quit was due to risk to the employee’s health or sexual harassment, the deputy would look for evidence that all administrative avenues had been exhausted (e.g., reported the incident, sought a reassignment). Claimants who quit due to reductions in pay or changes in job duties would also have to document that they exhausted administrative avenues with their employers before quitting. An example of a good cause voluntary quit would be as follows: An employee worked the 7 a.m. to 3 p.m. shift and was reassigned to the 3 p.m. to 11 p.m. shift. The employee was hired specifically for the early shift and is unable to find childcare for the later shift. This would constitute both a change in the original employment conditions and good cause for quitting (i.e., no night child care was available).

Claimants who quit because of urgent or compelling personal reasons (e.g., to care for a family member, to follow a spouse) are not eligible for benefits. As noted previously, the disqualification for voluntary quitting employment is working for four weeks in covered employment and earning at least four times the weekly benefit amount.

### **C. Issues Pertaining to Discharges**

The UI statute states that an individual is ineligible for benefits if he or she is “discharged ...for just cause in connection with the individual’s work.”<sup>50</sup> The length of the disqualification is employment for four weeks and earnings of four times the weekly benefit amount. According to UI staff, a claimant’s behavior must be willful or wanton. Inefficiency, inability to do the work, or misjudgment do not rise to the level of willful or wanton misconduct. While there are a number of precedent cases on the issue, the statute does not specify just cause.

There is considerable discretion in interpreting discharge rules. Staff will try to determine if the individual was trying to the best of his or her ability, whether performance has changed over time, whether the claimant was aware that the behavior was grounds for termination. The employer must show progressive discipline (e.g., a warning, a suspension) and provide documentation. The employer must also communicate the reason for the firing.

### **D. Trends Over Time**

The percent of new claims that resulted in a separation determination increased about 77 percent between 1989 and 1999, from 13 percent to 23 percent. In 1999, Delaware’s determination rate was similar to the national average (22 percent). Staff was unsure of why the separation

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<sup>49</sup> Title 19, Section 3315 (1).

<sup>50</sup> Title 19, Section 3325 (2).

determination rate increased during the 1990s. Other than adding a provision to the statute regarding domestic violence (which staff note is evoked rarely), there have not been changes to the UI rules. They speculated that the strong economy resulted in fewer layoffs, thus more separations were due to quits or discharges.

The proportion of separations that resulted in denials declined about 15 percent between 1989 and 1999, from 72 percent to 61 percent. The denial rate in 1999 exceeded the national average (53.5 percent).

## **F. Variation Across State**

Delaware has four local offices that serve the three counties in the state. Two offices are located in New Castle County (Wilmington and Newark) where the bulk of the state population resides. Two-thirds of UI claimants are in New Castle County. Aspects of the program other than claimant residence, such as reasons for job separations or benefit duration, are not tracked by local office.

## **IV. NON-SEPARATION POLICIES AND PRACTICES**

### **A. Fact-Finding and Adjudication Process**

Non-separation issues are detected during the intake process and the continuing claims process.

As noted above, claimants fill out an income questionnaire at the time of intake, which asks about the receipt of an employer pension, workers compensation, disability pay, severance/bonus pay, and holiday or vacation pay. Receipt of severance pay affects the start date of UI payments. Claimants must exhaust severance benefits before drawing down UI payments. The claims processor conducts fact finding at the time of the application, and the claimant may be asked to speak to a deputy. At intake, claimants are also given an eligibility review form to return with the first continuing claim form. Responses on the form indicate ability to work and availability. An eligibility review interviewer in the local office reviews all submitted forms to determine if there is a non-separation issue. If, for example, the claimant indicated he or she does not have transportation, the form will be routed to a deputy who will conduct fact finding.

The continuing claim forms ask claimants a series of questions regarding availability and work search (see **Section II.C** for the exact questions). If an issue arises (e.g., the claimant reported being unavailable for work or did not contact any employers), the deputy conducts fact-finding.

### **B. Able and Available**

The UI statute states that claimants must be able to work and available to work.<sup>51</sup> Ability and availability are not defined in the law. According to UI staff, “able” means having no illness, disability, or restriction (e.g., lack of transportation or child care) that prevents work.

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<sup>51</sup> Title 19, Section 3314.

The State Supreme Court addressed the issue of ability and availability in a 1982 case ruling. The Court found that “determination of ‘availability’ for unemployment compensation purposes is subjective, in the sense that the ability of a particular employee to secure work must be measured by the skill of that employee in an identifiable labor market.” Moreover, “The term ‘availability’ for employment incorporates both the requirement of ability to work and qualification through skill, training or experience for a particular occupation, commonly expressed in terms of ‘an identifiable labor market.’”<sup>52</sup> Thus, work history indicates the type of work for which a claimant should be available. Staff noted that a claimant with a history of part-time work could be available for part-time work and still receive benefits. A claimant with a history of working 40-hours per week, however, could not restrict availability to part-time work.

Staff also noted that a claimant with an illness might still be deemed available for work so long as he or she was available more than three days per week and is under the care of a doctor.

A claimant is disqualified from benefits in any week that he or she is not able and available for work.

### **C. Disqualifying and Deductible Income**

When claimants apply for benefits, they report on the *Claimant Income Questionnaire* whether they received a pension (employer, military, or lump sum), railroad retirement, an annuity, an IRA, workers compensation, sickness/accident pay, disability pay, severance/bonus pay, or holiday/vacation pay. As noted above, severance pay is treated as wages, and claimants must exhaust their severance benefits before they can claim benefits. Pensions and annuities are not treated as wages. Instead, pensions paid by base period employers are deducted from the weekly benefit amount. For example, if the weekly benefit amount was \$100 and the claimant received a pension of \$25 per week, the UI benefit would be reduced to \$75. Vacation and holiday pay are not considered wages, so are not treated the same as severance pay (i.e., they do not have to be exhausted for benefits to be paid). However, if a claimant receives holiday or vacation pay while working part-time and receiving benefits, it will be deducted from the benefit in the week it was accrued.

Continuing claimants are allowed to earn 50 percent of their weekly benefit amount without any deductions. Earnings over 50 percent are deducted dollar for dollar. For example, a claimant with a weekly benefit amount of \$100 could earn \$50 in gross wages without being penalized. If the claimant earned \$75, the weekly benefit amount would be reduced by \$25.

### **D. Work Search**

Delaware claimants must be engaged in an active work search to be eligible for benefits. They must make at least one job contact each week and indicate the relevant information (date, employer, location, type of work sought, results) on the back of the continuing claim form. The method of contact should be appropriate to the employer and industry. For some employers, this will entail mailing a resume. For others, it will mean going in person and asking to speak to a

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<sup>52</sup> This note pertains to the court case, *Petty v. University of Del.*, Del.. Supr., 450 A.2<sup>nd</sup> 392 (1982).

human resources representative, applying for a job over the Internet, or making a contact via telephone. Claimants are encouraged to keep a list of employer contacts in the work search log located in the handbook, *Your Guide to Unemployment Insurance Benefits*.

Claimants are ineligible for benefits in any weeks that they do not make an employer contact.

## **E. Work Registration**

Claimants who are *not* members of a labor union with a hiring hall or who do not have a recall date must register for work at DET. As noted above, DET is co-located with UI at local office locations. When a claimant applies for benefits and indicates that he or she does not have a recall date and is not a member of a labor union, the UI claims processor explains that it will be necessary to register for work. The claimant is given the *Intake Interview Notification* form to take to DET and is instructed to register while on site. Once the claimant has registered, a DET staff person will sign the form and forward a copy to UI.

Failure to register will result in a disqualification of benefits until the claimant complies.

## **F. Profiling**

Delaware uses a characteristics model to determine who is at risk of exhausting benefits. The model identifies the following individuals: (1) claimants who do not have a recall date, who are not a members of a union hiring hall, and who have received a payment; and (2) individuals who were laid off from a slow-growth or declining industry, last worked in a slow-growth or declining occupation, and worked for their last employer for at least three years (i.e., long-term employment). Slow growth is defined as growing by less than 25 percent over five years.<sup>53</sup> All claimants who meet these criteria are referred to DET for services. This amounts to between 20 and 50 claimants per week statewide. Approximately 5 percent of all claimants that file a new claim are selected for referral to DET.

DET staff are notified by UI of individuals who are selected to participate. DET sends a letter to these claimants that indicates they are required to attend a joint UI-DET orientation meeting. The orientation is about 30 minutes in length and describes services available through DET. Following the orientation, claimants are assigned to a DET case manager (in the Wilmington office, where we observed the orientation, case managers are assigned depending on whether the claimant is interested in job search or training). The claimant then meets with the case manager to develop a service plan.

If a claimant does not attend the orientation session, DET will send a second notice and reschedule him or her for a session the following week. If the claimant still does not report to the orientation, the UI staff person assigned to profiling (the social service specialist in Wilmington and the UI interviewer in the other three local offices) is notified. This staff person may refer the case to a claims deputy for adjudication. The individual is notified that he or she must contact DET to reschedule the orientation in order to continue to meet eligibility requirements.

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<sup>53</sup> This definition changes over time depending on the size of the profile pool. In the past, “slow growth” was closer to 15 percent. In an effort to boost the size of the pool, the definition was expanded.

UI staff expressed some frustration with the profiling program. Most claimant service plans focus on job search and do not take advantage of the array of resources offered through DET. There is also little follow-up with profiled claimants to determine if they need additional services. Staff suggested this is due in part to a culture in DET that emphasizes customer service and options (i.e., staff do not want to appear heavy-handed). At this time, UI is in the process of developing additional policies and procedures with regard to profiled claimants. For example, claimants who are unemployed after 20 weeks of benefit receipt may be called into DET to review and possibly revise the service plan.

## **G. Eligibility Reviews**

Eligibility review interviews (ERI) are not conducted systematically. If an individual reaches the 10<sup>th</sup> week of a claim, he or she becomes eligible for an ERI. A staff person (the Social Service Specialist in the Wilmington office and the UI Interviewer in the other three offices) will randomly select cases that have been paid for 10 weeks or more.<sup>54</sup> The claimant is sent a letter explaining that he or she has been selected to participate in an ERI. A date and time are specified. In some instances, ERIs are conducted over the telephone. The purpose of the interview is to review the claimant's current work search plan, enhance the plan if necessary, and review the services offered by DET. Employers are not contacted to verify information.

Failure to report for an ERI results in a disqualification of benefits. The disqualification remains in place until the claimant complies.

## **H. Suitable Work**

The statute states that benefits are denied "If an individual has refused to accept an offer of work for which the individual is reasonably fitted."<sup>55</sup> This does not apply if the individual, as a condition of hire, must join or refrain from joining a union; the position offered is vacant due to a strike; the work is at an unreasonable distance from the individual's residence; or the remuneration, hours, or other conditions of work are substantially less favorable than those prevailing for similar work in the locality.<sup>56</sup>

"Suitable" is not defined in the code. Thus, when determining whether a job is suitable, staff explore the claimant's work history. Staff consider the wage level, shift, distance and occupation. For instance, a tractor-trailer driver would not be expected to look for work as a cashier. A shift worker who traditionally worked the night shift would not be able to reject a job because he or she wants to work only the day shift. In terms of wages, staff will examine the going rate for a particular job, which may or may not be the same wage the claimant earned at his or her last job. An engineer who worked for five years at a firm would be unlikely to command the same salary as a new employee at a different firm. The general rule is that a 15 percent pay cut is reasonable.

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<sup>54</sup> Because this is a random selection process that varies from week to week, there is no set annual selection percentage.

<sup>55</sup> Title 19, Section 3348 (3).

<sup>56</sup> Title 19, Section 3348 (3)a-d.

Determining whether an individual rejected a suitable job can be difficult. Claimants are asked on the continuing claim form if they refused suitable work (question #4). An employer might report to UI that a person refused a job. In such an instance, UI staff will ask for some type of documentation that a job offer was in fact extended. DET staff will notify UI if a claimant was referred for an interview and did not go. Failure to accept suitable work results in the disqualification of benefits until the claimant has worked for at least four weeks and earned four times the weekly benefit amount.

## I. Trends Over Time

The percent of claimant contacts that resulted in a non-separation determination decreased almost 60 percent between 1989 and 1999, from 2.9 percent to 1.2 percent. In 1999, Delaware's non-separation determination rate was considerably lower than the national average (4.1 percent of claimant contacts). Staff was unsure of why the non-separation determination rate decreased during the 1990s. There were no major policy changes. One possibility is that eligibility review interviews became less common.

The proportion of non-separation determinations that resulted in denials increased about 40 percent between 1989 and 1999, from 64 percent to 89.5 percent. The denial rate in 1999 exceeded the national average (53.5 percent).

## V. NON-MONETARY DETERMINATION APPEALS

There are four levels of appeals in Delaware: two administrative appeals (the lower level referee hearings and the higher level UI Appeals Board hearings) and two court-level appeals (the Superior Court and the state Supreme Court).

Requests for an administrative appeal (lower level or higher level) must be in writing. Directions for how to appeal are indicated on the previous decision (i.e., the deputy's decision or the UI referee's decision). Claimants or employers can fill out a form at one of the four local offices or they can mail appeal requests. All appeals are forwarded to a central Appeals Unit. A staff person will send a hearing notice two weeks prior to the hearing to all parties involved.

**Lower level appeals.** Claimants and employers have 10 calendar days from the date the deputy's decision was mailed to submit an appeal. Lower level appeals are conducted in the local offices, usually the office where the appeal was filed. Most hearings are in-person, although parties may be granted permission to participate by telephone upon request in certain extenuating circumstances. A UI referee presides over the hearing. There are seven referees (three part-time and four full-time); all but one have law degrees. Lower level appeals are de novo hearings. Thus, although the referee will read the documentation surrounding the determination prior to the hearing to glean the facts of the case, the documentation does not become part of the official record, but it may be entered into the record upon the motion of either party if relevant to the case as determined by the appeals referee.

Hearings are audio taped. Parties are sworn in. Each party has the opportunity to testify and cross-examine the other party. In some instances, a UI staff person will testify on behalf of the Department (generally able, timeliness of filing, and available and work search issues). Third party representation is uncommon at this level. If the appealing party fails to show, the case is

dismissed and the deputy's ruling stands. If the appealing party shows and the other does not appear, the hearing goes forward. Because it is a de novo hearing, the referee's decision is based solely on the evidence provided at the hearing. Decisions are sent to both parties via mail, usually within a week or 10 days of the hearing. Staff noted that more deputy decisions are affirmed than reversed, although exact figures were not available.

In 1999, 22 percent of determinations were appealed to the lower level, an increase from 16 percent in 1989. The appeals rate exceeded the national average in 1999 (12 percent). Suggestions were offered as to why the appeal rate was higher than average, including the ease of filing an appeal (it can be done in the local office), and the increase in employer representatives. Staff note that employer appeals have become more common.

**Higher level appeals.** If either party is unsatisfied with the referee's decision, it can be appealed to the UI Appeals Board. This is a five-member board appointed by the Governor. The members are not attorneys. An attorney from the Department of Justice serves as the legal advisor to the Board. The Board can review the record from the referee hearing without taking additional evidence, or it can schedule a supplemental hearing, in which the appealing party is asked what he or she disputes from the referee's decision. Between 10 and 15 percent of higher level appeals are reviews of the record only.

About one-third of referee decisions are reversed. Each referee gets a copy of the cases that were appealed to the Board, and the corresponding decisions.

Once administrative appeals are exhausted, either party can appeal to the Superior Court, and then the Supreme Court. Staff said UI does not collect data on court appeals but estimates that they are rare.

## VI. OTHER ISSUES

### A. Experience Rating

Experience ratings are based on three years of taxable wages, benefit wages charged, and rehire credits.<sup>57</sup> The summed three years of adjusted benefit wages charged (benefit wages minus rehire credits) is divided by the summed taxable wages to determine the benefit wage ratio. For instance, if an employer paid benefits of \$12,000 over three years and had a wage base of \$204,000 during those same years, the benefit wage ratio would be 5.9 percent. This ratio corresponds to a tax rate on a tax table (2.3 percent). To find the appropriate tax rate, the employer must know the state experience factor in use for the year (it ranges from 1 to 50 and in 2002 is 39). The experience factor is calculated by summing the total benefits paid from the UI trust fund for three years and dividing the product by the total benefit wage charges of all employers during the same three years. The state adds a supplemental assessment rate of 0.2 percent to all employer rates, for a total tax rate of 2.5 percent. The rate ranges from a low to 0.3 percent to a high of 8.2 percent. In 2001, about 4 percent of employers paid the maximum rate.

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<sup>57</sup> If an employee is hired back before collecting 25 percent of the benefit weeks, the employer gets a 75 percent credit; if the employee is hired back before collecting for 50 percent of the weeks, the employer gets a 50 percent credit; if the employee is hired back before collecting 75 percent of weeks, the employer gets a 25 percent credit.

New employers are not experience rated for their first two years. Instead, they pay a new employer tax rate that corresponds to their industry. The new employer rates, construction industry and non-construction industry, are calculated each year in accordance with Section 3348, Title 19, *Delaware Code*. The new employer rate assigned to an employer is the rate in effect at the time the employer became subject to the provisions of the DE UI Code.

The employer handbook points out that the size of the payroll affect the tax amount. A smaller business (i.e., smaller taxable wage base) will see a larger effect of one or more employees collecting UI benefits than a larger business. Staff note that employers call and ask for projections (i.e., if one more employee files for benefits, what effect will the claim have on the tax rate).

## **B. Role of One-Stop Career Centers**

In Delaware, the one-stop career centers house the Employment Service and Workforce Investment Act (WIA) programs. Both are operated by DET. The four local UI offices (Wilmington, Newark, Dover and Georgetown) are physically co-located in the offices or office complexes that house the one-stop career centers. However, UI is not technically part of the one-stop network.

As noted above, UI claimants receive employment-related services from DET at the one-stops. These include:

- Claimants who must register for work search are referred by UI to DET staff at the one-stop. Because UI and DET are located in the same office complex, claimants are encouraged to register for work search on the same day they apply for benefits.
- Claimants who participate in the profiling program receive services from DET at the one-stops.
- All claimants (regardless of whether they are profile program participants) can use the job search services at the one-stop, including the career resource room (which contains computers, fax machines, phones, staff assistance with resumes), career counseling, job matching and referrals, and aptitude tests.

## **VII. Unique features of Delaware's program**

Delaware has a number of unique features and policies. These include:

**Local Office Structure.** Claims are still accepted in and processed by staff in local offices. Deputies in the local offices adjudicate claims. There is no centralized call center or adjudication unit, and there are no plans to implement a centralized approach. UI staff suggested that a decentralized process is beneficial to both staff and claimants. Staff get a sense of the industries and employers in their area and can develop a rapport with them. Claimants do not have to travel far to get to an office. UI staff also noted that in-person meetings are important. Claimants report in customer satisfaction surveys that they have a certain comfort level with face-to-face meetings, particularly when applying for benefits. It provides an opportunity to see what is happening and ask questions. UI deputies agreed that in-person interviews are good, in part

because they can observe the claimant when he or she is answering questions and in part because they provide an opportunity to explain the process to the claimant.

**Stringent Quit Rules.** Another interesting feature of the UI program is that while the state has a relatively high reciprocity rate, the rules surrounding voluntary quits are stringent. Quits must be work-related and supported by documentation (two exceptions are illness and domestic violence). There are no authorized quits for personal reasons.

**Other Rules not Specified.** Other program rules are not spelled out in the code. The UI statute, for example, does not specify how misconduct is defined, leaving a great deal of room for deputy interpretation. Nor does the statute define “able and available” or “suitable work.” Court cases give staff some direction. Generally, staff use work history as a basis for determining availability and whether work is suitable.

**Benefits Available for Part-Time Workers.** Claimants can qualify for benefits if they worked part time, so long as they meet monetary requirements. A claimant with a history of part-time work could be available for part-time work and still receive benefits.

**No Waiting Week.** Delaware does not require claimants to wait a week before claiming benefits. Thus, an individual who applies for benefit on Friday would submit a continuing claims form the next Sunday. Staff said that the lack of a waiting week adds time pressure to the claims deputies, who are required by federal law to issue decisions on separation determinations within 21 days of the start of the claim.

**Employer Tax Schedule.** Experience ratings are based on a number of factors, including taxable wages, benefit wages charged, and rehire credits. Once the benefit wage ratio is calculated, a table, based on the state experience factor, is used to determine the tax. The state experience factor ranges from 1 to 50 and depends on the total benefits paid over three years from the trust fund in relation to total benefit wage charges of all employers during the same years. In 2002, the state experience factor was 39. If, for example, the employer’s benefit wage ratio was 7.0, the basic assessment rate is 2.7 percent under the experience factor of 39. If the experience factor was 45, the tax would have been 3.1 percent; for an experience factor of 20, it would have been 1.4 percent.

## Maine Site Visit Report

To learn more about how Maine defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from The Lewin Group and Johns Hopkins University conducted a site visit to the state from August 19 to 21. We met with state-level staff at the Bureau of Unemployment Compensation, staff from the UI call center in Lewiston, appeals staff in Augusta, and staff from two career centers (the state's One-Stops) in Lewiston and Portland.

This report provides an overview of Maine's UI program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state, the role of the career centers, and the state's planned changes in the near future. The report concludes with a discussion of the features of Maine's program that we found to be unique to the state, some of which could help explain some of the UI outcomes for the state.

### I. GENERAL OVERVIEW OF Maine's Unemployment Insurance PROGRAM

From material provided by the state, the purpose of UI is "to provide an economic safety net for individuals who are out of work through no fault of their own. It provides the individual with an economic bridge from one job to another. Additionally, by infusing money into local communities and the state, unemployment benefits help counteract the negative effect of rising unemployment and economic downturns."<sup>58</sup>

According to state staff, Maine has strong labor representation, and unions are politically active. The employers group are not as vocal, operating more behind the scenes and focus more on maintaining the status quo.

Overall, the state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is high, relative to other states. This is driven by relatively high rates of inflow.<sup>59</sup> The rate of separation determinations per initial claims is very low, meaning almost all initial claims go uncontested by employers. Employers in the state also initiate a smaller share of all appeals (just 18 percent) compared with a national average of about 28 percent.

#### A. Organizational Structure

The Bureau of Unemployment Compensation (UC), the Bureau of Employment Services (ES), and the Division of Administrative Hearings (DAH) are three separation divisions within Maine's Department of Labor.<sup>60</sup> Under Unemployment Compensation, there are four offices: Tax, Benefits, Support, and Field. The three call centers (located in Lewiston, Orono, and Presque Isle) fall within the Field Office's domain.

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<sup>58</sup> From "An Overview of Unemployment Compensation," March 2001.

<sup>59</sup> We are using Wayne Vroman's definition of inflow (ratio of first payments to new spells of unemployment), duration (the ratio of the average duration of benefits to the average duration of new spells of unemployment), and reciprocity (the product of inflow and duration).

<sup>60</sup> Three other divisions include the Bureau of Rehabilitation Services, the Bureau of Labor Standards, and the Division of Labor Market Information Services.

In the call center, the state uses integrated teams to handle claims. Each team includes the team leader (a supervisor), about 10 claims intake staff, and about 5 adjudicators. Some of the intake staff are aides, while others are claims specialists, who have additional experience and more responsibilities (they train new staff and are members of Rapid Response teams). There are three teams located in the Lewiston call center, two teams in the Orono center, and one team in Presque Isle. In addition, each of the largest centers (Lewiston and Orono) has a regional manager. The state gravitated to the mixed-team concept after experimenting with other staff configurations. They prefer the mixed-team approach because it increases communication between the intake staff and adjudicators and increases teamwork. A complaint with moving to the call center approach, voiced by staff after the move, was that the center was too large and impersonal.

The Bureau of Employment Services operates 24 career centers throughout the state.

## **B. Monetary Requirements**

The state first determines whether the claimant is monetarily eligible based on wages in the regular base period – the first four of the last five completed calendar quarters. If not eligible based on the regular base period, the system looks to see whether the claimant is eligible based on wages in the alternate base period – the last four completed quarters.

To be monetarily eligible, the claimant must meet two requirements in either the regular or alternate base period:

- During at least two calendar quarters in the base period, they must have been paid wages which are at least two times the annual average weekly wage in Maine.
- Over the entire base period, they must have been paid wages totaling at least six times Maine's annual average weekly wage.

If monetarily eligible, the weekly benefit amount (WBA) is determined by dividing the average of the quarterly wages in the two highest quarters of the base period by 22, not to exceed \$283, and at least \$49. The maximum total benefit amount is equal to either 26 times the WBA or one-third of the total base period wages, whichever is less.

In addition to the WBA calculated above, the state offers a dependency allowance equal to \$10 for each child under the age of 18. The dependency allowance is also provided for children over the age of 18 who are dependent and full-time students or are incapable of earning wages because of a mental or physical incapacity.

After receiving unemployment benefits during one benefit year, to be eligible in the second benefit year, the claimant must have earned eight times the WBA in the new benefit year.

## **C. Outreach Efforts**

The state conducts a number of outreach efforts that are worth noting:

- The state has produced a 30-minute video program that spends about 20 minutes on the UI program and the claims process and 10 minutes on employment services offered at

local offices. This program is shown statewide twice a week on the local public broadcasting system (PBS) network. Claimants can also watch the video at the local career centers, as well as access it from the Internet.

- A Rapid Response Team is sent to employers planning to lay off at least 20 workers. The team is made up of members from both the call centers and the career centers who provide employers, union leaders and employees with a brief overview of UI, and how to file for benefits, advise them of the services available from UI and ES, and provide them with informational brochures on these services.
- All employers are required to post a notice on UI benefits in “conspicuous places near the actual locations where workers’ services are performed.”<sup>61</sup> The state recently revised this notice to reduce the “legalese” language. While posting the notice is a statutory requirement, employers are not sanctioned when they fail to do so.
- UI provides local career centers with employer services brochures, paper claim applications, and claimant handbooks.
- UI field representatives (who work in the call centers and career centers throughout the state) attend professional organization meetings from time to time to meet with employers and discuss their concerns. For example, the local chambers of commerce and professional accounting groups hold meetings periodically and invite these representatives to come and present information on employer responsibilities under the UI program.

## **D. Issues Pertaining to Union Members and Other Specialized Labor**

### **1. Unions**

In 2001, about 14.5 percent of Maine workers were members of a labor union, members of an employee association similar to a union, or workers who were not union members, but whose jobs were covered by a union or an employee association contract labor union. This is slightly less than the national average of 14.8 percent.<sup>62</sup> However, as mentioned above, unions are a strong force in the state. As a result, the state has implemented some policies that favor employees (discussed further below).

Womens’ groups are also politically active in the state and successfully fought to increase UI eligibility for women who quit due to domestic violence. Now these groups (with organized labor) are pushing for an expansion of UI for part-time workers. The proposed measure failed in the state legislature earlier when it was introduced, but according to staff at the state level, it is likely to pass in the future.

### **2. Seasonal Workers**

The state has very complex seasonal laws, defining in great detail what is seasonal (e.g., tourism work) and what is not. Seasonal workers are only eligible for benefits during the regular seasonal

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<sup>61</sup> Maine Employment Security Laws.

<sup>62</sup> From the Department of Census Current Population Survey (CPS).

period. The UI call centers experience greater numbers of people filing claims during the winter months, in part because the tourism and construction industries tend to lay off workers during this season. These claims are especially complicated when workers have both seasonal and non-seasonal jobs, and staff have to determine who is the bona fide employer. Seasonal claims may also result in a greater numbers of appeals.

Generally, school employees and professional athletes are not eligible for benefits during breaks. When a school or professional team determines that the workers will not have a job after the break, they might be eligible. Also, school bus drivers might be eligible if they are employed by contractors; bus drivers that are school employers are not eligible.

## **II. Process for Submitting Initial and continuing claims**

### **A. Application Process**

Claimants have the option to file by mail or call one of the 11 local exchange numbers. Most choose to call the local number, which will route them to one of the call centers, usually the one that is assigned to the local exchange number. Depending on call volume, the call could be routed to another call center in order to reduce time spent in queues.

For initial claims, the claims taker follows a written script, asking a series of questions: Whether the claimant expects to be recalled to work by his or her former employer; whether he or she is in school full time; the occupations held with the most experience in the last 10 years; whether a member of a union; and the number of dependent children. The representatives also ask questions on the claimants' characteristics (highest grade of school; number of household members; marital status; race; and citizenship) that are more for research purposes. They then ask questions that help determine whether they are not able (if there are any reasons they cannot work in their regular occupation), are self-employed or working on a commission basis, are an officer of a corporation, or received retirement or Social Security pension payments. Responding yes to any of these questions results in a fact-finding interview.

After going through the standard questions, the claims taker reviews the claimant's work history and reason he or she is no longer working for the last employer. The separation information is sent to the employer, and a fact-finding interview is scheduled if the claimant gave a reason other than "lack of work." Also, if the claimant admitted to refusing any jobs since becoming unemployed from the last employer, the claims taker will schedule a fact-finding interview.

The fact-finding interview is scheduled at least five days after the application is submitted as Maine law requires a written notice of fact-finding of at least five days but no longer than 14 days. In the meantime, the call center sends the claimant the claimant handbook, advises the claimant of his or her rights and responsibilities, and sends a form that is particular to the issue. Before ending the call, the claims taker walks through what the claimant should expect: a claimant handbook in the next few days, claim cards each week, and a form outlining the monetary benefit amount. In addition, the claimants are advised to watch the UI program on PBS and are informed of the services available to them at their local career center. Staff estimated that the initial claims process takes only about 8 to 10 minutes to complete, if there are no issues. In

the week prior to our visit, the Lewiston call center took 502 initial claims; a total of 1,144 initial claims were taken in the state.

If the claimant appears to be ineligible based on monetary criteria, the claims taker will inform the claimant of this, but will still complete the claim. If all wages are not in the system, there will be a wage investigation, handled by the tax office. This occurs in about 5 to 10 percent of all claims.

Interstate claimants, where claimants reside and have wages in another state besides Maine, are more complicated. Claimants can file a combined wage claim with the state where they reside, file a straight Maine intrastate claim if they are eligible (based only on their Maine wages), or file a claim for the other state alone.

Maine also receives a number of international claims from Canada. Canadian loggers work part of the year in the U.S. This negatively affects Maine's ability to meet DOL's interstate performance goals regarding timeliness because Canada needs to review the application, translate it into English (from French), and cross-match the application with its own system to ensure claimants are not filing claims in both countries before forwarding the claim to Maine.

The term "interstate claimant" does not include an individual who regularly commutes to work in Maine from another state and has no wages in any other state. These "commuter claimants" generally come from New Hampshire and can be filed through the call center. Commuter claimants make up a very small share of total claims (substantially less than interstate claimants).

## **B. Special Needs**

The staff use the translation services provided via the telephone from the LanguageLine for claimants who do not speak English. While Maine is not a state that has large populations of non-English speakers, relative to other states, claimants have requested services in 30 languages or dialects in the last year. There has been a surge in Hispanic migrant workers recently.<sup>63</sup> The state also has a large population of French-speaking workers, given its close approximation to Canada, although these workers tend to speak English as well.

## **C. Filing Continuing Claims**

The state processes all continuing claims by mail. Claimants receive claim cards every week they must complete and send to the UC call center. They may mail their weekly cards as late as 21 days after the end of the week being claimed, although this would result in a delay of benefits.

The state is making plans to allow claimants to file weekly by phone. Current projects are that this service will be available statewide by the end of January 2003.

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<sup>63</sup> A study conducted by the Maine Department of Labor found that the number of seasonal alien agriculture workers (not including alien workers who do not need alien certification) grew from 1,154 in 1998-1999 to 1,704 in 1999-2000 (a 48 percent increase in one year) . From "A Study on Temporary, Part-time and Seasonal Employees in Maine."

### III. NON-MONETARY SEPARATION POLICIES AND PRACTICES

#### A. Fact-Finding and Adjudication Process

Staff are required to give all relevant parties five days written notice before they conduct a fact-finding interview, regardless of the issue. This is a statutory requirement strongly supported by labor unions. According to UI staff, this creates delays and affects the state's performance on DOL's timeliness measures. In some cases, they know the claimant is ineligible, but cannot rule on the claim until five days later. This situation is further exacerbated by the fact that any resulting overpayment cannot be set up until the decision has become final under Maine law (30 days).

The last employer is held liable for the entire claim, unless the claimant was employed for five weeks or less. However, in all claims, forms are sent to the last employer, who has 10 days to complete it, although most will complete it prior to the fact-finding interview.

All fact-finding interviews take place via telephone by adjudicators located in the call center. Generally, the fact-finding interview is conducted first with the claimant and then with the employer. Fact-finding interviews take about 30 minutes for separation issues. If the information supplied by the employer differs from what the claimant stated, the adjudicator will call back the claimant, adding to the time required to adjudicate.

Large employers in the state, like L.L. Bean and Wal-Mart, rely on third-party representatives. These representatives reside in other states (e.g., Colorado and Massachusetts) and rarely respond to adjudicators' requests for information. If it is critical, the adjudicator will call the employer, although they will always attempt to reach the third-part representative first. Several workers mentioned that there might be a financial incentive for these representatives to wait until the decision is appealed to respond.

#### B. Issues Pertaining to Voluntary Quits

Benefits are allowed if the claimant had good cause for leaving related to work. In addition, some reasons not related to work are allowed. As is true in most states, the burden is on the worker to prove good cause for voluntarily quitting. Reasons for good cause are specified in state law and include the following:

- **Illness.** Claimants who need to quit due to their own illness or a family member's might be eligible for UI if they informed the employer of the reason for their absence, kept in contact with the employer, and requested reemployment when they were able to work. In such situations, benefits would not begin until the claimant is determined to be medically able to work.
- **Leaving to accept a new job.** Benefits are allowed if the claimant left a job to take another, but the new job fell through because of actions by the new employer.
- **Leaving to accompany, follow, or join his or her spouse.** This is generally allowed, assuming the claimant seeks work in the new residence.

In addition, claimants who leave to protect themselves from domestic abuse are eligible, assuming they made all reasonable efforts to keep their job. The claimant handbook defines domestic violence as “attempting or actually causing bodily harm, or putting another in fear of bodily injury. It also includes controlling another’s conduct, restricting another’s movements, threatening, or intimidating another person.”

According to staff, a substantial portion of quits are due to illness. Even if the claimant is allowed under the voluntary quit provision, he or she might not be eligible under the able requirement. For this assessment, the adjudicator relies on the doctor’s diagnosis. If the claimants are able to do other work, they are eligible.

### **C. Issues Pertaining to Misconduct**

The state law defines misconduct as “a culpable breach of the employee’s duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer.” In 1999, the law clarified some of the ambiguities in the definition of misconduct, providing specific examples of misconduct. These include:

- refusal to perform reasonable duties assigned by the employer;
- failure to exercise due care for punctuality after warnings;
- providing false information or dishonesty that substantially jeopardizes the material interest of the employer;
- intoxication while on duty; using illegal drugs while on duty;
- unauthorized sleep while on duty;
- insubordination; abusive or assaultive behavior while on duty;
- destruction or theft;
- conviction of a crime in connection with the employment; and
- absence for more than two work days due to incarceration for a conviction of a crime.

Prior to 1999, there were more grey areas – employers claimed that it was too easy to not find misconduct and pushed to get the clarification put into law.

For cases of absenteeism, if employees have made reasonable efforts to give notice and have complied with the employer’s rules and policies, this will generally not be construed as misconduct. Also, cases where employees have made “an isolated error in judgment or a failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned” would not be ruled as misconduct.<sup>64</sup>

Claimants leaving employment due to misconduct are disqualified until earning four times the WBA. If a claimant is discharged for a crime in connection with work and this leads to a felony

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<sup>64</sup> Maine Employment Security Law.

conviction, he or she is disqualified until earning \$600 or eight times the WBA, whichever is greater.

Staff admitted to some degree of discretion in determining misconduct, and will seek out the advice of other adjudicators and supervisors for particularly troublesome cases. Also, an internal audit is conducted on a sample of cases that uses the same process as used by BTQ, but for internal purposes to review the decisions made.

#### **D. Trends Over Time**

Maine was one of the first states to move its operations to call centers (about five years ago). The state implemented a two-year period to prepare for the transition, so it took less of a toll on UI staff. Many staff moved into other state jobs, while others took early retirement. They reduced the number of managers from 17 to 8, so some managers took non-management jobs, although continued to receive the same level of pay they were making previously.

Still, the move to the call center was a cultural change. Staff were used to working in offices with three or four staff, where they knew the local community and the employers in the community. The new environment was a less personable setting.

The response from the claimants was very positive. In customer satisfaction polls, the state determined that 92 to 98 percent of claimants were satisfied with the services provided. They found the new process was less intimidating and less time consuming. Previously, claimants had waits in the offices of up to 2 hours, and many had to drive long distances.

Initial claims have been increasing – in 2000, 71,289 claimants filed applications; in 2001, it increased to 80,540. This partly reflects the changes in the economy, although the move to call centers could be contributing to the rise. Also, benefit duration is increasing, as claimants are not becoming reemployed at the same rate as in the past.

#### **F. Variation Across State**

UI data by region were not available. However, UI employment statistics likely vary tremendously by region. The southern area, near Portland, continues to enjoy low unemployment; the inland area is more agricultural, so has cyclical unemployment; the coast's cyclical unemployment is driven by the fishing and tourism industries; and the eastern area around Washington County and some of the western portions of the state have little or declining industries (primarily, the manufacturing plants).

### **IV. NON-MONETARY NON-SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

A non-separation issue is often discovered when intake staff review the weekly claim cards. Claimants might not provide adequate job search information, may state they are not able or available to work, might admit to refusing a job or a referral from Job Service, or report earnings in the prior week. In addition, non-separation issues might be discovered during the initial claims fact-finding interview. The BAM unit will also review a small sample every week (about 12 in

the Lewiston call center) for quality issues. If they determine false information was listed on the claim card, this could lead to a fraud investigation and denial of benefits.

Last summer, the call center in Lewiston conducted random audits over a two-week period to examine the information listed on the weekly cards. For the most part, information listed could be verified.

Fact-finding interviews take about 15 minutes for non-separation issues.

## **B. Able and Available**

In Maine, being available for work means physically able to work, available to accept suitable full-time work without restrictions, have arrangements for child care and transportation, and if required by the occupation, available to accept shift work. Exceptions are made to the last requirement if the shift is between midnight and 5:00 AM and the claimant is caring for an immediate family member. For claimants who are physically able to work only part-time, they might still be eligible for reduced benefits if they otherwise qualify. Benefits would be prorated to the percentage of time they are physically able to work.

If a claimant is sick during a week, and staff find out about this, the weekly benefit is reduced for the days when ill. Staff admitted they are unlikely to learn of this unless the claimant states this on the claim card.

Training does not preclude a claimant from being available, if it is determined to be “approved training” by the UI Commission. Training sponsored by WIA, TAA, and NAFTA training is pre-approved and claimants automatically retain eligibility.

## **C. Disqualifying and Deductible Income**

To determine eligibility during weeks with earnings, gross earnings above \$25 are subtracted from the benefit check for that week. If gross earnings are \$5 or more above the WBA, the claimant has “excess earnings” and is not eligible for benefits that week. Also, if the claimant is working full-time, he or she is not eligible for benefits, regardless of the gross amount of earnings. (If a claimant receives a bonus, it is deducted in the same manner as regular wages, starting in the week in which it is paid.) For those who receive bonuses in excess of the weekly pay, it is divided by the regular week’s pay and applied to the same number of weeks.

Severance pay is deducted from the unemployment check for the week in which it is paid; vacation pay is deducted for a period which equals the number of vacation pay days received; while holiday pay is deducted from the claim for the week in which the holiday occurs. In some cases pensions are deducted also, although only the employer’s portion is deducted.

## **D. Work Search**

Claimants are asked to report on their weekly claim card three employers whom they contacted in the previous week, along with the employers’ addresses, the persons contacted, the date, the method (e.g., by telephone, in-person, or Internet), the type of work, and the results. If they did not actively seek work, they are asked to explain why they did not.

Some claimants are not required to conduct a work search. These include claimants who have been laid off and are expected to be recalled within six weeks, accepted jobs starting in two weeks, enrolled in training approved by the UI Commission, in a trade union through which they generally obtain work (only exempt for the first six weeks), or in a labor dispute.

The method allowed to conduct a job search depends in part on the normal method of seeking work in the occupation. Generally, calling prospective employers or responding to newspaper ads alone are not considered to be an adequate work search and will not be counted if this is all that is included on the claim card. A dishwasher who is seeking work would be expected to “knock on doors” to find restaurant work, while business professionals could submit resumes. The adjudicators questioned the rationale in allowing some job search methods and disallowing others. Specifically, it was not clear why calling potential employers on the telephone is not considered to be a valid search, while sending a resume to an Internet site or sending an e-mail is allowed.

If someone supplies at least two valid contacts, they will be paid for that week; fewer contacts will generate an issue, and will be sent on to the adjudication unit. Once it gets to the adjudicators, they have some leeway in how they rule on it. One adjudicator mentioned that he tends to warn the claimant if it is the first offense (i.e., he “reads him the riot act”). The next time an issue arises, the claimant will lose benefits for a week. Also, the call center conducts random checks to determine whether claimants are supplying accurate information on the cards.

After 12 weeks, the claimant is expected to expand the types of jobs they seek. For example, they are expected to travel farther for work, seek work in a different occupation, and accept a lower starting salary than their highest previous wage.

## **E. Profiling**

The state uses a computer model to generate lists of claimants for profiling services. Each office has provided UI with the number of claimants they could see in a given week, amounting to about 2,000 slots set aside across all career centers in the year. Letters are sent to the selected claimants informing them that they have a week to report to a career center. Once there, they receive an individual orientation and assessment of the activities available to them. Non-participation still results in a denial of benefits, although the data reported to DOL do not reflect this. In particular, in 2002, the state reported no determinations due to profiling to DOL.

In addition to the mandatory letters, the state sends ‘voluntary’ letters suggesting participation to all claimants who were profiled as likely to exhaust benefits but who were not selected as part of the mandatory program. These claimants are encouraged to participate but are not required to do so.

The non-mandatory nature of profiling is a change that began in the beginning of the year. Prior to this, the career centers conducted profiling workshops weekly and failure to attend was more likely to result in denying benefits for every week until claimants showed up (although, even in 2001, only a handful of issues were raised as a result of the profiling requirement).

According to one UI staff, ES “detests the mandatory aspect” of profiling. They want to serve those who want to be there and as opposed to setting up plans for individuals who will likely fail

because they are not interested. As the manager of one career center noted, “we have enough people coming in who want to come in. Policing the UI system is not what we do.” Also, there is a move toward serving a more broad-based population, including professional occupations, and not just those considered “hard-to-employ.”

The profiling program in Maine does not appear to increase service usage very much at the centers. The Lewiston office reported that of 199 letters sent between April and July 2002, 30 claimants reported to the office. Out of the 30 that reported, 4 attended a subsequent workshop (offered to the public at large on a variety of topics).

## **F. Work Registration**

Most claimants are automatically registered for work when they apply for UI. This is a partial registration; those who visit the local career center must fully register at the center to access the services, which allows them to access the job bank. UI does not require that claimants fully register at the local office.

Claimants who are part of a mass temporary layoff (designated by the Commissioner) are not registered.

## **G. Eligibility Reviews**

The state essentially stopped conducting eligibility reviews around 1994, well before the move to the call center. UI staff have discussed the possibility of reinstating this requirement, but do not have the staff and resources needed to do so.

## **H. Suitable Work**

Suitability is based on several factors, including the degree of risk to health, safety, and morals; physical fitness; prior training; prior work experience and earnings; length of unemployment; prospects of finding work in the present occupation; and distance between the job and home. Also, if the position offered involved a shift that occurred between midnight and 5:00 AM, and the claimant had to care for their children or an immediate family member, then this would be deemed unsuitable work.

After 12 weeks of unemployment, the state greatly broadens the definition of suitability. The prior training and work experience are not taken into consideration. Also, if the job pays a wage that is equal to or more than the average weekly wage, then prior earnings are not taken into consideration.

UI might learn of refusals of offers of work when claimants note this on the claim card. Also, prior employers who attempt to rehire their staff have a financial incentive to report refusals of job offers because they are held liable for the unemployment spell. Reporting a job refusal automatically generates an issue.

An issue could also arise for refusing a referral if a claimant visited the career center, conducted a search of jobs in the job bank, and received a referral from the computer (known as “self-referrals”). In the past, the career center would send employers the names of the individuals who

received referrals and ask that they verify who followed up and who did not. ES reported claimants who failed to follow-through to UI, generating an issue. Since then, they have stopped this practice.

Claimants remain ineligible due to refusing suitable work or referrals to work until they have earned eight times the WBA, assuming the separation from the new job is allowed. If they refused work or a referral for work for good cause, such as an illness, then the claimant is ineligible only for the period when they are unavailable due to the illness.

## **V. NON-MONETARY DETERMINATION APPEALS**

The first appeal is to the Division of Administrative Hearings (DAH). To appeal this decision, claimants and employers have 15 days after the decision was mailed. They can file an appeal by phone, mail, fax, Internet, or delivery. Neither party has to state their grounds for appeal.

The DAH's decision can be appealed to the UI Commission. This second appeal must be filed within 15 days of when the first appeal decision was mailed. Any new information or specific objections is supplied with the appeal request.

Parties that wish to appeal the UI Commission's decision must request a reconsideration within 10 days of the mailing date of the decision. After that either party can file an appeal with the State Superior Court.

### **A. Division of Administrative Hearings**

The first appeal is a de novo hearing, which means only evidence presented at the hearing is considered. They receive the adjudicator's written summary of the decision, and statements from the employer and claimant, but these are only used to direct the questioning in particular areas. Adjudicators can attend the hearing if they choose to do so, but few attend due to resource constraints. About 15 percent of adjudicators' decisions are appealed. Of these, less than one-third are reversed.

The hearings are conducted in-person or by telephone (about 60 percent are conducted by telephone). When it is a single-party case, it is almost always conducted over the phone, while it is almost always conducted in-person when there are multiple witnesses and attorneys present. Most hearings involving a separation last between 30 and 60 minutes.

For in-person appeals, hearings are conducted weekly in Augusta, Lewiston, Portland, and Orono, and monthly in Aroostook County (northeastern Maine). The state employs six full-time hearing officers, two part-time officers, an office manager, and six administrative staff to handle all UI appeals in the state. About half the hearing officers are lawyers, although this is not required.

Claimants receive a written decision, by mail, from the hearing officer approximately 10 days after the hearing. This decision either affirms, modifies, or sets aside the original adjudicator's decision.

The state has experienced an increasing number of appeals in the past three years, which they largely attribute to changes in the economy.

## **B. UI Commission**

The UI Commission will review the administrative hearing's decision and determine whether to grant a hearing. Generally, they do not take new evidence, but base the decision on testimony presented in the first appeal hearing. About 15 percent of hearing officer's decisions are appealed to the UI Commission. Of these, about 15 percent are reversed.

## **C. State Superior Court**

The appeal to the Superior Court is an appellate review. The Court looks to determine whether gross error was committed. Generally, the state defers to the Commission's decision, and few appeals make it to this level.

# **VI. OTHER ISSUES**

## **A. Experience Rating**

In 1997, the state's UI trust fund was predicted to be bankrupt by 2002. To prevent this from happening, the state enacted major legislation to overhaul the revenue side, increasing the taxable base from \$7,000 to \$12,000. It also moved from a simple tax schedule to an array of rates (more than 20) to increase the distribution of rates among employers. (The distribution of employers in each rate category is about 5 percent of all employers.) Prior to this new policy, 50 percent of employers were paying the lowest tax rate. Now, the range of taxes paid by employers is wider – the lowest rate is lower than the previous low rate, while the highest rate is higher.

This new schedule also adjusts the rates depending on the need for benefits, providing for 20 to 21 months of reserves (they have seven different schedules, from Schedule A, the lowest range of rates, to Schedule G, which has the highest rates. After the policy change, employers were paying Schedule F rates. It took a few years for the fund to recover before the state switched to Schedule C rates. Employers will move to Schedule A starting January 2003.

## **B. Role of Job Service and One-Stops**

Since moving to the call centers, UI has had very little presence at the career centers. Claimants can use the telephones to place a call to the call centers, and UI provides the centers with brochures and applications, but little assistance is available in the career centers to help claimants with the application process. The centers can send the applications to the call center on the claimant's behalf, but this does not happen often.

UI claimants are generally offered the same level of services offered to all individuals who walk in the door. One exception is the Maine Enterprise Option (MEO) program, which targets UI individuals profiled as likely to exhaust their benefits (although a broader group than are selected for the Reemployment Services). This program provides eligible individuals with weekly benefits while they start their own business. Individuals who are eligible to apply for consideration under MEO receive a letter inviting them to meet with someone at the career

center to discuss the program further. MEO participants are waived from the job search requirement as long as they certify they are spending 40 hours per week getting their business off the ground. To retain eligibility in the program, they have to take an introduction to business seminar; attend two one-on-one counseling sessions with a small business counselor; attend one workshop offered at the center (on a variety of topics); and submit a weekly form describing their 40 hours of activity. The Lewiston career center sees several individuals a week who are interested in the MEO program. These participants have started a broad range of businesses including day care, IT-web design, restaurants, and pet care business.

### C. Changes Planned in State

The state has been exploring funding opportunities to set up an Internet system for taking claims. The state periodically conducts customer satisfaction surveys and have found an increasing number of claimants want to file using the Internet. Currently, claimants can download the application and related information about the program. Also, claimants can file appeals over the Internet.

As mentioned above, the state is also completing a project that will allow claimants to file weekly claims over the telephone.

## VII. Unique features of maine's program

Maine has implemented several unique policies that are worth mentioning.

- **UI has virtually no presence in the career centers.** The UI program discontinued conducting eligibility reviews and ES operates a very limited, and voluntary, profiling program. The Portland ES office, which serves one of the larger areas in the state, sends mandatory letters to only eight claimants a week. Also, while the letter notes that claimants are required to come to the office, UI does not enforce this requirement.
- **Employers are as powerful a force in pushing for new policies.** According to staff at the state level, the state has a relatively high share of “mom and pop” shops, and employer groups are less active than the labor groups in lobbying for policies that benefit them.
- **The state revamped its employer tax rate schedule, which might increase the incentive for employers taxed at the high rates to contest claims in the future.** Using the current tax schedule (Schedule C), the contribution rates range from 0.71% to 5.4%, depending on the employer’s experience factors. The employers at the top rate are companies, such as construction, cannery, and fishery companies, which lay off workers regularly.
- **Virtually all employers in the state are covered by UI.** The state’s Independent Contractor Law outlines the three conditions (the “ABC test”) that are required to for contractors to exclude its worker from UI coverage: (1) the worker is free from control or direction over the performance of the service; (2) the service is outside the usual course of the business or is performed outside of all the places of business of the enterprise; and (3) the worker is customarily engaged in an independently established trade, occupation, profession, or business. As a result, many companies that use independent contractors are

required to pay into the UI system. Staff at the state level hypothesized that this might contribute to the high recipiency in the state.

- **The state has a high share of seasonal workers.** Data on the number of seasonal workers is unavailable, although, according to staff, Maine has a relatively high share of seasonal workers. A significant share of Maine's workers are employed in four industries: fishing, farming, forestry, and tourism.<sup>65</sup> Partly due to seasonal employment, the state experiences spikes in initial claims during the winter months.
- **Maine has a significant number of workers from Canada.** Unlike most states in the nation, Maine has many workers who live in Canada, but commute to work in the state, or live in the state during particular seasons (e.g., logging seasons). Claims from Canada comprise a small share of total claims, but a large share of interstate claims. This affects the state's ability to meet the interstate claims payment timeliness measure.
- **The state has experienced fiscal problems and has begun making budget cuts.** The state instituted a hiring freeze two months ago and went on furlough, shutting down the center for days. This occurred during a period when some staff were leaving, and it was difficult to rehire new staff.

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<sup>65</sup> Maine Workforce Investment Act Planning Guidelines for the period of July 1, 2000 to June 30, 2005, May 2001.

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## Pennsylvania Site Visit Report

To learn more about how Pennsylvania defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from The Lewin Group and Johns Hopkins University conducted a site visit to the state from July 16-18, 2001. This was one of two pilot visits for the project. We met with state-level staff at the Department of Labor and Industry (DLI), staff from two call centers, adjudication and appeals staff, and staff from one-stop career centers in Allentown, Wilkes-Barre and Scranton.

This report provides an overview of Pennsylvania's unemployment compensation (UC) program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state and the role of the employment centers. The report concludes with a discussion of the features of Pennsylvania's program that we found to be unique to the state, some of which could help explain some of the UC outcomes for the state.

### I. GENERAL OVERVIEW OF Pennsylvania's Unemployment Insurance PROGRAM

According to state-level staff, the mission of the UC program is two-fold: stabilize the economy of local communities and stabilize the economic security of individuals unemployed through no fault of their own. The state Supreme Court decision in the case *Penn Hills School District v. UC Board of Review* further described the UI program as follows:

- In order to be eligible a claimant must be unemployed through no fault of his/her own.
- The Law<sup>66</sup> is remedial.
- The benefits section of the Law are to be interpreted liberally.
- There must be explicit language in the Law to exclude an individual from its coverage.
- A claimant is presumed eligible until it is shown that he/she is ineligible.

U.S. Department of Labor administrative data indicates that, relative to other states, Pennsylvania has a higher reciprocity rate and lower separation determination rate. The state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is 41.6 percent, the sixth highest in the country (the national average is 30.1 percent). In 1999, 13 percent of all new claims resulted in a separation determination (compared to 22 percent nationally); of these 45 percent were denied (the national average was 53 percent). The 1999 non-separation determination rate (6.2 percent of claimant contacts) exceeded the national average (4.1 percent of contacts). The percent denied, however, was lower (47.5 percent versus 59 percent).

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<sup>66</sup> Article I, Section 3 of the Pennsylvania Unemployment Compensation Law.

Staff note that a number of features unique to Pennsylvania affect the state's UI program. Traditionally industrial states like Pennsylvania tend to have higher reciprocity rates. Manufacturing is more sensitive to quick changes in the economy and thus produces a high proportion of "clean" claims (i.e., layoffs). Claimants are more likely to be members of unions and thus more astute about UI benefits. Also, labor and management work together to make the UI program work.

Policies also differ from other states. Pennsylvania has no active work search. There are no eligibility review interviews.

## **A. Organizational Structure**

The UI program is housed in the Bureau of Unemployment Compensation Benefits and Allowances within the Department of Labor and Industry (DLI). The directors of UI operations and UI programs report to the Bureau director and assistant director. The UI operations division includes the claims information center, employers' charge, UI payment services, and wage records. The UI program division includes adjudication services, claims services, benefit payment control, continued claims, and initial claims.

At the time of our visit, Pennsylvania was transitioning to a call center structure. There were six service centers in operation, with two more scheduled to go on line shortly. The centers are located in Philadelphia, Allentown, Scranton, Lancaster, Altoona, Indiana, Allegheny, and Erie. In addition to intake staff, each service center houses adjudicators.

## **B. Monetary Requirements**

To qualify for benefits, a claimant must have been paid wages for insured work in two or more quarters of the base period. The base period is the first four of the last five completed calendar quarters. Individuals who do not meet wage or credit week requirements due to a work injury may apply for benefits under an alternate base year, which consists of the four calendar quarters immediately preceding the injury.<sup>67</sup>

Claimants must have sufficient earnings and credit weeks to qualify for benefits. A credit week is any calendar week in which the claimant earned \$50 or more. The total amount of benefits is based on the number of credit weeks. Claimant who have 18 or more credit weeks are eligible for a maximum benefit of 26 times their weekly benefit amount. Those with 16 or 17 credit weeks are eligible for a maximum benefit of 16 times their weekly benefit amount. Claimants with fewer than 16 credit weeks are not eligible for benefits.

The benefit amount ranges from \$35 to \$442 and is determined by both the high quarter wage and total base period wages. A qualifying wage is associated with every high quarter earnings amount. For example, a claimant who earned \$1,000 in the high quarter would have to have earned \$1,640 in the base year to receive benefits. The weekly benefit amount would be \$43.

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<sup>67</sup> For alternate base period rules to apply, the injury must be compensable under the Workers' Compensation Act.

### **C. Outreach Efforts**

The outreach efforts conducted by the state to inform individuals about the UI program include:

- The DLI website contains information about the program for claimants and employers.<sup>68</sup>
- Employers are required by law to post a notice about workers' rights and how to file a claim.
- Quarterly mailings to employers highlight current UI issues and provide educational updates.
- Employer outreach, including presentations at the monthly Employer Advisory Council meeting and at Chamber of Commerce and Better Business Bureau conferences.
- The Rapid Response team visits employment sites planning mass layoffs.
- The Careerlink one-stop centers have brochures about the UI program. Claimants can use a telephone or computer on site to apply for benefits.
- In limited instances, DLI advertises certain aspects of the program. For examples, when the Extended Benefit program began, DLI issues press releases and mass mailings to explain it.

### **D. Issues Pertaining to Union Members and Other Specialized Labor**

The state has greater union representation relative to other states. According to the 2000 Current Population Survey, 17 percent of workers in the state are members of labor unions, relative to a national average of 13.5 percent. State officials noted that strong union representation translates into claimants who are informed about the UC program. Additionally, the state is characterized by positive employer-labor relations. Employers provide information to employees who are due compensation. In the event of a large layoff, DLI staff work collaboratively with employers to help workers receive benefits.

In terms of labor disputes, however, workers do not receive benefits when work is not performed due to a strike. According to the UC Law:<sup>69</sup>

An employee shall be ineligible for compensation for any week in which his unemployment is due to a stoppage of work, which exists because of a labor dispute (other than a lockout) at the factory, establishment or other premises at which he is or was last employed: Provided, that this subsection shall not apply if it is shown:

- He is not participating in, or directly interested in, the labor dispute which caused the stoppage of work, and

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<sup>68</sup> [www.dli.state.pa.us](http://www.dli.state.pa.us)

<sup>69</sup> Section 402(d).

- He is not a member of an organization which is participating in, or directly interested in, the labor dispute which caused the stoppage of work, and
- He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in, or directly interested in, the dispute.

In terms of other specialized labor categories, school employees are not eligible for benefits between academic years or terms, or during holiday periods. This applies to both professional (e.g., instructional, research, principal administrative) and nonprofessional (e.g., janitor, cafeteria worker) staff.<sup>70</sup> Nor are professional athletes eligible for benefits between successive seasons as long as there is a reasonable assurance that the individual will perform the work in the latter season.<sup>71</sup>

The only seasonal work addressed by the UC Law is fruit and vegetable processing.<sup>72</sup> The employer can apply for seasonal status. It must be in operation 180 days per year or less to be considered seasonable. A determination granting an employer seasonal status would cause an employee who files for benefits between seasons to be ineligible so long as the employee has a reasonable assurance of returning in the next season. However, if upon returning to work the next season the worker finds there is no job available, his or her UC claim is accepted retroactively to the time when benefits would have began.

## **II. Process for Submitting Initial and continuing claims**

### **A. Application Process**

As noted above, the state was in the process of converting to a system of eight Unemployment Compensation Service Centers (UCSC) at the time of our visit. Six were operational and the remaining two were scheduled to go on line shortly. Claimants in the UCSC regions file claims over the telephone. They can either call the nearest UCSC or call a toll-free number, which will route the call to the UCSC nearest their residence. Claimants also have the option to file for benefits on-line. The Allentown UCSC, for example, reports that about 15 percent of claims are filed on-line. As of July 2001, residents in the Allegheny (Pittsburgh) and Indiana call center regions still file claims at the local Careerlink one-stop centers.

In each call center, there are two types of intake workers who take applications over the phone and answer questions about claims: Intermittent Intake Interviewers (III), and UC interviewers. In Allentown, there were six III workers and 34 UC interviewers. In Scranton, there were 40 III workers and 18 UC interviewers. The telephone system will accommodate up to 31 callers in the queue. When the queue approaches 31, UC examiners (adjudication staff) are asked to take calls.

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<sup>70</sup> Section 402.1.

<sup>71</sup> Section 404.2.

<sup>72</sup> Section 402.5.

When a new claimant calls, the intake worker (interviewer) walks the caller through a series of questions that appear on the computer screen, including name, address, and verification of the Social Security Number. Once the SSN is in the computer, the caller's wage records for the past six quarters appear. Claimants are asked the reason for their job separation. At the time of our site visit, if the claimant was laid off (as opposed to quit or was fired), a form is generated from the computer and sent to the employer, requesting verification of the information. If the employer verified the lay off date or failed to reply, the client was deemed eligible for UC (assuming monetary requirements are met). The state office in Harrisburg then informs the employer of the charge. If the claimant quit or was fired, the interviewer took appropriate information and requested on a computer screen that an issue-specific (e.g., quit for personal reason, quit for medical reason, school employee) fact-finding questionnaire be sent to the claimant and employer. The state office in Harrisburg generated the form. The interviewer then routed the case to an adjudicator at the service center.

This process changed since our visit. If a claimant reports quitting or being fired, the intake worker pulls the relevant form and asks the questions over the phone. The claim is then forwarded to the adjudicator, who tries to reach the employer by telephone. If this method is not successful, the employer form is faxed or mailed and the employer is instructed to send it back to the adjudicator.

## **B. Special Needs**

The UCSCs can accommodate many different languages. Each call center has Spanish speaking intake workers. If the caller speaks a language other than English or Spanish, the intake worker calls the language line, which has interpretation services for 108 different languages.

Claimants who are hard of hearing have multiple options for filing benefits. They can file over the Internet, mail an application, or use a TTY service.

## **C. Filing Continuing Claims**

Claimants must file for benefits on a bi-weekly basis. Claimants call a toll-free number to file through the Pennsylvania Teleclaims (PAT) system or can file via the Internet. Claims are filed Sunday through Friday. PAT asks a series of yes/no questions for each of the two weeks:

- Is the mailing address you provided to the UCSC still correct?
- Do you wish to file for benefits for the claim week ending [PAT states week]?
- Did you work or were you absent from work during the week you are claiming? [If the claimant answers "yes" to this question, PAT will ask for responses to specific questions and/or statements regarding work or absence from work.]
- Did you or will you receive holiday or vacation pay during the week you are claiming? [A "yes" response prompts PAT to ask specific questions/statements regarding holiday/vacation pay.]
- Were you able and available for work?

After completing the questions, claimants can choose to have the answers repeated, clear the answers and begin again, or process the answers. PAT informs the caller that the claim was accepted; if there is a problem with the claim, the caller is given further instructions at that time.

### **III. SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

In Pennsylvania, adjudicators, or examiners, are co-located in the service centers with the interviewers. At the time of our site visit, when an issue arose on an initial claim, the interviewer filled out a form (a green routing form in Allentown, a blue one in Scranton) that described the forms that were sent to the employer and applicant. Employers and claimants had one week to return forms to the local UCSC. In Allentown and Scranton, claims were assigned to examiners based on the last digit of the claimant's social security number. As noted above, intake workers now conduct initial fact finding during the application process. The claimant information is forwarded to the examiner. The examiner then tries to contact the employer the questions on the relevant employer form. If the examiner is not successful in reaching the employer by phone, a copy of the form can be faxed or mailed.

Employers have 10 days to respond. Once the forms are returned, the examiner reviews them and decides if additional information is needed for either the claimant or the employer. In some cases, the forms are not fully completed and the examiner has to follow-up with a call to one or both parties. In other instances, there is conflicting information, so the examiner telephones each party and seeks a rebuttal. If one or both parties fail to respond to the forms, staff will call and mail a letter. When leaving a message, staff give each party 48 hours to respond. If there is still no response, the examiner uses the information available to make a decision.

Once the information is compiled, the examiner uses a computer program to make a decision on the claim. A series of questions lead the examiner through the claim. A determination is generated to approve or deny the claim and lists the relevant section of the law. The decision is mailed to the claimant and employer, along with an appeal form.

#### **B. Issues Pertaining to Voluntary Quits**

Claimants who voluntarily leave work are denied benefits unless they left for a necessitous and compelling reason (i.e., good cause). According to the UC Law, a necessitous and compelling reason is that in which a reasonable person would have no other choice. The claimant must demonstrate that behavior was consistent with prudence and common sense and was based on factors which are real, substantial, and reasonable.

UC Law Section 402(b) lays out the allowable reasons for leaving a job. The Section provides the following:

- Leaving work because of a disability, if the employer is able to provide other suitable work, is not good cause.
- No employee shall be ineligible for leaving work if the employee is required to join or remain a member of a company union; must resign or refrain from joining any labor

organization; must accept wages, hours or conditions of employment not desired by a majority of the employees in the establishment or occupation; or is denied the right of collective bargaining.

- In determining whether or not an employee has left work voluntarily without cause of a necessitous and compelling nature, the Bureau shall consider whether the work was suitable under Section 4(t).<sup>73</sup>
- Provisions of this subsection shall not apply in the event of a stoppage of work that exists because of a labor dispute.
- No claimant shall be denied benefits for accepting a voluntary layoff option pursuant a labor-management contract or an established employer plan, program, or policy.
- There is no disqualification where a claimant leaves work that is not suitable to enter an approved training program. Suitable work in this provision means work of a substantially equal or higher skill level than the claimant's past adversely affected employment and wages for such work at not less than 80 percent of the worker's average weekly wage.

In addition to the UC Law, a number of legal decisions have addressed voluntary quits. These include:

- Quitting for health reasons. A claimant must communicate his or her limitations prior to the quit. The burden then shifts to the employer to provide alternate suitable employment. If this is not possible, the claimant quits for good cause.
- Quitting to follow a spouse. The spouse's decision to relocate must be attributable to reasons beyond his/her control; there must be economic circumstances beyond the claimant's control, such as insurmountable commuting distance. Accepting a promotion in another location is considered a personal choice within the spouse's control. A claimant who quits to get married must show other necessitous and compelling reasons in order to qualify for benefits.
- Quitting to seek other employment. Leaving work to accept a definite job is a cause of necessitous and compelling nature when the job does not materialize through no fault of the claimant.
- Quitting because of marital, filial, or other domestic obligations. The claimant must inform the employer of problem before leaving work, attempt to adjust the work schedule to keep employment and be able/available after the separation.
- Quitting due to transportation problems. The burden is on claimant to show that he/she lost transportation through no fault of his/her own and that all reasonable alternative options were explored.

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<sup>73</sup> Section 4(t) considers the degree of risk involved to the claimant's health, safety and morals; the claimant's physical fitness; the claimant's prior training and experience; the distance of the available work from the claimant's residence; the prevailing condition of the labor market; the prevailing wage rates in the trade or occupation.

- Quitting due to a change in job duties. When an employer changes the employee's job duties without the employee's consent and refuses to transfer the employee, the employee has cause of necessitous and compelling nature to quit.
- Sexual harassment. This would be considered good cause so long as the claimant reported the behavior to the supervisor.
- Domestic violence. This would be a necessitous and compelling reason if the claimant had to quit work and move to avoid violence.

If an individual quits without good cause, he or she must earn wages equal to or in excess of six times his or her weekly benefit amount.

### **C. Issues Pertaining to Discharge for Willful Misconduct**

According to UC Law, Section 402(e), an employee is ineligible for benefits for any week in which unemployment is due to discharge or temporary suspension from work for willful misconduct connected with work. Willful misconduct was defined by a court case as follows: "For behavior to constitute misconduct, it must evidence (1) the wanton and willful disregard of the employer's interest, (2) the deliberate violation of rules, (3) the disregard of standards of behavior which an employer can rightfully expect from his employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard for the employer's interests or the employee's duties and obligations."<sup>74</sup>

The burden of proof is on the employer to prove that the claimant was dismissed as a result of willful misconduct. The employer must provide firsthand information regarding the incident which caused the separation. Staff note that Pennsylvania's rules are such that many employers find discharges difficult to prove.

A number of legal decision have addressed discharges for willful misconduct. These include:

- Discharge for violation of company rule. Deliberate violation of a rule which is well-known to the employee constitutes misconduct if the rule is reasonable and violation was not motivated by good cause. The Bureau's policy is that in order to support a denial of benefits, the employee must be aware of the rule and that the rule must be uniformly enforced. In addition, the employer's progressive discipline rules must be followed (e.g., if the punishment for a rule violation is suspension and the employer discharged the worker instead, the discharge would not be for willful misconduct).
- Dismissal for absenteeism or tardiness. Excessive and unjustified absenteeism can constitute misconduct even when properly reported and excused. The Bureau's policy is that denial of benefits requires that the employee must have been warned about his or her attendance prior to the discharge.

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<sup>74</sup> *Kentucky Fried Chicken of Altoona, Inc.*, Commonwealth Court, 1973.

- Discharge for intoxication. Intoxication or the use of intoxicants constitutes misconduct connected with work only when the work of the employee is directly affected adversely or it breaches a reasonable and known work rule of the employer.

If an individual is discharged due to willful misconduct, he or she must earn wages equal to or in excess of six times his or her weekly benefit amount.

#### **D. Trends Over Time**

The percentage of initial claims resulting in a separation determination increased 62 percent between 1989 and 1999, from 8 percent to 13 percent. The national average in 1999 was 22 percent. The percent of separation determinations that resulted in denials, however, declined 22 percent in the same years, from 58 percent to 45 percent.

#### **F. Variation Across State**

The state's two large population centers, Philadelphia and Pittsburgh, generate a higher share of determinations. Staff suggested that large cities have more job opportunities so claimants may be less reluctant to quit. Altoona has lower determination rates. Again, this could be due to the nature of the economy.

### **IV. NON-SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

As noted above, claimants file continuing claims by calling PAT bi-weekly. If an issue arises during the call (e.g., the claimant reports not being able/available), the claim is flagged and call is routed to a service center. An examiner conducts fact finding. For example, if the issue is able and available, the examiner will call the claimant and ask for a statement.

In some instances, employers or Careerlink one-stop staff will contact the local service center to report that a claimant refused a job or did not return to work after a temporary layoff. The adjudicator will take a statement from the claimant and a decision will be made as to whether to deny benefits.

#### **B. Able and Available**

Claimants must be able and available for work to receive benefits.<sup>75</sup> "Able" to work refers to the mental or physical ability of a claimant to engage in gainful employment. A disability may limit a claimant's work opportunities; however, it may not prevent him or her from engaging in any type of work.

"Available for work" is not defined by state law. The courts have stated that a claimant is available for work if he or she is ready, willing, and able to accept some substantial and suitable work. In addition, the courts have stated that registration for work at the local one-stop

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<sup>75</sup> Section 401(d)(1).

(Careerlink) constitutes availability. The statute does not require that a claimant be available for full-time or permanent work.

If a claimant is not able and available for work, he or she is disqualified from receiving benefits until the situation changes.

### **C. Disqualifying and Deductible Income**

When claimants file for weekly benefits, they must report all work (gross earnings), including vacation or holiday pay. Claimants can earn up to 40 percent of their weekly benefit amount in a week without facing reduced benefits. Any amount earned over this “partial benefit credit” is deducted from the weekly benefit amount. For example, if the weekly benefit rate is \$200, the partial benefit credit is \$80 (or 40 percent of \$200). If the claimant earned \$100, the weekly benefit amount would be reduced by \$20.

UC Law Section 404(d)(1) holds that holiday pay should be treated in the same manner as other wages; that is, it is deducted from the weekly benefit amount. According to the same sub-section, if vacation pay is received during a temporary layoff, it will be deducted from the weekly benefit amount. However, if the job separation is permanent, vacation payments are not deducted from the weekly benefit amount.

Section 404 of the UC Law and court rulings<sup>76</sup> indicate that severance payments are not considered remuneration for services performed and are not deductible from a claimant’s unemployment benefits. Claimants must also report all pensions. A pension is deductible if it was paid from a plan contributed to or maintained by a base period employer and if the claimant’s work during the base period increased the amount of or eligibility for the pension.

### **D. Work Search**

So long as the claimant is able and available, he or she is eligible for benefits. Pennsylvania does not have an active work search requirement.

### **E. Work Registration**

When a claimant files for benefits, the UCSC interviewer provides web site information for Pennsylvania Careerlink (the state’s one-stop system) and the location of the nearest Careerlink office.<sup>77</sup> Claimants are invited to explore the information and services available at the Careerlink. In addition, when a claim is processed, Careerlink staff can go into a data store and sort data by county, last employer, union representation, and other characteristics. Staff can look for those who are permanently separated from their jobs. The one-stop can send letters to claimants that ask them to come in. According to state UI staff, the process of sending names to the data store might constitute work registration. However, there is no formal registration process and no penalty for failure to register.

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<sup>76</sup> *Hock*, Commonwealth Court, 1980.

<sup>77</sup> [www.pacareerlink.state.pa.us](http://www.pacareerlink.state.pa.us)

## **F. Profiling**

The Profile Reemployment Program (PREP) identifies claimants who are permanently separated from their jobs (i.e., will not be recalled) and are deemed at risk of exhausting their benefits. About 50 percent of claimants are in this category. A regression analysis assigns a score to each claimant. Careerlink one-stop service centers receive a list of claimants in their locality who were identified as candidates for PREP. The proportion actually called in for services depends on each individual Careerlink's capacity. Staff at one Careerlink we visited said that all claimants on the PREP list are contacted. A second site indicated that about 45 out of 240 claimants per week are called in for services.

The services begin with a group orientation at which time staff explain what Careerlink offers. Claimants then register with the Careerlink system. They receive an introduction to the career resource center (websites, newspaper ads, how-to books, self-help resources, and workshops) and training opportunities. Claimants that are selected must report to the Careerlink. Names of non-attendees are sent to the UCSC. In theory they are sanctioned, although it is not clear how often this actually happens. Local Careerlinks have a great deal of discretion on how to treat claimants who fail to participate. Claimants may be sanctioned for a single week or they may lose benefits until they report in.

State staff estimates that less than 10 percent of all claimants are called into their local Careerlink centers for PREP services.

## **G. Eligibility Reviews**

Pennsylvania does not conduct eligibility review interviews.

## **H. Suitable Work**

According to Section 402(a) of the UC Law, a claimant is ineligible for benefits for any week in which unemployment is due to failure, without good cause, either to apply for suitable work or to accept suitable work when offered by an employment office or employer. While Pennsylvania does not have a job search requirement, Careerlink might send a claimant for an interview. If the claimant fails to show without good cause, that constitutes failure to apply for work and he or she is sanctioned. Suitable work is defined by Section 402(t) and means all work which the employee is capable of performing. In determining whether work is suitable, DLI considers the following:

- The degree of risk involved to the claimant's health, safety and morals.
- The claimant's physical fitness.
- The claimant's prior training and experience; the distance of the available work from the claimant's residence.
- The prevailing condition of the labor market.
- The prevailing wage rates in the trade or occupation.

A position is not considered suitable if it is vacated due to a strike; the remuneration, hours, or other conditions are substantially less favorable than those prevailing for similar work in the locality; or, as a condition of being employed the employee would be required to join a union or refrain from joining one.

A claimant is ineligible for any week in which he or she is unemployed due to failure without good cause to accept suitable work.

## **I. Trends Over Time**

According to U.S. DOL administrative data, the percent of claimant contacts that resulted in non-separation determinations rose from 4.8 percent in 1989 to 6.2 percent in 1999.

During our visit, we asked state staff why Pennsylvania's non-separation determination rate was 50 percent higher than the national average. Staff suggested that the determination rate was probably higher than the average state because of the treatment of earned income. If a claimant reported earning more than the benefit amount, it triggered a determination, as opposed to simply disqualifying the claimant for the week in question. This policy has been changed so that excess earnings do not cause a determination. The claimant simply is ineligible for the week.

## **V. NON-MONETARY DETERMINATION APPEALS**

There are three levels of appeals: UC referee, UC Review Board, and the Commonwealth Court.

A UC referee conducts the first level of an appeal. Each UCSC has referees who generally are located at sites in the community (e.g., a Careerlink). Hearings are usually in person, although they can be conducted via telephone. There are 64 referees in the state. Each hears four to eight appeals per day. Hearings last on average 20 to 30 minutes. Referees try to issue judgments within one week.

First level hearing are de novo hearings. The referee asks questions of each party. The other party has a chance to offer a rebuttal. Then each party has the opportunity to make a closing statement. The hearings are taped, and the recording serves as the official record of the hearing. UCSC staff (generally an examiner) often attend non-separation hearings. Representation for either party is also common. Employers sometimes bring tax consultants.

In 2001, there were 50,805 referee-level decisions. According to state staff, 80 percent of appeals involve separation issues. About 27 percent of UCSC decisions are reversed. State staff noted that referee-level appeals might be increasing because an appeal form is enclosed with all decisions. In fact, sometimes people appeal favorable decisions without reading the form.

The second appeal level is a three-person UC Review Board (comprised of a lawyer, consultant, and industry person). The Board members are appointed to six-year terms. The Board examines the record from the referee hearing and UCSC paperwork. No new information is collected. Once the Board makes a decision, it is drafted by the DLI legal counsel. Claimants and employers can ask that the Board reconsider its decision. In 2001, there were 6,786 Board-level decisions. About 13 percent of referee decisions are reversed.

The third appeal level is the Commonwealth Court. There are fewer appeals at this level because of the expenses involved (e.g., filing fees, lawyers).

## **VI. OTHER ISSUES**

### **A. Experience Rating**

An employer's experience rating is based on six components:

- Reserve ratio factor: A lifetime measure of the employer's risk with unemployment, determined by dividing the balance in the employer's reserve account by the employer's average annual taxable payroll for the last three fiscal years. This ratio is cross-referenced to the applicable table in the law, is determined annually, and ranges from 0 percent to 2.7 percent.
- Benefit ratio factor: A short-term comparison of the employer's taxable payroll and benefits charged. It is determined by dividing the employer's average annual benefit costs for three years by the average annual payroll for the last three years, and ranges from 0 percent to 5 percent.
- State adjustment factor: An assessment on all employers and uniformly levies the common benefit costs that are paid out of the UC Fund but are not charged to a particular employer. The factor is determined annually and ranges from 0 percent to 1.5 percent.
- Surcharge adjustment: Established by law and is the same for all employers.
- Additional contributions: Applied to all contributory employers and designed to provide additional revenue to the trust fund.
- Interest factor: If the trust fund is depleted, the state can borrow money from the Federal government. The funds are subject to an annual interest charge.

Experience ratings for employers range from 2 percent to 11 percent.

### **B. Role of Careerlink Centers**

There is no UI staff presence in the Careerlink centers (the local one-stops). People who come to the centers inquiring about benefits are directed to apply over the phone or internet. Careerlink's role in UI is limited to claimant outreach and profiling services.

When a claimant files for benefits, the UCSC interviewer gathers information on the type of work he or she is seeking. Data about claimants is placed in a common data source that Careerlink can access. Staff can sort by a variety of demographics and characteristics, including last employer, industry, and county. When job matches are found, Careerlink can send letters to claimants who match the job description. Careerlink also might send the claimant a letter offering reemployment services (e.g., workshops) that are available. In addition, as noted above, Careerlink staff conduct profiling.

Claimants can also access Careerlink on their own. They can register and use a variety of services, including the Career Resource Room. They also have access to intensive services through the one-stop, so long as they satisfy one core service (e.g., registration). At this point, they would work with a counselor to determine which services would be most appropriate, including training.

## **VII. Unique Features of Pennsylvania's Program**

Unique features of Pennsylvania's UI program include:

- a. No active work search requirement. Claimants are not required to register for work at the local one stop, nor are they required to make a certain number of job contacts each week. In addition, the state does not conduct eligibility review interviews.
- b. Severance pay is not deducted from benefits. Claimants are not asked about severance pay at the time of intake. The examiner will ask the employer if severance pay was provided, but the information does not affect benefits. Claimants can draw benefits and severance pay at the same time.
- c. Pennsylvania is a highly unionized state. Staff suggest this adds to the high reciprocity of the state. Union members are astute about the UI program. They are also likely to have clean claims following a layoff. The state works collaboratively with employers in the event of large layoffs.

## South Carolina Site Visit Report

To learn more about how South Carolina defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from Lewin and Capital Research Corporation conducted a site visit to the state from July 24-26. We met with state-level staff at the Employment Security Commission and two Workforce offices in Charleston and Columbia.

This report begins by providing an overview of South Carolina's UI program; then describes the process for submitting initial and continuing claims; outlines the separation and non-separation policies and practices; describes the appeals process; and discusses other issues of interest, including experience rating in the state, the role of One-Stops, and the state's planned changes in the near future. The report concludes with a discussion of the features of South Carolina's program we found to be unique to the state, some of which could help explain some of the UI outcomes for the state.

### I. GENERAL OVERVIEW OF South Carolina's Unemployment Insurance PROGRAM

According to the state UI policy staff, the philosophy of the program in South Carolina is to process individual's claims efficiently and to ensure that they have the services they need to become reemployed. The state's Employer Handbook expands on this:

“The objective of the Employment Security Program, which includes Unemployment Insurance and the state public Employment Service, are

- To assist in the prompt employment of individuals seeking work, and to assist employers in obtaining the best qualified employees;
- To lighten the burden of economic hardship which so often falls on the unemployed worker and his family;
- To stabilize purchasing power and thus halt the spread of unemployment; and
- To lessen the need for public relief and charity.”

As will be discussed in more detail below, the state takes a pro-employer stance on some of its policies. It is a right-to-work state and has stringent separation policies, relative to other states.

Overall, the state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is in the lower one-third of all states. This is driven not by a low rate of inflow into the program, but low benefit duration.<sup>78</sup> Interestingly, its determination rates for both separation and non-separation issues are quite low, although once a separation determination is

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<sup>78</sup> We are using Wayne Vroman's definition of inflow (ratio of first payments to new spells of unemployment), duration (the ratio of the average duration of benefits to the average duration of new spells of unemployment), and reciprocity (the product of inflow and duration).

raised, it is more likely to result in the denial of benefits. South Carolina had the second lowest denial rate for separation issues among all states in 1999.<sup>79</sup>

## A. Organizational Structure

The Employment Security Commission (ESC) is made of three separate divisions: Unemployment Insurance, Employment and Training, and State Workforce Investment Board. Strong linkages between the divisions exist.

The strongest linkage is at the ground level. In June 2001, ESC began training both ES and UI staff to become generalists, who could handle both UI and ES responsibilities in the 36 Workforce offices (One-Stops) that UI operates.<sup>80</sup> Cross-trained staff take UI claims, conduct fact-finding interviews, register claimants for work, conduct eligibility reviews, and refer claimants to employment and WIA services. The only difference between UI and ES jobs are the funding streams that pay staff salaries.

In addition to the ESC-operated Workforce offices, WIA operates other One-Stops. These offices offer employment services, although do not take unemployment claims.

## B. Monetary Requirements

The state has three criteria for assessing monetary eligibility:

- Claimant must have been paid wages for at least \$540 in covered employment during the high quarter of the base period (first four of the last five completed quarters);
- Claimants must have been paid a minimum of \$900 in covered employment during the base period; and
- The total base-period wages must equal or exceed one and one-half times the total of the high quarter wages.

From our discussions with staff, the third criterion – total base-period wages must be at least one and one-half times the total wages – tends to be more difficult to meet than the first two.

If monetarily eligible, the maximum benefit is the lesser of 26 times the weekly benefit amount, or one-third of the total base period wages. The minimum and maximum weekly benefit amounts (\$20 and \$278, respectively) are lower than the average of all states (\$59 and \$328, respectively).<sup>81</sup>

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<sup>79</sup> In 1999, the denial rate among separation determinations was 82 percent in Nebraska and 80 percent in South Carolina; the median rate among all states was 56 percent.

<sup>80</sup> In addition to the 36 offices, there are 10 itinerant offices (small offices where staff visit one to three times per week).

<sup>81</sup> From U.S. Department of Labor *Significant Provisions of State Unemployment Laws*, January 2002.

The state does not offer an alternate-base period or short-time compensation (i.e., “worksharing”). However, it allows claimants to receive UI benefits for partial employment, which is for any week in which work is less than full-time because the employer does not have full-time work available. If they have any earnings during the week for which they file a claim, the portion of their earnings in excess of 25 percent of their weekly benefit amount is deducted from their benefit check.

### **C. Outreach Efforts**

The outreach efforts conducted by the state to inform the general public about unemployment insurance are limited. Staff felt UI was common knowledge among claimants and it was more beneficial to inform *employers* about UI policies and requirements. Several efforts were mentioned:

- ESC sends manuals to every employer, along with posters to place in the workplace where the majority of workers will see it. The poster outlines South Carolina workplace laws, including laws governing unemployment insurance. It also provides information on how workers can apply for UI should they become unemployed. While employers are required to post the notice, the state does not monitor the workplace to make sure it is displayed.
- The South Carolina Employer Council has meetings with employers periodically throughout the year. For some sessions, they will invite ESC staff to brief employers on UI policies.
- The Chamber of Commerce conducts seminars for employers and will sometimes invite ESC staff to discuss UI issues.
- When large employers have plans in place to lay off staff, a UI Rapid Response team will visit the company and explain to management how the employer can submit claims and the reemployment services available to claimants.
- The state has produced public service announcements, but these have focused primarily on informing individuals of the services available to help them find reemployment.

The state publishes separate handbooks for employers and claimants, which explain the process for claiming benefits and claimants’ rights and responsibilities. In addition, it posts information on the state website, with specific links for employers and claimants. Information at this point in time has not been translated into other languages. This might change due to an increase in the state’s Spanish-speaking claimant population.

### **D. Issues Pertaining to Union Members and Other Specialized Labor**

The state has little union representation relative to other states. Indeed, according to the 2000 Current Population Survey (CPS), only 4 percent of workers in the state are members of labor unions, relative to a national average of 13.5 percent. South Carolina is a right-to-work state, meaning a worker cannot be forced to join a union in order to get or keep a job.

Any insured worker is ineligible for benefits for total or partial unemployment that is directly due to a labor dispute. State UI administrators indicated that in practice, the employer notifies the

UI Commission of the strike and provides a listing of all individuals who are of the same grade/class as those on strike. Union members are not eligible while on strike. Also, if a non-union member applies for benefits, they are not eligible, since they still have a job. The state is notified when the strike is over and if the individual remained unemployed, he or she may be eligible for UI. The central adjudication office (discussed further below) adjudicates these types of issues.

With regard to seasonal workers, there is nothing in the law that pertains to their eligibility for receipt of UI benefits – they are treated the same as other workers.

South Carolina follows federal guidelines with regard to school employees, professional athletes, and individuals with alien status.

## **II. Process for Submitting Initial and Continuing Claims**

### **A. Application Process**

In most offices throughout the state, individuals filing on their own must visit their local UI office and submit an application in person. However, several exceptions are worth noting.

- Employers who separate workers because of lack of work are able to file claims on the workers' behalf. Employers can also file partial claims for employees during a week of reduced work hours or temporary business closure, regardless of the number of workers, for up to 26 weeks. According to state reports, in 2001, mass (employer) claims comprised 64 percent of all UI initial claims. This increased from 55 percent the previous year. As will be discussed below, this may explain the state's low separation determination rate, since these claims do not result in separation determinations.
- On July 23, the Columbia office began allowing individuals to complete their application on-line, using the intranet site in the office. This is a pilot program that will be expanded statewide, and eventually will be moved to the world wide web (i.e., individuals will not need to go to special computers at the One-Stop offices).
- The Charleston office allows individuals to complete their application over the phone by calling the office and speaking to a claims taker. This differs from the automated systems used in other states; in Charleston, the claims taker walks through the application with the claimants and completes it on their behalf. This began as a pilot in 1998. Currently, about one-quarter of all claims are conducted over the phone in this office.
- Individuals residing outside the state also apply over the phone, although use a more automated system than is used in Charleston.

Both the Columbia and Charleston offices average about 180 new claims a day. In addition to this, the Charleston office takes about 60 to 70 new claims a day over the phone. For those in Charleston who file in person, after being provided forms, they are sent to the resource room where they can learn about the services offered while waiting for a claims taker. In Columbia, they first attend a 15-minute group orientation session where a claims taker will explain the basic UI policies, review the forms, and explain how to file continuing claims.

The claims taker will then meet with the claimant on a first-come, first-serve basis to review the monetary eligibility determination generated by the computer and verify the information on their past employment. If there are discrepancies, the claims taker will investigate it and submit the information to the state office.

Regardless of whether the claimant is monetarily eligible or ineligible, the claims taker will continue and review the reason for separation. If a separation issue is detected based on claimants' statements, the worker will schedule the claimant to come back eight days later. This gives the employer seven days to respond to the claim. If the claimant states the separation reason is due to "lack of work," no follow-up appointment will be scheduled. However, the employer will be notified of the application and if they dispute the claim, an appointment will be scheduled with the claimant. In the course of the interview, they might also identify a non-separation issue, such as an availability issue. In this circumstance, they will schedule an appointment for eight days later.

As mentioned in Section I, South Carolina will pay benefits for partial claims for claimants whose hours were reduced due to lack of work. This might occur if the worker is employed by a temp agency. Interestingly, the application for benefits could spur the employer to provide more hours to reduce their liability. In this situation, because of the one-week waiting period, the claimant will not be eligible for benefits unless the agency reduces the hours again. One staff admitted this is quite common among these types of employers.

## **B. Special Needs**

The state has been exploring ways to accommodate individuals who come into the office and have special needs. For example, as mentioned above, since South Carolina has experienced a growth in Spanish-speaking population, they are looking at producing more information in Spanish. The two offices we visited also have several staff on hand who speak Spanish. For individuals who speak other languages, the office can schedule to have a translator on hand for the appointment. Also, Columbia uses a computer program that translates phrases into different languages.

In addition, offices can request the services of signers for deaf individuals. For persons with visual impairments, the Columbia office uses a special machine that magnifies all written materials.

## **C. Filing Continuing Claims**

Claimants can file their continuing claims by calling weekly into the central telephone system, which takes calls Sunday through Saturday, from 6:00 AM to 12:00 midnight. Claimants are asked three questions, which they can answer using a touchtone phone:

- Did you work? If yes, how much did you earn?
- Did you refuse work, quit a job, or were you dismissed from a job?
- Were you able to work, available for work and looking for work as instructed by the claims office?

Some individuals will show up in-person to file their claims, but both Charleston and Columbia offices estimated that they may see only a few people each week who request their assistance.

For employer-filed claims, employers can file on claimants' behalf by submitting their names and identification to the office weekly. They can submit a diskette or post a file on the file transfer protocol (FTP) site.

### **III. NON-MONETARY SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

A claims taker will conduct the fact-finding interview when a separation issue has arisen, generally eight days after the claimant submitted an application. Any of the cross-trained staff can conduct this interview. During this interview, the claims taker will have the claimant's statement regarding the cause for separation and typically will have the employer's statement.<sup>82</sup> Occasionally, the employer will show up for the interview, although this is rare. Also, when the employer does not respond within the eight days, a decision will be made to pay the claimant, although the employer can appeal this decision (discussed in Section V).

The interview takes about 30 minutes, on average, and several hours for complicated cases. Staff has a fact-finding guide to help them identify a set of questions to ask, depending on the issue. For example, the claims taker is instructed to ask the following questions when the reason for separation is a voluntary quit:

- Why did the client quit?
- What happened the last day?
- What were the conditions of hire?
- Were there changes in the work conditions?
- Were efforts made to adapt to the change?
- Were efforts made to resolve the problem with the employer prior to quitting?

For discharges, they are instructed to ask the following questions:

- Why was the claimant discharged?
- What happened the last day or the date of incident in relation to the discharge?
- What is the policy? What did the claimant do? What was he expected to do?
- Were warnings given?

During this interview, they also review the employer's statement. When the claimant disputes what the employer has stated, they can contact the employer during the meeting to get further

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<sup>82</sup> If employers use third-party representatives, the claims takers will contact them first. Some staff said they will only contact the employer if the third-party representative gives them permission, while others said they will contact the employer if they are not getting the information they need from the intermediary.

clarification. The employer has 48 hours to respond to the claimant's assertions. Then, the claimant will sign a summary of his or her statement and it becomes part of the packet that is sent, along with the employer's statement, to a central adjudication unit for a decision.

All adjudication decisions are made by the adjudication unit in the state UI office. Once at the adjudication unit, the information is imaged and put in a pool. The adjudicators handle all cases; there is no specialization. When reviewing the case, the adjudicator may contact the claimant, employer, or claims taker for additional information or clarification. In our meeting with a group of adjudicators, we learned that this is not uncommon. The adjudicators are held responsible for poor quality decisions, after a Benefit, Timeliness, and Quality (BTQ) review, and not the fact-finders. According to state staff, this is a "thorn in the adjudicators' side," because a poor decision might be due to poor fact-finding.

## **B. Issues Pertaining to Voluntary Quits**

Good cause for voluntary quits is allowed only when the quit is related to work, and not personal circumstances. In general, this means the situation at work was changed in some way to make it difficult or impossible to continue working.<sup>83</sup> This might include a change in the work location that would require a lengthy commute or a different mode of transportation that is not available to the claimant, a change in the work shift, a reduction in wages or hours, or a change in the job description.

Hazardous working conditions could be deemed good cause, but the burden of proof is on the claimant. For example, workers exposed to second-hand smoke would need to get a written notice from the doctor that they have a condition such as asthma. A worker asked to operate a dangerous machine might be eligible if they could prove that this machine is, in fact, dangerous. A quit due to sexual harassment can be approved as good cause if there is proof (or if the claim is not disputed by the employer).

Circumstances that are personal in nature and not connected to the job (e.g., quit due to illness, to follow a spouse, or to take a better job) would not be deemed good cause quits.<sup>84</sup> The state considered allowing some personal circumstances to be considered good cause. For example, the claimant may have quit his or her job to take a better job, but the job did not materialize. Some in the state felt these individuals should be eligible because they are not at fault. However, the state decided that the bona fide employer should not be penalized for the worker's departure because that employer did nothing wrong.

Claimants who quit without cause are disqualified for the entire period of unemployment. To re-qualify, they must have earned wages equal to at least eight times the weekly benefit amount.

According to the adjudicators, voluntary quit cases take very little time to decide and involve little discretion because the employer and worker generally do not dispute the circumstances and the state policies are pretty clear regarding how to handle them.

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<sup>83</sup> This is an administrative rule, not in statute.

<sup>84</sup> An exception is made when the individual quits to accompany a spouse who is in the military or works for the federal government.

### **C. Issues Pertaining to Misconduct**

Misconduct must be related to the employment and must be due to “willful failure or neglect of duty.” Failure to meet production requirements (i.e., an incapacity to perform the duties) does not by itself constitute misconduct. The burden of proof is on the employer to show the individual was discharged for cause connected with the employment.

The adjudicator considers several factors:

- What does the policy say? Were they following the company policies?
- Was this the first offense? If not, did the employer warn the employee after the first offense?
- Were there any memos documenting the abuses?

This is an area where the adjudicator has some discretion, although most of the discretion is over the period of disqualification. The law states that ineligibility for UI benefits begins with the effective date of the request for benefits and continues for a period not less than five weeks and not more than the next 26 weeks (in addition to the waiting period). Staff provided some examples: tardiness could result in six to eight weeks of ineligibility; absenteeism could incur eight to 12 weeks; and gross misconduct (e.g., fighting, alcohol, theft) could result in 22 to 26 weeks of ineligibility.

### **D. Trends Over Time**

South Carolina has experienced an increase in initial claims leading to separations over time. The rate was 10 percent in 1989, 11 percent in 1995, and 13 percent in 1999. This is a trend experienced nationally, and may be explained more by economic conditions than state policy changes. The economy was improving over this period, resulting in fewer mass layoffs. The state policies regarding separations did not become more stringent over this period. In 2001, the rate declined to 10 percent, reflecting the changes in the economy.

### **F. Variation Across State**

The northern area of the state has more employment in the manufacturing industry, and more lay-offs, leading staff to speculate that this area of the state probably has a lower determination rate among initial claims. Of the misconduct and voluntary quit determinations, there should be no differences across the state in how these cases are discovered and ultimately ruled, since all initial claims that are not due to lack of work are sent to the central adjudication unit. Once at this unit, cases are handled similarly, regardless of the region.

## **IV. NON-MONETARY NON-SEPARATION POLICIES AND PRACTICES**

### **A. Fact-Finding and Adjudication Process**

The primary staff involved in non-separation determinations is located at the local UI office. Unlike non-monetary separation determinations (which are issued by adjudicators located at the state UI office), fact-finding and adjudication of non-separation issues occurs at each local UI

office (unless the non-separation issue is accompanied by a separation issue). Each local office has an adjudicator on staff whose job it is to adjudicate availability, failure to report, suitability, and other non-separation issues that arise. Claims takers in the UI local office will conduct initial fact finding with respect to non-separation issues, generally through in-person or telephone interviews with the UI claimant. The claims taker will document the results of the fact-finding interview on a specialized form, which is then sent to an adjudicator (located in the same local office) for determination. Once the local adjudicator makes the decision (typically within several days of receiving the fact finding form), the claimant is notified via mail of the determination. The claimant has 10 days to appeal the determination (see section on Appeals for additional details). The local adjudicator in the Columbia office indicated that non-separation issues arise most commonly during initial claims and eligibility reviews. The most common types of non-separation issues are related to attending school, lack of transportation, lack of available childcare, illness, the claimant being out of the area and failure to report for scheduled appointments.

## **B. Able and Available**

To be eligible for UI benefits for any week, claimants must be “able to work” and “available for work.” According to the *South Carolina Employment Security Law*, “an unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that...he is able to work and is available for work at his usual trade, occupation, or business or in such other trade, occupation, or business as his prior training or experience shows him to be fitted or qualified; is available for such work either at a locality at which he earned wages for insured work during his base period or if the individual has moved to a locality where it may reasonably be expected that work suitable for him...is available.” The individual must be seeking full-time work to be considered available, even if he or she had previously worked part-time. Local adjudicators indicated that in South Carolina, certain circumstances were important in making determinations. Several examples were provided:

- A truck driver with cataracts would generally not be found to be “able and available;” however, if he had prior work experience as an office clerk and he indicated a willingness to take a job in that former field, then he would likely be found able and available.
- A student attending school during work hours would likely be available if he/she indicated a willingness to leave school to work full-time in suitable work.
- A claimant that failed to report for an eligibility review or profiling session to the local UI office would likely be held out for a week (or longer), unless he/she had been available for work and had a job interview that day that made it impossible to make the appointment. If the individual indicated the reason that he or she did not attend the appointment was illness, being on vacation, lack of transportation, inability to arrange childcare, he/she would be held out a week or longer.

With regard to training, the law indicates that “no otherwise eligible individual shall be denied benefits with respect to any week in which he is in training with the approval of the Commission...” State and local UI staff indicated that claimants in approved training would be exempted from work search requirements until they completed their training.

### **C. Disqualifying and Deductible Income**

Due to provisions of federal law, South Carolina was required to amend its law to allow for the deduction of certain types of pensions from unemployment benefits. A pension is deductible only if it meets two criteria: (1) the pension must be based on the claimant's work, and (2) the pension must be provided by a base period or chargeable employer. The claimant's pension is deductible at the percentage that was contributed by the employer; a military pension is deductible at 100 percent.

Severance pay is not reportable and so is not considered with regard to eligibility or determining the weekly benefit amount.

### **D. Work Search**

Claimants are required to conduct a work search while receiving UI benefits (i.e., the applicant handbook indicates "you are required to actively seek full-time work on your own behalf in a suitable occupation and to apply for such work"), although the policy does not require a specific number of contacts per week. Staff noted that they require at least one contact per week, although for some professions, they might require more. Claimants are given a form on which to record all work-seeking activities and which they are asked to bring with them to their first eligibility review. As will be discussed in more detail below, the interval for their next eligibility review is dependent, in part, on their job search effort during their first six weeks.

The work search requirement is less stringent than it was five years ago. The policy then was to require all employers that claimants contacted to sign a form that they were, in fact, contacted. They also required more job contacts (a minimum of two each week). This policy was relaxed after employers complained about unqualified claimants coming for job interviews only so they could get forms signed. This requirement was also unpopular with some UI claimants because they felt employers labeled them as unemployed and or a claimant, which might reflect poorly when seeking work. UI staff indicated that this requirement led to an increase in the number of determinations for lack of adequate job search.

Local administrators and staff indicated that as part of taking the initial claim, they made claimants aware of the requirement to conduct an active work search and also checked job openings listed with the ES to see if any were suitable for the claimant. If there was an appropriate job opening in the computerized system, the staff provided the individual with the job listing. In addition, staff made claimants aware of job search help available through the ES and local One-Stop career center.

### **E. Profiling**

The state uses a regression model, which, according to state UI administrators, has nine variables (five or six of which are included in the federal regression model). Among the variables included in the model are: job tenure, occupation, industry, education, whether claimant is a delayed filer, replacement wage, claim duration, WBA, and county unemployment rate. The model, which is applied to all initial claims, assigns each claimant with a probability of exhausting benefits. Local UI office staff (each local office has a staff member assigned to conducting profiling workshops) around the state brings up a data screen (which is refreshed each day), which

provides a listing of new claimants listed in order from highest to lowest in terms of the probability of exhausting benefits. Claimants remain in the pool for four weeks. Local office staff selects claimants for profiling services off of this screen. They work down from those with the highest probability of exhaustion of benefits – staff cannot skip individuals in working down the list, though some claimants (such as those who have been submitted as part of mass claims by employers) are exempt.

The numbers of individuals selected to attend profiling workshops varies by local office in accordance with how often workshops are held and how many individuals can be accommodated at such sessions. In the Columbia and Charleston local office we visited, the staff person assigned to administering profiling requirements selected all claimants with a 50 percent or above chance of exhausting benefits. In the Charleston local office, for example, it was typical that 50-60 claimants would be sent notices indicating that they had been selected to attend a profiling session. Two workshops were held each week, with 25-30 individuals being invited to each session. About 50-60 percent of those invited would typically show for the scheduled workshop. Those not showing for the workshop were sent notices that their check was stopped and they would need to come in to the office to discuss why they failed to show for the session. Unless the claimant could provide a good reason for failure to show (e.g., searching for work), they would be found ineligible for the week (i.e., unavailable for work) – and would be re-scheduled for the next workshop. It would be typical for an individual to attend a profiling session about 10 days after applying for benefits (generally before the claimant had yet received a check).

Though reemployment services offered for profiled claimants are similar across localities – usually a one- to two-hour workshop that covers the types of reemployment services available – each local office determines the types and content of profiling services. The profiling workshop in Charleston typically lasts for about 2½ hours (in Columbia, the workshop is 1-1½ hours). The workshops in both localities cover about the same topics:

- Review resources and reemployment services available through UI, ES, and One-Stops;
- Provide a quick review of effective job search methods; and
- Where appropriate, provide job leads suitable for claimants.

In both localities, profiling services are pretty much limited to these workshops – though those attending these workshops are strongly encourage to return to use ES/UI resources and, in some instances, workshop attendees will contact the instructor for additional help (particularly in the area of structuring job search activities).

The profiling program has become less intensive over time. Previously, profiling sessions lasted three hours, followed up with required participation in other activities, and the state selected more claimants for participation. Staff at the state level felt the current program is effective at spotlighting a group of individuals who need additional help, but is limited in what it can do because of limited resources. There may not have been a great need for profiling during the economic upturn, because individuals tended not to exhaust their benefits; this, however, may no longer be true.

## **F. Work Registration**

As part of the process of making an initial claim, applicants are required to register with the ES as a condition for receiving UI benefits.

## **G. Eligibility Reviews**

South Carolina conducts eligibility reviews on all claimants at six weeks of receiving benefits. Claimants are scheduled for an in-person interview at the local UI office. Claimants must bring in a form provided at the time they applied for UI benefits, which records their job search activities during the first six weeks of receipt of benefits. The UI staff person will interview the individual concerning their continuing eligibility, availability for work, and ongoing efforts to secure suitable work. It is up to the interviewer to make the determination of when the individual will be scheduled again for another eligibility review. This decision generally hinges on the UI staff person's assessment of how hard the individual has been searching for work. The individual could be re-scheduled for an eligibility review in as short a time as two weeks (e.g., if they had shown little in the way of job search activity) or as long as 13 weeks. Individuals that exhaust benefits, would, on average, receive three eligibility reviews, factoring in the extension period allowed under the Temporary Extended Unemployment Compensation (TEUC) program.

Individuals that do not show for eligibility reviews could miss one or more weeks of benefits. If a claimant does not show for an eligibility review, the UI staff person will immediately suspend UI benefits. No check will be issued until the individual comes to the local UI office to provide an explanation for why he/she missed the ER and to re-schedule the review. It is likely that the individual will lose at least one week of benefits, unless they can show good cause for not attending the interview. For example, if the individual claims illness, lack of transportation, or inability to arrange childcare, then they would likely be held out for the week because of unavailability. Generally, the individual would need to indicate that they were somehow engaged in an active job search at the time that prevented them from attending the review. Claimants that do not report to the local UI office to provide an explanation for failure to report will have their benefits terminated.

## **H. Suitable Work**

According to the *South Carolina Employment Security Law*, “in determining whether or not any work is suitable for an individual, the Commission shall consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.” UI state and local administrators indicated that there was a fair degree of discretion involved in determining “suitable” work; all we interviewed indicated that as the spell of receipt of UI benefits lengthened, that claimants were expected to become more flexible with regard to what was considered suitable work (particular with regard to wages). In addition, staff noted that prior work conditions and wages were key consideration in determining whether work was suitable for the claimant (i.e., suitability is very much tied to the particular individual). According to UI staff we interviewed, there are four main considerations with regard to suitability: (1) wages offered

(in comparison to what the individual was paid in his/her prior job), (2) hours/shift (e.g., if the individual worked the day shift in his/her past job, they would not be required to accept evening or night work); (3) appropriate commuting distance (which depended on distance the individual traveled to work on his/her prior job and type of transportation available to the individual); and (4) occupation/type of job duties.

Unless an employer reported that an individual had turned down suitable work or the local office had referred a claimant to a job opening, local office staff would in most instances rely upon what the claimant reported during the continuing eligibility process or eligibility reviews. There is a special form that employers may complete to report instances where claimants refuse suitable offers of employment. Few employers send in these forms, though some temporary agencies do submit these forms on individuals that file for UI benefits that refuse to take new temporary assignments. If such an employer form is submitted, the local office must schedule a fact-finding interview with the claimant to obtain a statement and issue a determination. Individuals who are determined to have refused suitable work are disqualified from receiving UI benefits for the current spell of unemployment and cannot file a new claim until they re-qualify (i.e., earn eight times WBA with another employer).

## **V. NON-MONETARY DETERMINATION APPEALS**

Claimants who are dissatisfied with a determination and feel they have additional information to offer can have their determination “reconsidered” by the local office, provided the request is made within 10 days of the determination date. For those with no additional information, they have the right to appeal the decision. There are several levels of appeals available to the claimants and employers: (1) appeal to the Appeal Tribunal; (2) appeal to the Commission, (3) appeal to the Court; and (4) Administrative Appeal.

The first appeal – the Appeal Tribunal – is an evidentiary de novo appeal. That is, the court hears all new evidence and decides the facts and law as if there had been no prior decision. The second appeal, by the Commission, is a review of the previous case; no new testimony is taken, although it will hear arguments on both sides. The appeal to the Court is conducted by the local circuit court and is also a review of the record. Finally, at the request of an employing unit or employer, the Director of the UI Division can choose to review any administrative determination with respect to the status, liability, and rate of contributions and can issue an administrative ruling with regards to the determination.

In our discussions during the site visit, we focused on the first two levels of appeals – which UI officials referred to as lower level (or Tribunal) and higher level (or Commission appeals). Appeals may be filed by going in person to a local UI office or by mailing or faxing a letter requesting an appeal. The appeal request must be in writing. The determination letter includes a notice, which describes the right of each interested party to appeal a determination, as well as the procedures for doing so (though it does not provide a check box or pre-formatted form to facilitate the appeals process). There is no charge made for any appeal.

When a claimant files an appeal, he/she must continue to report to the local UI office as instructed and file a timely claim each week. Failure to do so results in the individual not being paid on the claim. If the employer appeals a decision holding the claimant eligible for benefits,

the Commission will continue to pay the UI benefits to the claimant pending the result of the appeal. However, if the claimant is held to be ineligible for benefits, he/she must repay the benefits to the Commission.

**Lower Level (Tribunal) Appeals.** About 17 percent of non-monetary determinations are appealed in the state, claimants initiating four-fifths of these appeals. Both the employer and claimant receive notices to appear at a hearing, the purpose of which is to receive direct sworn testimony about the specific issue(s) over which the appeal is submitted. Hearings are typically conducted at a local UI office by an itinerant hearing officer (sent out from the state office). The Commission prefers to conduct hearings with both the employer and claimant in attendance; however, it is possible also to conduct appeals over the telephone. The appeals process is time-driven (a decision must be rendered within 30 days of a fair hearing), so while trying to honor requests from the various parties involved for scheduling and attending a hearing, the hearing officer can determine that it is necessary for one or more parties to be involved in the hearing via telephone. Appeals staff indicated that in about one-fourth of hearings that one or more parties are patched into the hearing by telephone. Lower level appeals hearings typically take about 30-45 minutes (but can run from 15 minutes to several hours). During the hearing, the officer will have the record of earlier fact finding conducted by the local UI office, but will also conduct a new round of evidence gathering to clarify relevant facts in the case. Claimants and employers provide testimony under oath. Typically, the hearing will focus on the events leading up to the departure of the claimant from the employer. After testimony is taken, a decision must be rendered within 30 days – though hearing officers try to write the decision immediately following the hearing and generally decisions are mailed out at the end of each week to the interested parties. State UI officials estimated that 25 to 30 percent of appeals result in modification or reversal of the original determination.

Claimants and employer are represented in less than one-fifth of cases, with about an even balance between employers and claimants being represented (generally by attorneys). Any person can represent a claimant; only attorneys can represent corporate employers. Third parties cannot participate in such hearing unless they have personal knowledge relating to the separation. No legal fees are paid for either party, though the Commission sets a limit on legal fees that can be charged to claimants (\$125).

**Higher-Level (Commission) Appeals.** Each party then has 10 days to appeal the Tribunal decision after the date of mailing of the decision. The same methods as those used in lower-level appeals are used to request Commission appeals – either the claimant or employer goes to a local UI office or submit in writing via mail or fax an appeal request. Commission hearings, held in Columbia (the state Capitol), are scheduled for 20 minutes – providing each side 10 minutes to present oral arguments. As mentioned above, no new evidence is presented or fact-finding is undertaken at the higher level (i.e., the Commission issues a ruling based on the facts collected through the lower level appeals process). About 20 percent of lower-level appeals are reversed or modified.

Staff from the state suggested that a high share of decisions are appealed, which the DOL data corroborated (about 17 percent of all determinations are appealed in South Carolina relative to 12 percent across all states). In South Carolina, it is relatively easy to appeal a decision, since neither party has to state grounds for appealing the decision.

## **VI. OTHER ISSUES**

### **A. Experience Rating**

Like most states, South Carolina is a reserve-ratio state. A new employer liable for contributions coming under the Law for the first time will be assigned a base rate of 2.64 percent and this rate will be effective until such a time as the employer is eligible for an experience rate computation. Under experience rating, an employer may have a base contribution rate ranging from 5.4 percent down to a minimum of 0.54 percent depending upon four factors: (1) most recent annual payroll, (2) contributions paid, (3) the benefit charges made against the account for UI benefits paid to former or current employers during past years, and (4) the statewide reserve ratio. Generally, an employer's base contribution rate remains 2.64 percent until there have elapsed 24 consecutive months from the date liability was accomplished. At the end of the quarter in which 24 consecutive months is accomplished, a computation is made for an experience rate to apply to the balance of the calendar year. Essentially, a snap shot is taken as of June 30<sup>th</sup> of each year for the purpose of computing contribution experience rates applicable for the following calendar year (i.e., to begin the following January 1). Contribution rates are established in accordance with the reserve-ratio system, which is the ratio the reserve balance bears to the most recent annual payroll. To arrive at the reserve balance, all benefits charged to an employer's account are subtracted from the total contributions made by the firm to the fund. The resulting figure is the employer's reserve. The ratio obtained by dividing the reserve balance by the most recent payroll places the employer in a rate bracket established by the law. An estimated 5 to 10 percent of employers are at the maximum rate. According to state UI officials, the experience rating factor can be a factor in encouraging employers to challenge worker claims during both determination and appeals.

### **B. Role of Job Service and One-Stops**

There are a total of 55 One-Stop career centers in the state, of which 31 are located in ES/UI offices. The Columbia UI local office that we visited is located in a comprehensive One-Stop, which provides a range of services, including WIA training, and outstationed human service agencies on-site. The Charleston UI local office we visited provided some employment services, but referred clients to the Trident One-Stop Center for WIA training.

To initiate a claim, in almost all instances an applicant must come into a local UI One-Stop. As noted earlier, if a claimant is part of an employer claim (i.e., mass claim) it is not necessary to come into a local office; in addition, the Charleston office has initiated a special procedure where applicants can call into a local office and complete a claim over the telephone (though if there is a non-separation or separation issue, they will have to come in to make a statement as part of a fact finding interview).

### **C. Changes Planned in State**

The state is planning on making several changes to its UI program in the near future that could affect the number of initial claims filed. These include the following:

- In the next six months, the state will be launching its internet site that will begin accepting initial claims. It remains to be seen how many people will choose to submit their claims this way, although the state is expecting to see a jump in applications. Staff noted that there will always be a group of filers who will more comfortable coming into the office to file their claims.
- The state also plans on implementing a “virtual call center” that will involve the use of an automated telephone system for completing the intake applications. South Carolina’s phone system will differ from other state systems because rather than have all staff located together in one call center, staff will continue to work out of the One-Stops, but will be able to pick up calls in a statewide queue in the order in which the calls were received. Therefore, a staff person in Charleston will be able to complete an initial claim from someone who called from Columbia. This new development might reduce the flow into the job service office, but claimants will still be required to come in for fact-finding interviews and eligibility reviews. The state plans on implementing the call center after they have launched the internet site because the hope is that the internet will be the preferred choice of most claimants (requiring fewer resources than the phone center).
- The state’s policy of allowing employers to file claims has become more liberal in recent years. Previously, the policy allowed only employees filing claims for 25 employees to submit claims, and partial claims were approved for only four weeks; now, there is no minimum number of claims per employer and employers can submit claims for up to 26 weeks. The state has considered implementing more restrictive policies by approving claims for just 13 weeks, and reinstating the minimum claims requirement of 25. This would reduce claims by employers, but could also reduce employer fraud.

## VII. Unique features of south Carolina’s program

The state has implemented a number of unique policies that are worth mentioning.

- **The state uses cross-trained to conduct both UI and employment service functions.** Staff interviewed expressed differences in opinion about the effectiveness of the cross-trained staff. Staff who might be effective UI workers might not have the same skills and interests as ES workers. In particular, the UI work involves understanding complex UI policies, completing a myriad of forms, and fact-checking all information provided, while the ES job has traditionally required staff with good “people skills” – requiring that they be part job counselor and part job developer. Some at the state level questioned whether the training was adequate, especially with regards to the UI responsibilities. Staff in the local offices generally felt that having staff cross-trained made sense and that they were adapting to the new policies.
- **The state’s low separation determination rate appears to reflect the high share of employer-filed claims and relatively low employer tax rate.** Over half of all initial claims are filed by employers. When an employer files a claim on the claimant’s behalf, no issue is generated. Since the state does not experience higher mass layoffs than other

states<sup>85</sup>, this suggests that allowing employers to file claims might explain the state's low determination rate. In addition, according to the state staff, employer's pay a relatively low tax rate, which may result in fewer employer's contesting workers' separation, because the penalty is minimal.

- **The state's high separation denial rate reflects the state's relatively stringent policies concerning separation reasons.** When an issue arises – that is, a claimant applies for UI assistance, and the separation reason was something other than “lack of work” – the determination will generally be ruled in favor of the employer. In 1999, 80 percent of all the state's separation determinations were denied, compared with 54 percent of all separation determinations in the U.S. The stringent policies might explain the high denial rates. South Carolina limits voluntary quits to those that are connected to works and as a result, only 7 percent of all voluntary quit separations are allowed. Employers can discharge its workers for misconduct if it is following the established policies. Thus, misconduct for relatively minor offenses such as tardiness will likely be ruled in the employer's favor, although the duration of ineligibility will be limited.
- **The state uses a central adjudication unit to adjudicate all separation issues.** This policy ensures that decisions are made consistently across the state. Unlike in most other states, the staff who adjudicate are not the ones conducting the fact-finding. This might result in some redundancies, especially as the adjudication unit often has to follow-up with the claimant and employer to get additional information. This policy might result in a more unbiased decision, since the adjudicators have not met with either party in person and are going primarily on what information is provided in the written materials. The state is generally happy with this approach and have even discussed centralizing the adjudication of nonseparation determinations.
- **South Carolina is one of the few states left that requires in-person filing, although this policy is changing.** The Charleston and Columbia One-Stops both experience heavy foot traffic, much of it coming from individuals applying for or claiming unemployment insurance benefits. When the state launches its internet site and implements the virtual call center, the offices will experience a reduction in traffic. This could reduce the number who receives employment services prior to their first visit to the office for their eligibility review six weeks later. The state does not anticipate a reduction in the staff workload, since these new developments could increase the number of applications.

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<sup>85</sup> In fact, the share of mass layoffs in the state as a share of total unemployment was just 7 percent in 1999; for the US it was closer to 20 percent.

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## South Dakota Site Visit Report

To learn more about how South Dakota defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from The Lewin Group and Capital Research Corporation conducted a site visit to the state from September 18-20. We met with state-level staff at the Department of Labor (DOL), staff from the state call center, adjudication and appeals staff, and staff from one-stop career centers in Aberdeen and Pierre.

This report provides an overview of South Dakota's UI program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state and the role of the employment centers. The report concludes with a discussion of the features of South Dakota's program that we found to be unique to the state, some of which could help explain some of the UI outcomes for the state.

### I. GENERAL OVERVIEW OF South Dakota's Unemployment Insurance PROGRAM

According to the state's Unemployment Insurance Benefits website, UI serves the following purposes: "Unemployment insurance provides financial assistance for persons who have lost their jobs through no fault of their own. Its purpose is to provide a temporary source of income to individuals while they look for work. These payments also provide economic stability to the community."<sup>86</sup> UI benefits are one level of support to unemployed workers. One-stop career centers help claimants find jobs. Training is provided when needed. UI staff note that the overarching goal of the program is to help claimants find work as quickly as possible.

U.S. Department of Labor administrative data indicates that, relative to other states, South Dakota has a lower reciprocity rate and higher determination rate. The state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is 16.5 percent, the second lowest in the country (the national average is 30.1 percent). In 1999, 26 percent of all new claims resulted in a separation determination (compared to 22 percent nationally); of these 62 percent were denied (the national average was 53 percent). In addition, the non-separation determination rate (6.8 percent of claimant contacts) exceeded the national average (4.1 percent of contacts). The percent denied was also higher (92 percent versus 59 percent).

Staff note that a number of features unique to South Dakota affect the state's UI program. The state has one of the lowest unemployment rates in the country—currently 2.6 percent. The economy is dominated by agriculture (most are small farms not covered by unemployment insurance), services, and seasonal industries such as tourism and construction. The state also has one of the highest female labor force participation rates in the nation. Staff suggest this is due in part to lower-than-average wages in the state and the need for two-earners in a household.

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<sup>86</sup> [http://www.state.sd.us/dol/dolui/benefits/BE\\_home.htm](http://www.state.sd.us/dol/dolui/benefits/BE_home.htm)

## A. Organizational Structure

The UI program is housed in the Office of Labor Administration (OLA) within the state Department of Labor (DOL) Division of the Secretariat. In addition to OLA, the Division of the Secretariat includes the director of WIA programs, field operations, marketing/information programs, and labor and management. The UI Director is assisted by managers for UI Benefits, UI Tax, Quality Control, Administrative Services, and the Department Advocate. While most DOL offices are located in Pierre, the state capital, OLA is located in Aberdeen.

South Dakota adopted a centralized call center in 2000. The call center is located in Aberdeen. Claimants apply for benefits by calling a toll-free number and also file for continuing benefits via telephone. In rare cases, applications are taken in person at one-stop career centers and then forwarded to Aberdeen for processing. No decisions are made at the local level regarding claims. Adjudicators are co-located in the call center (located in Aberdeen). Appeals staff, including administrative law judges, are not housed in OLA. Rather, they are part of the DOL Office of Labor and Management, which is located in Pierre.

## B. Monetary Requirements

To qualify for benefits, a claimant must have been paid wages for insured work in two or more quarters of the base period. The base period is the first four of the last five completed calendar quarters. There is no alternative base period.<sup>87</sup> In addition:

- Wages in the high quarter must equal or exceed \$728.
- Wages in the other three quarters must equal or exceed 20 times the claimant's weekly benefit amount.

For example, if the claimant's high quarter was \$2,600, the corresponding weekly benefit amount would be \$100 (1/26 of the high quarter wages). Thus, wages in the three other quarters must total \$2,000 (20 times the weekly benefit amount).

According to state administrative data, the percentage of claimants monetarily eligible began to rise in the past year after remaining relatively stable through much of the 1990s. In 2001, 85.2 percent of claimants were monetarily eligible, an increase from 80.5 percent in 1997.

If a claimant is monetarily eligible, the weekly benefit amount ranges from \$28 to \$241. The maximum amount payable in the benefit year is one-third of total base period wages, but no more than 26 times the weekly benefit amount. Thus, if base period wages totaled \$9,000, the maximum amount of benefits would be \$3,000. The average claim duration for the year ending September 30, 2002, was 11.8 weeks. The benefit exhaustion rate was 10.4 percent.

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<sup>87</sup> There is a special base period for people who are not monetarily eligible because they have not worked for an extended period due to a work-related injury. This base period can only be used if a claim is filed within 24 months of the injury.

### C. Outreach Efforts

According to state staff, UI conducts limited outreach with employers and does not have a broad-based outreach effort to educate the general population about program benefits. For example, the UI agency does not advertise the program in the print media or air public service announcements. Claimants generally learn about the UI program in the following ways:

- Employers are required by law to post a placard in their offices that explains the program. UI sends every employer a placard annually. During random audits of employers, UI checks whether the placard is posted; however, there is no fine for non-compliance.
- One-stop career centers have brochures about the UI program. The *Dial to File* pamphlet explains how to file, what information will be needed to file, and how to obtain reemployment services.
- The DOL website has a UI benefits page that includes information on filing a claim, eligibility requirements, deductions from benefits, wage requirements/benefit amounts, weekly claim filing, filing appeals, facts about UI benefits, frequently asked questions, and links to related sites.<sup>88</sup>
- The telephone directory yellow pages lists the UI call center toll-free number.

UI staff notify employers about the program through a variety of methods.

- As noted above, each employer that pays UI taxes receives a placard annually. However, employers are not required to tell workers about UI benefits at the time of separation.
- Each employer receives the *Handbook for Employers*, which explains employer liability, new hire responsibilities, covered employment, benefit payment policy and practices, and information about the job service.
- Seminars are scheduled regularly around the state to discuss a variety of UI issues with employers.
- The DOL website includes information for employers, including tax rates, tax forms, appeals, and new hire reporting requirements and information.

### D. Issues Pertaining to Union Members and Other Specialized Labor

The state has little union representation relative to other states. According to the 2000 Current Population Survey, only 5.9 percent of workers in the state are members of labor unions, relative

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<sup>88</sup> [www.state.sd.us/dol/dolui/benefits/BE\\_home.htm](http://www.state.sd.us/dol/dolui/benefits/BE_home.htm).

to a national average of 13.5 percent. South Dakota is an “at will” state, meaning that an employer does not need a specific reason for firing an employee.<sup>89</sup>

In terms of labor disputes, workers do not receive benefits when work is not performed due to a strike. According to the South Dakota Codified Law, “An individual is not entitled to any benefits for any week with respect to which the Secretary finds that his total or partial unemployment is due to a labor dispute at the factory, establishment, or other premises at which he is or was last employed.”<sup>90</sup> However, the following exceptions apply:

- The worker is not participating in or financing or directly interested in the labor dispute.
- The worker does not belong to a grade or class of workers of which immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating or financing or directly interested in the dispute.
- The worker is locked out by the employer.

The length of disqualification for a labor dispute is working in covered employment for six weeks and earning not less than the weekly benefit amount in each of those weeks. The disqualification ends when the labor dispute ends.

In terms of other specialized labor categories, seasonal employment is common in South Dakota. Workers are eligible for benefits so long as the employer is closed for business for five months of the year. The state rule identifies specific businesses that are seasonal, including construction and tourism. Application for seasonal employment must be made by employer and approved by the Department of Labor. (Construction businesses cannot apply for nor are they approved as seasonal employers.)

With regard to other labor categories, benefits are not paid to athletes between successive seasons. Those working in instructional, research or administrative capacities for an educational institution are not eligible for benefits between academic years or successive terms. Benefits are not paid to aliens unless the individual was lawfully admitted for permanent residence at the time services were performed.

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<sup>89</sup> State law says “an employment having no specified term may be terminated at the will of either party on notice to the other, unless otherwise provided by statute.” Generally, the only exceptions to this rule are: When there is a contract for employment, when the employer discharges an employee in retaliation for his refusal to commit a criminal or unlawful act, when the employee is attempting to take advantage of a lawful right, such as filing a worker's compensation claim. <http://www.state.sd.us/dol/dlm/terminat.htm>.

<sup>90</sup> Section 61-6-19.

## II. Process for Submitting Initial and continuing claims

### A. Application Process

Claimants are encouraged to apply for benefits on the first business day after they become unemployed. Claims are filed by calling the central call center. Calls go directly to an agent; there are no Interactive Voice Response (IVR) questions. The agent enters the claimant's Social Security Number into the computer and the screen is automatically populated with information on wages earned in the state.<sup>91</sup> The computer determines monetary eligibility and the weekly benefit amount. The agent then follows a detailed script to collect information about the last day worked, vacation/holiday/sick pay or severance pay, and reason for separation from most recent employer. The agent verifies the beginning and end date at the last place of employment, hourly pay, and the reason the claimant is no longer working (i.e., laid off, quit, fired/discharged). The claimant is asked if he or she will be recalled by the employer or is a member of a referring union (in either case, the claimant will not have to conduct an active work search). If the response is "no," the agent explains that the claimant will have to register with the local one-stop career center and provides the address and telephone number of the nearest center to the claimant's home.

The call center agent conducts fact-finding as part of the initial claim. If a separation or non-separation issue arises, the agent takes a statement and completes a screen on the computer. There can be multiple fact-finding statements on any given claim. For instance, the agent will always ask the caller to explain the reasons for the job separation.

- If it is a layoff, the agent asks the reason for the layoff (e.g., lack of work, business closing) and whether the claimant was given any notice.
- The script includes a number of scenarios for voluntary quits, including personal reasons, medical reasons, working conditions, harassment, breach of contract, in lieu of discharge, mutual agreement, reduction of hours/wages, leave of absence, and selling a business. While the specific questions for each type of quit differ slightly, the claimant is generally asked why he or she left work on the last day of employment, what other options were available, and what attempts were made to have the employer resolve the issues. If the claimant indicates a medical reason for quitting, the agent also asks for the names of all doctors treating the claimant for the medical condition that caused the quit. A form is sent to each doctor.
- The discharge script includes questions for violation of policy, absenteeism, work performance, insubordination, theft, after giving notice, mutual agreement, and leave of absence. As with voluntary quits, the questions differ slightly by reason for discharge, but generally focus on what was the employer's policy on the issue in question (e.g., tardiness), whether the claimant was aware of the policy, whether the policy written or verbal, whether the employer had discussed the particular behavior with the claimant, and whether a warning had been issued.

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<sup>91</sup> If the claimant has worked in other states in covered employment, it is also possible for the claims taker to view these wages (though the claims taker must log into another database).

If the claimant indicated receipt of vacation or severance pay, the agent takes a statement on a separate screen.

The agent also asks the claimant if there are any circumstances that restrict seeking or accepting work, such as particular days or hours, transportation or child care problems, or medical conditions. If the claimant reveals an availability issue, the agent takes a statement.

Finally, the agent explains how to file continuing claims. The claimant is told that he or she will receive a packet of information in the mail that includes a book entitled *Facts About Unemployment Insurance Benefits* and is responsible for knowing the information in the booklet. Those who are required to register at the one-stop (i.e., claimants who are not members of a referral union or will not be recalled by their employers) are reminded that they need to make two job contacts each week.

## **B. Special Needs**

Although the state does not publicize it, claimants can file their initial claims at one-stop career centers. Staff at the one-stops will always make the individual aware of the call center and encourage initial filing through that system. However, if the individual has a special need (e.g., hearing impairment) or is unable to navigate the phone system (e.g., perhaps because of poor basic skills or language barriers), the local staff at the one-stop will take all of the information needed (and conduct fact-finding, if appropriate) to assist the individual in filing a claim for UI benefits. For example, staff at a one-stop we visited noted that they filed a claim on behalf of a worker who was hard of hearing. The one-stop staff will collect the paperwork and mail it to the central office in Aberdeen. All decisions about eligibility are made by the central office. UI staff estimate that less than one percent of claims are filed in the one-stop centers.

Translation services are also available for claimants who do not speak English as their primary language. DOL contracts with a firm in Texas to provide these services.

## **C. Filing Continuing Claims**

The benefit week begins on Sunday and ends on Saturday. Claimants call a toll-free number to file their weekly claims. The IVR system asks a series of questions; claimants respond by punching numbers on their telephone keypads. The questions are:

- During this week claimed, did you work for an employer or in self-employment? [if yes, the claimant answers the following questions:]
  - Please enter the total number of hours you worked during the week.
  - Please enter the gross total amount of wages you earned in dollars and cents.
  - If you indicated you worked but had no earnings, was it because you attempted commission sales, were self-employed, or have other unpaid hours?
  - Are you still working for this employer?

- Did you or will you receive any of the following for this week (answer yes or no and gross amount): holiday pay? vacation pay or annual leave? sick pay? severance pay/wages in lieu of notice?
- Will you begin receiving Social Security, pension, disability payments or worker's compensation or did the amount previously reported change?
- Are you on call to return to work for your regular employer?
- Did you search for work as instructed? (Question is asked only if work search is required.)
- Were you physically able to work?
- Were you available to accept a job if offered?
- Did you refuse any offer of work or referral to a job?
- Did you begin school or did your class schedule change this week?

*Section IV* provides detail on how continuing claims are adjudicated.

### **III. NON-MONETARY SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

Adjudicators are located in the central Aberdeen UI office. There are five full-time adjudicators, and others are assigned on an as-needed basis.<sup>92</sup> As noted above, the call center agent takes a statement for any issue that arises during the initial claim process. At the end of each work day, the agent files the claims according to local one-stop career center office. (As will be discussed below, one-stops are sent a list of claimants who need to register for employment services.) A staff person sends a UI information packet to the claimant. In addition, a notice (Form 238) is sent to the base period employer that will be charged for benefits first. Notices (form 238) are then generated through out the claim year as claimant begins to draw against that employer. The employers have 15 days to respond. Adjudication extends to the last employer of 30 days, regardless of whether it was in the base period. (The other base period employers are contacted because they may be charged for the benefits.) The initial claims are then sorted by issue (e.g., separation issues are placed in one file, disqualifying income in another).

Each month, an adjudicator will be assigned to a specific issue. Thus, one will handle all separation issues, one will work on non-separation issues, and another will adjudicate issues that arise from the IVR (weekly claims). Once the claims are in hand, the adjudicator evaluates them to determine if either party needs to be contacted for additional information. In all cases, there is a claimant statement (taken during the initial claim filing). In some cases, there is information from the employer (i.e., some, but not all, return the Form 238 with information on the separation and documentation). Adjudicators noted that they do not always need information

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<sup>92</sup> The state recently began cross-training claims agents in adjudication.

from the employer in order to make a decision. For example, if a claimant indicated that he was fired for tardiness and had been warned that his behavior put his job in jeopardy, the adjudicator would not call the employer. Generally in a discharge scenario employers are contacted. However, if the claimant indicated that he was fired for tardiness and had been given no warning, the adjudicator would try to contact the employer. Contact is made via telephone. The employer is given 48 hours to return the call. At that point, a decision is made based on the information available. If the claimant and employer statements contradict each other, the adjudicator will make calls to both parties to try to clarify the matter. Once a decision is made, the adjudicator sends a letter to the claimant and employer. The letter notifies both parties that they can appeal and provides instructions (as discussed below, appeals must be in writing).

In some cases, additional information is received after a decision has been made on the determination. For example, the employer might mail documentation to the adjudicator that arrives after the 48-hour window for responses. The adjudicator can conduct a redetermination. Both parties will be informed via writing if the redetermination yields a different decision. (Claimants or employers can request a redetermination; UI adjudicators determine if a redetermination is proper. If not, file is referred to appeals.)

## **B. Issues Pertaining to Voluntary Quits**

According to Title 61 of the Codified Laws, “good cause” for voluntarily leaving employment is restricted to certain situations.<sup>93</sup> Specifically, good cause is granted if:

- Continued employment presents a hazard to the employee’s health. However, this subdivision applies only if:
  - Prior to the separation from the employment the employee is examined by a licensed practitioner of the healing arts, as defined in chapter 36-4 or 36-5, and advised that continued employment presents a hazard to his health; and
  - The health hazard is supported by a certificate signed by the licensed practitioner of the healing arts.
- The employer required the employee to relocate his residence to hold his job.
- The employer’s conduct demonstrates a substantial disregard of the standards of behavior that the employee has a right to expect of his employer or the employer has breached or substantially altered the contract for employment.
- An individual accepted employment while on lay off and subsequently quit such employment to return to work for this regular job.
- The employee’s religious belief mandates it. This provision does not apply, however, if the employer has offered to the employee reasonable accommodations taking into consideration

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<sup>93</sup> Section 61-6-13.1.

the employee's religious beliefs if this offer is made before the employee leaves the employment.

UI staff suggested that good cause reasons for quitting employment in South Dakota were likely more restrictive than in some other states. For example, there are no provisions that take into account quitting to care for a family member, to relocate due to domestic violence, to follow a spouse, or to take a better job. Quitting due to sexual harassment might be considered good cause under the employer conduct provision, provided that the claimant made an effort to address the issue with the employer prior to separating from the job.

The length of disqualification for a voluntary quit is working in covered employment for six weeks and earning not less than the weekly benefit amount in each of those weeks.

### **C. Issues Pertaining to Misconduct**

Section 61 of the codified law defines misconduct as follows:<sup>94</sup>

- Failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed.
- Substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.
- Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee.
- Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

Mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief which cannot be reasonably accommodated by the employer is not misconduct.

UI staff noted that the law for misconduct is less specific than for voluntary quits. As a result, adjudicators have more discretion in making decisions. They seek to answer the "how, why, when, and where" questions. For instance, if the employee was fired for failure to obey orders, the adjudicator will ask a series of questions including, What exactly did the employee do? Was it a pattern or an isolated incident? What actions were taken to warn the employee? Did the employee know that his or her job was at risk due to the behavior in question? The burden is on the employer to prove that the worker willfully disregarded the rules.

The length of disqualification for misconduct is working in covered employment for six weeks and earning not less than the weekly benefit amount in each of those weeks.

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<sup>94</sup> Section 61-6-14.1.

## D. Trends Over Time

The percentage of initial claims resulting in a separation determination increased 100 percent between 1989 and 1999, from 13 percent to 26 percent. The national average in 1999 was 22 percent. The percent of separation determinations that resulted in denials also exceeded the 1999 national average (62 percent versus 54 percent).

State staff was unsure why the separation determination rate doubled between 1989 and 1999. They noted that there were no new laws or policies during that time period that would have made reasons for quitting or definitions for misconduct more stringent. The economy was relatively stable during the time period as well.

As for why the separation determinate rate was high relative to other states, staff pointed to the fact that “good cause” for quitting is defined relatively narrowly (e.g., no personal reasons for quitting).

## F. Variation Across State

South Dakota has a centralized call center for taking claims; adjudication is also conducted centrally. Staff do not track initial claims or determinations by region of the state. (Initial, additional and reopened claims are tracked by Local Office area by the Call Center Manager.) However, Sioux Falls is the largest population area in the state. As such, most claims and determinations likely involve workers in this metro area.

# IV. NON-MONETARY NON-SEPARATION POLICIES AND PRACTICES

## A. Fact-Finding and Adjudication Process

As discussed earlier, the call center staff conduct initial fact-finding on each new claim. This fact-finding is limited to obtaining information from the perspective of the claimant (i.e., the employer is not called). The call center staff has a series of questions that are intended to uncover potential availability issues during the initial claims taking process – for example, questions around days and hours of availability for work, unavailability for specified periods of time, leaves of absence, transportation-related issues, school attendance, problems with arranging child care, medical/disability issues that might affect availability, and refusal of suitable work. If an issue arises, the claims taker has a series of special forms related to the specific availability issues, which are completed and sent along with other documentation to the state-level adjudicators.

Availability/suitability issues are also uncovered through several other means. As noted above, as part of the weekly process of submitting continuing claims, claimants use the IVR (telephone) system. There are a series of questions asked during this process that are aimed at uncovering availability/suitability issues (a “yes” response will automatically trigger an issue that needs to be resolved prior to the UI check being issued). (See *Section II.C* for the questions.)

In addition to the initial and continuing claims process, non-separation issues may be uncovered by staff at the local one-stop career center. The one-stop is involved in three aspects of the UI program: registration for work search, eligibility review interviews, and profiling services. For

example, new claimants (unless they are work attached or members of a union) are required to report within three weeks of filing their claims to the local one-stop career center to receive a one-on-one orientation about the UI program and to register for work search. If the claimant fails to appear within the three-week window, an issue arises and benefits may be stopped until the claimant complies. In addition, during these discussions, the one-stop staff may observe (e.g., the claimant arrives on crutches) or may hear about (e.g., the individual is caring for a family member or attending school) some problem or issues that affects availability/suitability. If an issue arises, the local one-stop staff person will send a notice to the adjudication unit of a non-separation issue for determination. Failure to show for an eligibility review interview (ERI) or profiling services also generates a determination.

As they arise, non-monetary determination issues are sent (on a daily basis) to the adjudication unit. As noted above, adjudicators are rotated each month to specialize on particular types of determination. Files are distributed to each adjudicator, which contain background documentation (typically taken by the call center or local office staff). The adjudicator will typically follow-up with the claimant and, if necessary, with the employer, to obtain additional details about the situation. With respect to non-separation issues, adjudicators are to issue determinations within 14 days from the date the initial claim was filed (compared to 21 days for separation determinations). In almost all instances, claimants and employers are contacted by telephone—though if this is not successful, then written correspondence is sent to the claimant or employer. In the case of telephone correspondence, claimants and employers are given 48 hours to respond; in the case of mailed correspondence, claimants and employers are given five days to respond. If a response is not received from either party within the deadline imposed, the adjudicator will issue the determination without the input of that party. Among the most common types of non-separation issues adjudicated are failure to meet job search requirements, failure to report for scheduled appointments (e.g., register for work search, eligibility reviews), attending school, lack of transportation, lack of available childcare, illness, and the claimant being out of the area and unavailable for work.

## **B. Able and Available**

To be eligible for UI benefits for any week, claimants must be “able to work” and “available for work.” According to the handbook distributed to all claimants (*Facts About Unemployment Insurance Benefits*), to be “able to work you [the claimant] must be:

- physically able to work in your usual occupation or in other work for which you are reasonably fitted;
- physically able to work the majority of the week (more than three days). If you were physically unable to work the major portion of any week, you will not receive benefits.”

According to this same handbook, “Even if you are able to work, you are not considered a member of the labor force unless you are also ‘willing’ to work:

- You must be available for full-time work.<sup>95</sup>
- There must be no personal reasons preventing you from accepting a job (caring for children, lack of transportation, vacation, etc.).
- You must not place restrictions on the work you will accept so that the job you want is practically non-existent.
- You must be willing to do work for which you are fitted by education and experience and for which there are prospects in your area.
- If you work in an occupation where different shifts are common, you must be available to work either day or night shift unless you have compelling personal reasons for not working a particular shift.
- You must accept the going wage in your area. You cannot hold out for your last wage.
- If you have an established working relationship with an employer, such as a temporary employment service or a firm that provides employees the option of accepting any available work, you must be willing to accept work or take positive steps to accept suitable work which you reasonably know is available with an employer.”<sup>96</sup>

With regard to being available for work, benefits staff we interviewed clarified that a claimant had to be available for work for 3½ days per week (based on a 7-day work week). For example, if a claimant was sick for 3 days during a given week (e.g., Tuesday, Wednesday, Thursday), he or she would be considered available as long as he or she was available for work on the other four days and be eligible to receive benefits for a given week.

### **C. Disqualifying and Deductible Income**

Claimants may be eligible for partial benefits if they are still seeking full-time work, earnings do not exceed the weekly benefit amount, and claimant works less than 40 hours for the week. Claimants must report earnings during weekly filing of claims via the IVR. According to the claimant handbook, earnings will reduce your benefits, as follows:

- No reduction from the weekly benefit amount is made for the first \$25 earned during a week.
- Seventy-five percent of earnings over \$25 are deducted from the weekly benefit.
- The claimant is not eligible for benefits if his/her gross earnings are equal to or more than the weekly benefit amount.

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<sup>95</sup> In our discussions with UI benefits staff, it was noted that an individual could be looking for only part-time work and still qualify for benefits, if that claimant had earned wage credits to qualify for benefits through part-time work.

<sup>96</sup> South Dakota Department of Labor, Unemployment Insurance Division, *Facts About Unemployment Insurance*, PAM-247, Rev. 7/02, p. 7 (also available at the Internet site at [www.sdjobs.org](http://www.sdjobs.org))

- The claimant is not eligible for benefits if he/she worked 40 hours or more regardless of the amount of earnings.

Claimants are also required to report reasonable cash value of goods received instead of wages (e.g., lodging, food, bills paid, etc.).

The following payments must be reported on the weekly claim form and are deductible on a dollar-for-dollar basis from the weekly benefit amount: vacation pay, annual leave pay, holiday pay, wages in lieu of notice, sick leave pay, severance pay, termination pay, dismissal pay, and back pay. Compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the federal government is also deductible. In the case of these various types of payments (such as vacation, severance pay, etc.), benefits are postponed based on the number of weeks the payment represents, beginning with the last day the claimant worked, regardless of when the payment was received. If the payment is less than the weekly benefit amount, the claimant receives partial benefits. For example, if the claimant received two weeks of vacation pay when he/she left employment and filed his/her claim immediately after separation, benefits would be postponed for the first two weeks of the claim.

Primary Social Security retirement benefits (i.e., the gross amount before Medicare deduction) based on the claimant's earnings are deductible from UI. One half of the claimant's monthly gross social benefits are deducted from the claimant's weekly benefits.

Pensions, annuities, and retirement payments are deductible if earned with a base period employer. However, only that portion of the pension, annuity, or retirement payment, which is based on payments made by the employer, is deductible from the claimant's benefits. In order to determine what portion of the pension, annuity or retirement pay is deductible, the claimant must provide the UI office with detailed information about the retirement plan, including the name and address of the plan administrator. Any lump sums that are received or will be received from the claimant's pension, annuity or retirement plan may be deductible from benefits.

Finally, military service connected disability payments are not deductible from UI benefits.

#### **D. Work Search**

According to the claimant handbook, *"unless you are exempted from work search, you must actively seek work while receiving benefits. An active work search includes the following:*

- Your work search must be a reasonable and honest effort to find work. Contacts with close relatives and spouses are generally not considered reasonable.
- You must be willing to accept the going wage in your area for the job or occupation in which you have the most experience or training. If there is no work or limited opportunities for you in your usual job, then you must be available for work you are capable of doing at the going wage for that type of work.

- Under most circumstances, you are required to make at least two job contacts in each week you are requesting benefits.”<sup>97</sup>

Claimants are required to use standard search methods for the specific occupation in which they are qualified and seeking employment. For example, if the claimant is in a profession where resumes and credentials are normally submitted to employers prior to in-person contacts, the claimant will typically be allowed to make job contacts in that manner. Claimants are required to keep a listing of all employers contacted each week in their claimant handbook (including, date of contact; name, address, phone number of employer; name of contact person; method of contact; type of work sought; results of contact; and was application completed). Each week, as part of the continuing claims process, the claimant must verify that he/she did in fact search for work (“Did you search for work as instructed?”). UI administrators and staff indicated that there is strict enforcement of the work search requirement at the time of eligibility reviews. When claimants come in for their reviews (typically every four to six weeks while receiving benefits), the one-stop staff check carefully to make sure there are at least two job searches for each week that benefits have been received. If, for example, there were three or four job searches each week for three of the four weeks, but none or one for the remaining week, the claimant would be questioned. If proof could not be provided that the individual did in fact conduct two searches for the week in question, the staff person would warn the individual about the need to conduct a minimum of two job searches a week and forward a form to the adjudication unit detailing the job search issue and requesting a determination. Staff indicated that the claimant would more than likely be held out for the week or weeks in question.

Local one-stop office staff indicated that as part of the initial interview with the claimant and registration for ES, that they make claimants aware of the requirement to conduct an active work search and also check job openings listed with the ES to see if any are suitable for the claimant. If there is an appropriate job opening in the computerized system, the staff provides the individual with a job referral. In addition, staff makes claimants aware of job search help available through the local one-stop career center.

## **E. Profiling**

The state uses a regression model, which, according to state UI administrators, has most of the factors used in the federal regression model. Among the variables included in the model are: county unemployment rate; change in industry of last employer (i.e., growth rate); occupational group; education level; months of experience in occupation; number of days between separation date and effective date; and local one-stop office. The model, which is applied to all initial claims (except those claimants scheduled to be recalled by their employer or union members), assigns each claimant with a probability of exhausting benefits. The state UI office (in Aberdeen) sends a letter to each individual selected as part of the profiling model that indicates the individual is to report to his or her local one-stop for orientation within 10 days. Profiled claimants are typically scheduled for profiling services at the one stop within several weeks of submitting a claim, but in some instances may be profiled and scheduled to report after their

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<sup>97</sup> South Dakota Department of Labor, Unemployment Insurance Division, *Facts About Unemployment Insurance*, PAM-247, Rev. 7/02, pp. 8-9. (also available at the Internet site at [www.sdjobs.org](http://www.sdjobs.org)).

initial eligibility review (4-6 weeks after they first begin receiving benefits). The local one stop is notified by computer that an individual is to report to the local office. If the individual fails to report, the local office will notify the adjudication office of a failure to report and the claimant's benefits will be halted until such time that the individual does report. If the individual cannot provide a good reason for his/her failure to report, the individual will likely be held out from receipt of benefits for the week in question. One of the local offices that was visited indicated that they have 1 to 5 profiled claimants referred each month (representing 1 to 5 percent of new claimants handled by the local office). The other local office we visited indicated that they had very few (1 or 2 and sometimes none) referred each month for profiling services. Statewide, an estimated 7 percent of new claimants are profiled—though there is considerable variation by locality in the numbers referred for profiling services because of the indicators used in the profiling model.

Each local office determines what services will be provided for those profiled. In general, each local office provides a one-on-one orientation to services available through the one-stop career center and assesses the potential need the individual may have for education, training, or other services to successfully secure employment. If the individual is in need of education or training, he/she will normally be referred to Workforce Investment Act (WIA) staff for more in-depth assessment, and if appropriate, intensive WIA services. One of the offices that was visited indicated that the one-on-one orientation lasted between 30 minutes and one hour.

UI and one-stop staff we interviewed questioned the utility of profiling, suggesting that profiling did not seem to be worth the effort (especially because claimants in South Dakota must go to the local one-stop to register for UI and, later, for eligibility reviews). Staff also questioned whether the model targeted those most in need of additional help—according to a one-stop staff member, the model seems to “get many people who are looking hard for a job, but does not seem to catch those that should come in...for example, claimants with Master's and Ph.D.s seem to be selected more often.”

## **F. Work Registration**

As part of the process of making an initial claim, claimants (except those who are expected to be recalled by their employer and union members) are required to register for work search at the one-stop as a condition for receiving UI benefits. Claimants are told to report within one week of applying to receive orientation and to register for work search. Each one-stop receives electronic notification of the claimants required to report. Those that fail to show to the local office by the end of the third week have a hold placed on their UI checks. Claimants can be registered either on-line or by completing a form. As part of this process (as discussed earlier), each claimant also receives an orientation to UI rules (especially work search requirements), steps required to submitting continued claims, and an overview of services available through the one-stop, WIA and elsewhere.

## **G. Eligibility Reviews**

When the claimant goes to a one-stop for orientation and to register for work search, he or she is scheduled for the first eligibility review interview (ERI). Eligibility reviews are set typically for four to six weeks (at local office discretion) after the claimant first receives his or her check—

and these reviews continue to be performed at four- to six-week intervals throughout the individual's involvement in the UI program.<sup>98</sup> As part of the eligibility review, the one-stop worker checks to make sure the individual has met his or her work search requirements. An eligibility review form—which probes availability issues and whether an individual has turned down a suitable job—is completed on each individual. If an availability or suitability issue is detected, the interviewer will document the issue and send a form to the adjudication unit at the UI central office. As part of this interview, which takes typically between 5 and 15 minutes, the interviewer may also check to see if there are potential job openings that would be appropriate for the individual (and if so, provide referrals).

At one of the one-stop career centers visited, claimants who do not have a job at the time of their first ERI must enroll in a job search workshop. The workshop is scheduled twice per month and is six hours in duration. Claimants who do not attend will be sanctioned. A hold will be placed on their benefits.

If the individual fails to show for the ERI by the end of the week for which he/she was scheduled, the one-stop will notify the central office of the failure to report. The central office will notify the individual of his/her need to report for the ERI, and place a hold on the individual's UI check, which will not be released until the individual reports to the one-stop. The claimant will be denied benefits for the week in which the eligibility interview was scheduled (and for every subsequent week) unless the individual obtains approval for a change in scheduled interview or establishes good cause for failing to report.

Following the ERI, the interviewer will send a form to at least one employer listed on the claimant's list of job contacts to verify that the individual did in fact look for work with that employer. If this form is returned by the employer with an indication that the individual had not contacted the firm, the one-stop staff will forward a form to centralized unit at the state level for further investigation. If at the time of the ERI, the UI staff is suspicious that the individual has not met his/her job search requirements, the interviewer is likely to send out verification forms to several additional employers listed on claimant's job contact form.

The state UI staff and local one-stop staff noted that frequent ERIs are important. They suggested that frequent reviews contribute to shorter duration of benefits. Such reviews provide an opportunity to bring the individual into the local one-stop, providing a greater opportunity for claimants to use center's resources and for the one-stop staff to work with the individual on securing a job. Frequent ERIs also provide an opportunity to catch availability and suitability issues; it is not unusual for individuals to relay information that they may not offer over the telephone. Such reviews help to cut back the potential for fraud and abuse in the system.

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<sup>98</sup> According to the *South Dakota Codified Laws*, three factors shall be determined by local offices in determining the frequency of eligibility reviews: (1) an individual's potential for being recalled to work by the individual's former employer; (2) an individual's reason for separating from the previous employer, and (3) an individual's potential for employment within the individual's occupation and area of residence.

## H. Suitable Work

According to the *South Dakota Codified Laws*, “if the Department of Labor finds that an unemployed individual has failed, without good cause, either to apply for available suitable work when so directed by the department or to accept suitable work when offered him, the claimant shall be denied benefits, including extended benefits, until he has been reemployed at least six calendar weeks in insured employment during his current benefit year and earned wages of not less than his weekly benefit amount in each of those six weeks.”<sup>99</sup> In determining whether or not any work is suitable for an individual, according to the *Codified Laws*, the Department is to consider the following factors:

- degree of risk involved to the individual’s health, safety, and morals;
- physical fitness and prior training;
- experience and prior earnings;
- length of unemployment and prospects for securing local work in the individual’s customary occupation; and
- the distance of the available work from the individual’s residence.

Information on refusal of suitable employment is generally obtained through claimant information provided during the continuing claims (IVR) process and eligibility review process, but may also come through information provided by employers. When such information does become available to the UI program, it is forwarded to the adjudication unit for determination.

There is a fair amount of judgment that must be applied in making decisions about “suitable” work. UI staff noted that prior work patterns, earnings, local labor force conditions, what are standard working conditions within a particular occupation (e.g., shift work), and length of unemployment all play a role in the decision-making process on suitability. The handbook for employers notes, for example, “compelling personal circumstances may justify refusal of a job. Illustration of circumstances which would require a determination include: health and safety hazards; interference with religious beliefs; requirements to purchase tools and/or equipment; pay, hours, and/or location; and type of work and experience required. What constitutes ‘good cause’ is influenced by general labor market conditions. A ‘reasonably prudent person’ acts differently when jobs are plentiful.”<sup>100</sup>

Staff indicated that decisions on suitability had to take into consideration a number of factors. Several examples were provided. If the claimant was a few weeks into a spell of unemployment, then he or she might not be expected to take a job if it offered wages below what was previously earned. However, as the individual moved closer to exhaustion of benefits, he or she would be expected to take lower (but prevailing) wages for individuals in the same occupation. With

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<sup>99</sup> State of South Dakota, *Unemployment Compensation: South Dakota Codified Laws, Title 61*, South Dakota Department of Labor, Unemployment Insurance Division, Rev. 8/99, Section 61-6-15, p. 73.

<sup>100</sup> State of South Dakota, *Handbook for Employers*, Unemployment Insurance Division, Rev. 7/02, p. 26.

regard to shift work, claimants who have earned wage credits in an occupation that generally requires shift work are required to be available to work all shifts or work schedules unless the individual has a compelling reason for not working one or more shifts or work schedules. According to South Dakota law, “a compelling reason is an obligation or commitment and not simply the result of personal preference.” Hence an individual could refuse suitable work for demonstrated health, safety, or moral reasons, but not because of a preference for working the day shift.

## I. Trends Over Time

Non-separation determinations, as a percent of claimant contacts, increased in South Dakota between 1989 and 1999 from 5.6 percent to 6.8 percent. The percent of non-separation determinations that resulted in denials has been increasing. In 1989, 68 percent of non-separation determinations resulted in benefits being denied. This increased to 92.5 percent in 1999. Staff was unsure why the non-separation determination rate and percent of determinations that resulted in denials increased over the 10-year period.

## V. NON-MONETARY DETERMINATION APPEALS

As noted earlier, DOL may initiate a redetermination of a decision to approve or deny benefits (for example, if new information emerges or if it is judged that a wrong decision has been made on the facts). Such redetermination would occur after a determination has been issued and prior to the conduct of an appeals hearing. Redeterminations may result in a reversal of the adjudicator’s original decision. In such cases, each party is notified of the decision and has the option to appeal the ruling. While UI may initiate a redetermination, this option is not available to the employers or claimants (i.e., they must go through the appeals process).

If an employer or claimant is dissatisfied with a decision, each has 15 days from the date on the determination notice to appeal. The notice describes the right of each interested party to appeal a determination, as well as the procedures for doing so (though it does not provide a check box or pre-formatted form to facilitate the appeals process). The appeal must be made in writing and sent to DOL (such requests can be sent directly via the mail or faxed to the UI Division or forwarded through the local one-stop).

There are two basic levels of appeals: (1) Administrative Law Judges (ALJ) conduct first level hearings and (2) if either party is dissatisfied with the ruling of the ALJ, the next step would be an appeal to the Secretary of Labor or directly to the Circuit Court. The Secretary is required to review all appealed cases. Additionally, parties who appeal to the Secretary retain the option of later appealing to the Circuit Court. No fee is charged to either party for a regular (ALJ) appeal or Secretary’s appeal. Employers or claimants may be represented by an attorney at appeals, but must pay costs of such representation.<sup>101</sup>

The lower level appeal is an evidentiary de novo hearing. That is, the ALJ hears all of the evidence and decides the facts and law as if there had been no prior decision (though the ALJs do

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<sup>101</sup> Employers may only be represented by attorneys or an employee (third party administrators are not permitted to represent employers); claimants may be represented by anyone of their choosing.

have copies of earlier fact-finding done by UI staff and review these materials in preparing for cases). The higher level (Secretary) appeal is a review of the record; no new testimony is taken.

When a claimant files an appeal, he or she must continue to file a timely claim each week. Failure to do so results in the individual not being paid on the claim. If the employer appeals a decision holding the claimant eligible for benefits, the UI program will continue to pay the UI benefits to the claimant pending the result of the appeal. However, if the claimant is held to be ineligible for benefits, he or she may be required to repay the benefits to the UI program.

**Lower Level Appeals.** About 12 percent of determinations are appealed, with claimants initiating 80 percent of these appeals. Hearings are conducted by telephone. Both the employer and claimant receive notices to telephone into the appeals hearing, the purpose of which is to receive direct sworn testimony about the specific issue(s) over which the appeal is submitted. On very rare occasions, in-person hearings are conducted.

All requests for appeals come first to the Aberdeen UI office. The appeal is logged and relevant materials from the claimant's file are copied and sent to the Pierre office (where the ALJs are housed). In addition, a state UI administrator reviews each appeal to determine (1) whether the initial determination made by the Adjudicator was correct based on the facts, and (2) whether the Department needs formal representation at the hearing. In the rare circumstances where the original decision rendered by the adjudicator appears flawed, the UI administrator may refer the case back to the adjudication unit for redetermination (see above). If (as is usually the case), the appeal is to move forward, the UI administrator will assess whether the agency needs to be represented at the hearing. If the appeal is limited to a separation issue, the agency does not normally need to be represented. Cases involving availability, suitability, overpayment, and fraud generally have agency representation.

ALJs conduct two or three hearings per day. Each of the ALJs in the state are, by Department policy, licensed attorneys. At the time of our visit, the ALJs were rendering decisions on about 150 appeals per month (which was up from a usual caseload of about 100 appeals per month). If the appealing party does not call in for the hearing, the appeal is automatically discharged; if the non-appealing party does not call in for the hearing, the appeal is heard. Most appeal hearings last between 15 minutes and 2 hours (though they have on rare occasions—usually as a prelude to a wider court case—lasted 8 hours or longer).

In scheduling appeals and rendering decisions, the ALJs are under pressure to meet performance targets set at 30 days (80 percent of appeals rulings issued) and 45 days (98 percent of appeals rulings issued) from the date the appeal is received by the agency. As a result, ALJs try to render decisions as soon as possible after the hearing is completed (though if the non-appealing party does not appear at the hearing, the ALJ may hold onto the ruling a few extra days to provide an opportunity for that non-showing party to provide “good cause” for not appearing at the hearing). When a decision is rendered, it covers all issues in the case (i.e., if an availability issue accompanies a separation issue, a single ruling will cover both issues). When previous rulings by the agency are overturned, ALJs indicated that usually it is because new evidence is presented by one or both appealing parties (which was not available originally to the state's adjudication unit). State UI officials estimated that in 2001 about 29 percent of appeals result in modification or reversal of the original determination.

**Higher Level Appeals.** Each party has 15 days to appeal the lower-level appeals decision after the date of mailing of the decision. The same methods as those used in lower-level appeals are used to request Secretarial appeals—either the claimant or employer must submit in writing via mail or fax an appeal request to UI. The Secretary reviews all appeals filed. The Secretary has the discretion to remand cases for the taking of additional evidence, but this rarely occurs. Rather, the Secretary normally conducts a review of the record. He may ask others within the agency (e.g., the UI agency director or the ALJ supervisor) to provide additional input or recommendations on the appeal. About 100 Secretary appeals are received each year (eight or so per month). No statistics were available at the time of our visit on the percentage of lower-level appeals that are reversed or modified.

## VI. OTHER ISSUES

### A. Experience Rating

Like most states, South Dakota is a reserve-ratio state. A new employer, or an employer who is not eligible for a reduced rate, will pay tax at the rate of 1.2 percent, plus an investment fee of 0.7 percent, for a total of 1.9 percent the first year.<sup>102</sup> The rate then decreases to 1.0 percent, plus and investment fee of 0.7 percent, for a total of 1.7 percent until the employer is eligible for a rate based on experience. The employer must maintain a positive unemployment account balance to receive the 1 percent rate.

The experience-rating account in South Dakota is a special account maintained for each employer (except cost reimbursement employers). This account provides a record of the accumulated contributions paid by an employer, accumulated benefits payments charged to the employer's account, and that employer's total taxable payroll. These three totals are used each year to compute an employer's experience ratio. An employer's rate is determined by the relationship between the employer's experience ratio and the corresponding rate in the experience table. The accumulated total benefit payments charted to the employer's account are subtracted from the accumulated total of contributions paid by the employer. This figure is divided by the employer's total table payroll (total taxable payroll is the sum of taxable payrolls for the three most recently completed calendar years) and the resultant percentage figure is known as the "reserve ratio." The employer's reserve ratio, then, is the result obtained by dividing the balance of credits existing in the employer's experience-rating account by the total taxable payroll of the employer for the preceding three calendar years. The Department maintains a single tax table (with tax rates running from 0 percent to 7 percent) against which the employer's reserve ratio is compared. According to UI agency officials, most employers fall in the lower end of the tax table, with perhaps about one-third paying no tax. UI agency officials were unsure about the extent to which experience rating affects the rate at which employers contest UI claims, but thought it was probably a factor (mainly because when claims are filed against a firm it may take several years to replenish the employer's reserve).

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<sup>102</sup> All new employers classified in construction services pay at the rate of 6 percent plus an investment fee of .7 percent, for a total of 6.7 percent the first year. This rate then decreases to 3.0 percent plus an investment fee of .7 percent, for a total of 3.7 percent until the employer is eligible for a rate based on experience. The employer must maintain a positive unemployment account balance to receive the 3 percent rate.

## **B. Role of Job Service and One-Stops**

There are 21 one-stop career centers in the state. During our visit, we interviewed staff at two full-service one-stops: (1) the Aberdeen one-stop, serving seven counties, and (2) the Pierre one-stop, serving an eight-county area. Both of these one-stops, provide a range of employment and training services, including a resource center, help with obtaining WIA-funded training, veterans and older worker services, and help with job search.

As has been discussed in greater detail earlier, there are a number of important UI functions that are performed by the one-stops:

- **Information Dissemination.** General information about UI program is provided to the general, particularly individuals that have recently become unemployed, including information about how to file initial and continuing claims. Each one-stop also contains resources and staff that can help UI claimants with finding a job.
- **Ability to Take Initial/Continuing Claims.** The one-stops have staff and forms necessary so that they can—in rare and special circumstances—take and process initial and continuing claims. Though potential claimants are referred to the call center, if there are special needs (e.g., hearing impairment), the one-stop will take the claim and conduct initial fact-finding. This information will be forwarded to the Adjudication Unit.
- **UI Orientation and Work Search Registration.** All new claimants (except those scheduled for recall by their employers and members of a union) are required to report to local one-stops within three weeks to receive a one-on-one orientation about UI and available services through one-stops, and to register for work search.
- **Eligibility Reviews.** As discussed earlier, all claimants (except those scheduled for recall by their employers and union members) are scheduled for ERIs at 4- to 6-week intervals. Findings from these ERIs are forwarded to the adjudication unit if non-separation issues (and other issues, such as overpayment) are detected. One of the two one-stops we visited also conducted a one-day work search workshop that all claimants were required to take if they were not re-employed by the time they came for their first ERI.
- **Profiling Services.** As discussed earlier, a small number of UI claimants (estimated at 7 percent, but varying by local office) are selected using the UI profiling model and scheduled for an orientation to services available at their local one-stops. One-on-one orientations are typically held with each profiled individual, and if appropriate, the individual may be referred to the WIA program for assessment and/or intensive services.

## **C. Changes Planned in State**

No changes in policy are planned in the near future. The state is planning to update and restructure its Internet site over the upcoming year so it will be possible for claimants to submit initial and continuing claims electronically via the Internet. It is hoped that this new capacity, which is expected to be operational by the Summer 2003, will reduce costs related to call center staffing and telephone charges. Also, by end of 2002, South Dakota anticipates beginning the use

of a front-end IVR for phone claims that will ask and document answers to basic eligibility questions.

## VII. Unique features of south DAKOTA's program

The state has a number of unique features and UI policies that are worth mentioning.

- State's population characterized as "self-reliant," with some potential claimants lacking knowledge and/or having an aversion to claiming UI benefits. One interviewee noted that historically the state's population has had a "self-reliant" streak. This has been manifested in aversion toward receiving government assistance in the form of welfare payments, and perhaps to some degree, UI payments. It was noted in our interviews that some workers within the state have little, if any, knowledge about availability of UI benefits.
- State adheres to strict job search rules and backs this up with verification of job contacts with employers. As discussed earlier, workers are required to make two job contacts per week. The necessity of conducting such searches are underscored in the claimant handbook and in the orientation provided to each new claimant. Eligibility reviews, conducted typically at 4 to 6 week intervals, provide the agency with the opportunity to check on conduct of work search—and the agency holds each claimant to a strict standard. In addition, following the ER, one or more job contacts provided by the claimant are verified through contacts with the employer.
- Though using a call center for initial and continuing claims, there are many opportunities for in-person contact. Local one-stop offices interact with UI claimants when they register for work search, participate in ERIs (every 4 to 6 weeks). Registration and ERIs also may uncover "issues" that would not otherwise be identified and result (to some extent) in failure to report for services violations.
- State provides relatively little room for claimants to cite "personal reasons" for quitting jobs; claimants must also make an effort to resolve issues prior to quitting. As discussed in detail earlier, the UI program provides a narrow definition of factors that can be considered when individuals voluntarily leave employment. For example, individuals must be advised by physicians prior to quitting that their job represents a health risk; spouses cannot claim UI benefits because they relocated to follow their spouse to a new job; the law does not include special provisions for receiving UI benefits if the individual leave a job voluntarily as a result of domestic violence; and in the case of sexual harassment, individuals must demonstrate that they make an attempt to redress the problem with the employer prior to quitting.
- Historically, the state has one of the lowest unemployment rates in the nation, making it possible for many unemployed to find jobs before submitting UI claims and driving down duration of receipt of UI. With unemployment rates hovering around 2.5 percent (and lower under favorable economic conditions) and, until recently, shortages of skilled workers, workers dismissed from or quitting jobs can reasonably expect to secure another job relatively quickly.

## Utah Site Visit Report

To learn more about how Utah defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from Lewin conducted a site visit to the state from August 21 to 23. We met with state-level staff at the Department of Workforce Services (DWS), staff from the state call center, adjudication and appeals staff, and staff from two employment centers (the state's one-stop system) in the metro Salt Lake City area.

This report provides an overview of Utah's UI program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state and the role of the employment centers. The report concludes with a discussion of the features of Utah's program that we found to be unique to the state, some of which could help explain some of the UI outcomes for the state.

### I. GENERAL OVERVIEW OF Utah's Unemployment Insurance PROGRAM

According to state staff, the general UI program philosophy is that benefits should be paid when possible and that payments should be made in a timely and efficient manner. According to the preamble of the Employment Security Act, "One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment. It is because of these reasons that it is in the public interest to liberally construe and administer the Act."<sup>103</sup>

The UI program is also interested in seeing claimants return to work quickly, and relies on staff at the employment centers to help place claimants in jobs.

U.S. Department of Labor administrative data indicates that, relative to other states, Utah has a lower recipiency rate and higher determination rate. The state's recipiency rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is 25 percent, in the lower one-third of all states. In 1999, 41 percent of all new claims resulted in a separation determination (compared to 22 percent nationally); the percent denied, however, was lower than the national average (46 percent versus 53 percent, respectively). The non-separation determination rate (5.1 percent of claimant contacts) also exceeded the national average (4.1 percent of contacts). The percent denied was also higher (67 percent versus 59 percent).

While the data paint a picture of a restrictive UI program relative to other states, our interviews and review of documents suggest that Utah's non-monetary policies are not overly stringent.

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<sup>103</sup> <http://yeehaw.state.ut.us/yeehaw?DB2=state&T2=eutah&Query=unemployment+Insurance&submit2=go>

## **A. Organizational Structure**

In 1997, Utah became the third state to shift to a centralized call center approach to accepting and processing UI claims. The UI program is operated by the Department of Workforce Services (DWS). DWS is a large department that includes the UI program, employment and training services, TANF, Food Stamps, and child care. As will be discussed below, all of these programs have a presence (some more limited than others) at the employment centers. DWS has two Deputy Directors, one of whom oversees the UI program, labor market information, and MIS. The UI program director reports to the DWS Deputy Director. The director is assisted by a Manager of Initial Adjudication, a Chief of Benefits, and a Chief of Contributions.

One interesting feature of the Utah UI program is that all staff related to policy, claims, adjudication and appeals are located in the DWS central office. In addition to the state-level policy staff described above, the DWS office houses a centralized call center, which processes all initial and continuing claims. Located on the same floor as the call center are the adjudicators. The appeals staff (administrative law judges) are in the same building, as are MIS staff.

## **B. Monetary Requirements**

The state has three criteria for assessing monetary eligibility:

- Claimants must have earned wages in two or more calendar quarters in the base period (first four of the last five quarters);
- Claimants must have total base period wages of at least 1.5 times high quarter earnings; and,
- Claimant must have earned \$2,400 during the base period.

Utah does not have an alternative base period or short-term compensation. However, if a claimant does not have 1.5 times the highest amount of wages paid during a quarter of the base period, he or she may qualify by providing proof of 20 weeks of employment with at least \$120 earned in each week. This provision was adopted in the early 1990s.

If monetarily eligible, the weekly benefit amount ranges from \$23 to \$365. In CY 2001, the average weekly benefit amount was \$245.77. The weeks a claimant is entitled to benefits ranges from 10 to 26. The number of weeks is determined by totaling wages for insured work paid during the base period, multiplying the amount by 27 percent, and dividing the product by the weekly benefit amount. In CY 2001, the average claim duration was 12.26 weeks. Most claimants do not exhaust their benefits. In CY 1999, the exhaustion rate was 30.5 percent. Staff estimate that the exhaustion rate last year was less than 35 percent.

## **C. Outreach Efforts**

According to staff, most claimants learn about the UI program through word of mouth. The state also conducts outreach through the following methods:

- Employers must post notification about the UI program in the work site. In accordance with Section 35A-4-406(1)(b) of the Utah Employment Security Act, the notice entitled *Unemployment Insurance Notice to Workers* must be permanently posted by each employer at suitable points (e.g., on bulletin boards, near time clocks) in each work place and establishment. The notice explains that the work is covered under the provisions of the Utah Employment Security Act for UI purposes, unless specifically exempted by the Act. It provides the phone number for the call center and for state employment centers. It directs employees that in the case of a separation they should request information from the employer about the reason(s) for the separation, and notifies employees that both the worker and employer will need to make a statement about the separation.
- Employment Centers have brochures that describe the UI program and how to contact the call center.
- The state dispatches a rapid response team in the event of a large layoff.
- The DWS website has a link to a UI web page.<sup>104</sup> The page contains general information about UI (e.g., eligibility requirements, filing a claim, UI laws and rules, appeals) as well as on-line services, such as filing a new claim, filing a weekly claim, and current claim status.

Although the state publishes a handbook for claimants, which explains the process for claiming benefits, it is mailed to the claimant after he or she has applied for benefits.

The state also educates employers about the UI program. New employers receive a packet of information containing an employer handbook, a New Hire Reporting handbook, a new business compliance checklist, workplace notices and posters describing the UI program to employees, and information on electronic quarterly wage reporting. In addition, DWS publishes a quarterly newsletter, *The Employer Advisor*, which contains information about the UI program.<sup>105</sup> Finally, UI staff hold occasional seminars for employers.

State staff thought it was likely that some people may fail to apply for benefits because they are unaware of the program. While employers are required to post a notice about UI, the state does not audit employers to determine if the notice is in fact visible. In addition, potential claimants might not have easy access to the Internet. Staff thought that advertisements about the program would alert more people to the possibility of unemployment insurance, much as the placement of billboards and advertisements on city busses informed parents about the presence of the children's health insurance program. There are no plans to launch a UI advertising campaign, in part due to the concern that the employer community would respond negatively.

#### **D. Issues Pertaining to Union Members and Other Specialized Labor**

The state has little union representation relative to other states. Indeed, according to the 2000 Current Population Survey (CPS), only 6.8 percent of workers in the state are members of labor

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<sup>104</sup> <http://yeehaw.state.ut.us/yeehaw?DB2=state&T2=eutah&Query=unemployment+Insurance&submit2=go>

<sup>105</sup> The Spring 2000 issue focused on "On-Line Reports and Payments Made Easy."

unions, relative to a national average of 13.5 percent. Utah is a right-to-work state, meaning a worker cannot be forced to join a union in order to get or keep a job.

In terms of labor disputes, workers do not receive benefits when work is not performed due to a strike.<sup>106</sup> For a worker to be disqualified due to a strike, the following elements must be present:

- The claimant's unemployment must be the result of an ongoing strike.
- The strike must involve workers at the factory or establishment of the claimant's last employment.
- The strike must have been initiated by the workers.
- The employer must not have conspired, planned or agreed to foment a strike.
- There must be a stoppage of work.
- The strike must involve the claimant's grade, group or class of workers.
- The strike must not have been caused by the employer's failure to comply with state or federal laws governing wages, hours or other conditions of work.

The claimant is ineligible for benefits until he or she has earned six times the weekly benefit amount.

With regard to seasonal workers, claimants are eligible for benefits provided that they meet the general eligibility criteria. Utah follows federal guidelines with regard to school employees, professional athletes, and individuals with alien status.

## **II. Process for Submitting Initial and continuing claims**

### **A. Application Process**

The process for submitting an application is the same across the state. All potential claimants can call the centralized call center, located in Salt Lake City, or apply via the Internet. The call center has been operational since 1997. Currently, about 94 percent of claimants use the call center, although the proportion using the Internet has increased every month since the option became available in Fall 2001. Claims cannot be submitted in person. If a potential claimant inquires about UI benefits at one the employment centers, he or she will be given a brochure with call center contact information and will be directed to a telephone or computer.

Those who dial the call center first hear a menu directing the caller to press (1) to file a new claim or reopen an existing claim. Next, there are a series of 25 questions that the caller responds to by pressing the telephone key pad. These eligibility questions include Social Security number (SSN), dates of employment, receipt of vacation or severance pay, reason for job separation, and

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<sup>106</sup> Administrative Code Section R994-405-403.

expectations about returning. After the caller has responded to all of the questions, the call is routed to a claims specialist, who finishes processing the claim. The claims specialists are generalists; that is, they handle both new claims and continuing ones.

When the claims specialist gets a call regarding a new claim, three employment screens on the computer are automatically populated with information on the most recent employers and quarterly wages. At the same time, the specialist checks the claimant's SSN on-line with the Social Security Administration. If the number does not match the name of the caller, the caller is directed to the nearest SSA office; the claim is taken but an issue is created.

The claims specialist will ask the caller about the job separation and verify the most recent employer. If the claimant separated from the job voluntarily or was discharged, the claims specialist takes a brief statement and the claim is flagged for adjudication. Regardless of the reason for separation, the computer generates a letter to the relevant employers that indicates a claim has been filed and asks about reasons for the separation. If the claimant has not earned six times the weekly benefit amount at the most recent place of employment, the claims specialist must get separation information from previous base period employers. If an able and available issue arises (e.g., not available for full-time work), the claims specialist takes a brief statement and forwards the claim to an adjudicator.

Each claimant is mailed a copy of *Unemployment Insurance Claimant Guide*. This pamphlet describes the UI program, including the process for filing continued claims and work search requirements.

## **B. Special Needs**

When a caller dials the claims center to apply for UI benefits, there is the option to hear the list of 25 questions in Spanish. When the automated portion of the application processes is complete, a call center claims specialist fluent in Spanish completes the claim. If the caller speaks a language other than English or Spanish, he or she would press "3" on the phone menu to speak directly to a claims specialist. The specialist can dial a special language line for translation services.

In very rare instances when a claimant cannot file a claim over the telephone or via the Internet, DWS will mail a UI application.

## **C. Filing Continuing Claims**

The benefit week begins on Sunday and ends on Saturday at midnight. Claimants can file a continued claim anytime after the week ends; however, they are encouraged to file on Sunday. Claimants can file their continuing claims by calling into the central telephone system or by using the Internet. At present, 85 percent file over the telephone and 15 percent via the Internet. Claimants are asked a series of questions regarding their availability for work, the job search, and earned income (see **Section IV.A** for additional information).

### III. NON-MONETARY SEPARATION POLICIES AND PRACTICES

#### A. Fact-Finding and Adjudication Process

If a determination issue is revealed during the claim intake process, the claim is flagged and forwarded to the adjudication unit. The adjudication unit is located at the DWS central office, on the same floor as the call center. There are currently 35 adjudicators. Each handles both separation and non-separation determinations. Adjudicators generally work on 30 to 60 cases per week, in addition to those cases that are assigned separately (e.g., Workers' Compensation and backdating issues).

As noted above, employers are notified when a worker applies for UI and are asked to provide information on the nature of the separation. The claims center also sends the claimant either a "Claimant Statement of Job Discharge" or "Claimant Statement of Voluntary Quit," depending on the separation issue. In the event of a discharge, the claimant is asked to describe what happened, including the final incident that caused the discharge; what, if anything, could have been done to prevent the incident; and whether the claimant was told he or she could be discharged for the conduct. For a voluntary quit, the claimant is asked to explain why he or she quit, especially the final incident; what, if anything, did the claimant do to work out the problems; and what hardships the claimant experienced by staying on the job.

Employers and claimants have 10 days to respond with statements. If the forms are not returned, the adjudicator will make an effort to reach the parties by telephone. In some cases, the adjudicator will call the employer or claimant, even if the forms were returned, to clarify the information. If one (or both) party does not respond, the adjudicator will make a judgment based on the information available. Per federal requirements, adjudicators attempt to resolve separation determinations within 21 days. A written decision is mailed to both parties.

#### B. Issues Pertaining to Voluntary Quits

According to the Administrative Code, "a separation is considered voluntary if the claimant was the moving party in ending the employment relationship. . . Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard."<sup>107</sup>

To establish *good cause*, the claimant must show that continuing employment would have caused an adverse effect that the claimant could not control or prevent.<sup>108</sup> There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by employment. The decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive. Good cause is *not* established if the claimant had reasonable alternatives that would have made it possible to preserve the job (e.g., transferring) or did not give the employer notice of the problem (thus depriving the employer the opportunity to make

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<sup>107</sup> Administrative Code Section R994-405-101.

<sup>108</sup> Administrative Code Section R994-405-102.

changes). Good cause is established if the individual was required to violate a state or federal law. Good cause may be established if the claimant left a new job that proved to be unsuitable (consistent with the suitable work test requirements in the Code).

If the good cause standard is not met, the equity and good conscience standard must be applied in all cases *except those involving a quit to follow a spouse*.<sup>109</sup> According to the Administrative Code, “If there are mitigating circumstances and a denial of benefits would be harsh or an affront to fairness, benefits may be allowed under the provisions of equity and good conscience standard.” A number of elements must be satisfied. For one, the decision to quit must be logical, sensible or practical. There must be evidence of circumstance which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action.

According to UI staff, Utah’s voluntary quit criteria are liberal when compared with other states. Examples of rules related to voluntary separations include:<sup>110</sup>

- *Prospects of Other Work*. Good cause is established if, at the time of separation, the claimant had a definite assurance of another job or self-employment that was reasonably expected to be full-time and permanent.
- *Reduction of Hours*. The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction may result in personal or financial hardship so severe that the circumstances justify leaving.
- *Personal Circumstances*. There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the individual made a reasonable attempt to make adjustments or find alternatives prior to quitting.
- *Religious Beliefs*. There must be evidence that continuing work would have conflicted with good faith religious convictions. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.
- *Transportation*. If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance.
- *Sexual Harassment*. A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct.

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<sup>109</sup> Administrative Code Section R994-405-103.

<sup>110</sup> For the reasons listed below, if the claimant fails to meet the criteria for good cause, the good conscience standard is applied.

- *Discrimination.* A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to alleviate the objectionable conduct.
- *Voluntary Acceptance of Layoff.* If an employer notifies employees that a layoff is going to take place and the employer gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.
- *Health or Physical Condition.* Health problems that required the separation must be supported by evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

Examples where good cause is not established include:

- *Retirement and Pension.* Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting.
- *Leaving to Attend School.* Leaving work to attend school is not compelling or reasonable.
- *Marriage.* Marriage is not considered a compelling or reasonable circumstance for voluntarily leaving work. Moreover, if an individual quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. The equity and good conscience standard is not to be applied in this circumstance.

The length of disqualification for a voluntary quit is working in covered employment and earning wages equal to six times the claimant's weekly benefit amount.

### **C. Issues Pertaining to Discharges**

According to the Administrative Code, "A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits shall be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the worker. A reduction of force is considered a discharge without just cause at the convenience of the employer."<sup>111</sup>

Just cause must be established by the employer for a discharge. To prove just cause, three elements must be satisfied: (1) culpability, (2) knowledge, and (3) control. To be *culpable*, the worker's conduct must be so serious that continuing employment would jeopardize the employer's interests. According to the Administrative Code, the claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. In addition, the worker must have had *knowledge* of the conduct expected on the job. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. Finally, the conduct causing the discharge must have been within the claimant's *control*. While isolated instances of carelessness do not constitute cause for

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<sup>111</sup> Administrative Code Section R994-405-201.

discharge, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control. In order to discharge a worker who does not meet performance standards, the employer must show that the claimant had the ability to perform the job duties in a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

Examples of reasons for discharge include:

- *Violation of Company Rules.* If an individual violates a reasonable employment rule and the three elements of culpability, knowledge and control are satisfied, benefits shall be denied.
- *Attendance Violations.* A discharge for an attendance violation beyond the control of the worker is generally not disqualifying unless the worker could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.
- *Falsification of Work Record.* An employee or potential employee has an obligation to truthfully answer material<sup>112</sup> questions posed by the employer or potential employer. If false statements were made as part of the application process, benefits may be denied even if the claimant would not have been hired if all questions were answered truthfully.
- *Insubordination.* Provocative remarks to a superior or vulgar or profane language in response to a request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a worker, acting in good faith, is not disqualifying conduct.
- *Loss of License.* If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying.
- *Incarceration.* Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.
- *Abuse of Drugs and Alcohol.* Utah's legislature determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace.<sup>113</sup> Drug testing is deemed a reasonable employment policy; proof of a positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his separation was consistent with the employer's written drug and alcohol policy.

The length of disqualification for a discharge is earnings equal to six times the weekly benefit amount. The exception is discharge for dishonesty constituting a crime. This type of discharge

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<sup>112</sup> Material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely.

<sup>113</sup> Utah Drug and Alcohol Testing Act, Section 34-38-1

involves a felony or class A misdemeanor in connection with work and which was established by an admission or a court conviction. Such a discharge is associated with a 52-week disqualification period and a deletion of wage credits for the employer that discharged the employee.

#### **D. Trends Over Time**

The percentage of initial claims resulting in a separation determination increased over 60 percent between 1989 and 1999, from 35 percent to 41 percent. The national average in 1999 was 22 percent. Although the determination rate exceeded the national average, the percent of separation determinations that resulted in denials, 46 percent, was below the 1999 national average (54 percent).

State staff was unsure why the separation determination rate was high relative to other states. Some possibilities were discussed. For one, the economy improved over the course of the 1990s, resulting in fewer mass layoffs and “clean” claims. Program-related changes during the 1990s included the shift to the call center and the adoption of the rule that quitting to accompany a spouse did not constitute good cause. However, it was unclear the degree to which these program changes affected the separation determination rate.

#### **F. Variation Across State**

Utah has a centralized call center for taking claims; adjudication is also conducted centrally. Staff does not track initial claims or determinations by region of the state. However, 80 percent of the state’s population resides in the greater Salt Lake City area. Thus, most claims and determinations likely involve workers in the metro area.

### **IV. NON-SEPARATION POLICIES AND PRACTICES**

#### **A. Fact-Finding and Adjudication Process**

Claimants file each week by dialing into the call center or filing via the Internet. Regardless of the method of filing, claimants are asked a series of questions, including:

- During the week, did you work? Claimants who answer “yes” are asked how much they earned before deductions, whether they worked more than 40 hours, and if they did not report earnings, whether the work was volunteer, self-employment, or commission-based.
- During the week, did you quit a job or were you fired from a job?
- Did you refuse any offers of work or fail to apply for work during the week?
- Did you attend school or training during the week?
- During the week, were you physically able to work and available for full-time work?
- During the week, did you contact employers for work as you were instructed by the Department?

At the end of the filing, the claimants certify the accuracy of their responses. If an answer reveals a non-separation determination issue, the claim is flagged. The claimant is advised to call the claims center where an additional claim is taken with employer and separation information. The claim is then referred to the adjudicator. The claimant is told that the week is not payable and instructed on how to proceed.

In addition, the weekly claim is matched against the state directory of new hires. If there is a match, the adjudicator will call the claimant to clarify the situation.

The same adjudicators that handle separation issues determinations assess non-separation ones. Generally, the adjudicator will call the claimant to clarify the situation. Per federal requirements, adjudicators attempt to resolve non-separation determinations within 14 days.

## **B. Able and Available**

According to the Administrative Code, “The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other criteria established for eligibility but, if he cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed. A principal requirement of the Employment Security Act is that the claimant must be attached to the labor force. This means the claimant can have no encumbrances to immediate acceptance of full-time work. He must be actively engaged in efforts to obtain employment. He must have the necessary means to become employed including tools, transportation, licenses, and child care. He must desire to obtain employment.”<sup>114</sup>

In determining whether a claimant is *able*, a number of elements are considered. These include:

- *Physical and mental impairments.* The claimant must show that he or she has no physical or mental impairments which would preclude immediate acceptance of full-time work.
- *Temporary Disability.* A claimant's ability to work may be affected by a short-term illness or injury. A claimant is not eligible for benefits if he or she is not able to work at his regular job due to a temporary disability, so long as the employer has agreed to allow him or her to return to the job. If the claimant has been separated from work, benefits may be allowed if the claimant can show there is work he or she can perform. The claimant must also meet other eligibility requirements including making an active work search.
- *Hospitalization.* While a claimant is hospitalized, he or she is not able to work, thus ineligible for UI benefits, unless the hospitalization is on an out-patient or residency basis and there is professional verification that the claimant is not restricted from immediately working full time.
- *Workers' Compensation.* A "Temporary Total" award of workers' compensation is made initially to replace lost wages based on a conclusion that the individual is unable to work. If the claimant has been granted an award, eligibility for UI benefits cannot be established.

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<sup>114</sup> Administrative Code Section R994-403-115c.

In determining whether a claimant is *available*, the general requirement is availability for full-time work. What constitutes “suitable work” depends on how long the claimant has drawn UI benefits. See **Section H** for a discussion of suitable work.

### **C. Disqualifying and Deductible Income**

When claimants apply for benefits, they must report any vacation, holiday, or severance pay that they received. Claimants are not eligible for the waiting week credit or UI benefits for the weeks in which these payments exceed the weekly benefit amount. The claims specialist determines the number of weeks a claimant will be ineligible.

Continuing claimants are not penalized for earnings equal to or less than 30 percent of their weekly benefit amount. For instance, a claimant with a weekly benefit amount of \$100 could earn up to \$30 without a benefit reduction. All wages earned in excess of 30 percent are deducted dollar for dollar.

### **D. Work Search**

UI claimants must actively seek work. This generally means making at least two new job contacts per week. The contacts need not be in person (e.g., they can be phone conversations or job applications via the Internet). Claimants should make the types of contacts that are used to find employment in their customary occupations.

The *Unemployment Insurance Claimant Guide* explains to claimants that they are responsible for keeping a list of all job contacts, including date of contact, company name and phone number, person contacted, type of work, method of contact, and results.

### **E. Work Registration**

All claimants must register at an employment center within five days of applying for benefits. There are 51 employment centers in the state. When an individual applies for UI benefit, the claims specialist will use the claimant’s zip code to determine the closest employment center.

Claimant who arrive at the employment center are directed to fill out a six-page registration form. This form is completed by everyone using employment center services, not just UI claimants. Starting in Fall 2002, claimants will be able to fill this out on-line, but at the current time it must be done on site. The form includes sections on general information (e.g., age, SSN), military service, desired employment (including an objective statement and minimum salary), employment history, education, and eligibility for other DWS services (e.g., food stamps). Claimants then meet briefly with an employment counselor to ensure that all of the fields are filled out correctly. Staff take this opportunity to ask the job seeker if other support services are needed. The center staff enter information from the application form into a data base. Parts of the application are used to create resumes, which employers can view on-line.

When an employer contacts the employment center regarding a job opening, staff will search the data base for job seekers with the requested skills and interests. A letter is sent to each selected job seeker that explains how to learn more about the job and how to apply. Staff do not track whether people follow-up on job leads.

## F. Profiling

All individuals who are filing a new claim for UI benefits are profiled. The state uses five questions to determine if someone is at risk of exhausting benefits. All five must be answered NO for the individual to be considered potentially profiled:

- Do you expect to return to your last employer?
- Do you expect to be able to return to your last occupation?
- Do you expect to be able to return to your last industry?
- Have you worked for your most recent employer for 3 years or less?
- Are you a member in good standing and expect to receive job referrals from a local union?

When individuals who answer “no” to these questions receive their first payment, their names are sent to a UI staff person who in turn notifies local employment centers.<sup>115</sup> The employment center is responsible for notifying the claimant that he or she must come in for an orientation. The employment counselor assigned the case sends a letter that indicates a date and time for a meeting and contact information if the meeting needs to be re-scheduled. If the claimant does not respond, the counselor makes as many as three attempts to contact him or her via phone. If the individual does not comply, the counselor contacts the designated staff person at the UI central office via e-mail. The claimant is denied benefits until he or she complies.

The one-on-one orientation meeting lasts about one hour. During this time, the claimant receives an overview of the services available through the employment center and an assessment. The assessment involves a discussion of work history and the reasons for job separation, as well as family-related and budget concerns and the need for supportive services. The counselor person will determine what services are needed and will include them in an employment plan with specific tasks and goals. Types of services available include testing and assessment, vocational counseling, job placement, labor market/career resource information, job search workshops, and referrals to local service providers or trainers. Finally, the counselor will schedule a follow-up time to meet. For some clients, this might be a few weeks after the orientation; for others, a monthly phone call suffices. It depends on the job search skills of the client.

We met with staff from two employment centers during our site visit. Both centers noted that individuals are sometimes profiled incorrectly. For instance, they may not understand the difference between not returning to an occupation and industry. The treatment of these individuals differed by employment center. In one center, staff continue to work with the individuals. In the other, staff continue with the assessment to determine if supportive services are needed. However, an employment plan is not developed and there is no follow-up.

Employment counselors at the two employment centers indicated that the number of profiled UI claimants ranges from four to six each week. Specified counselors handle the profiled cases and

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<sup>115</sup> Claimants are assigned to an employment center based on their zip codes.

generally have small caseloads (about 10). In addition to managing the profiled cases, these staff also work in the front area of the employment center, helping job seekers fill out the registration form and explaining services.

In the most recent fiscal year (July 1, 2001 to June 30, 2002), Utah referred 1,451 workers to profiling services.

## **G. Eligibility Reviews**

In the past, UI staff conducted eligibility reviews in person. Randomly selected individuals were called into the employment center to discuss work search. Five years ago, eligibility reviews were discontinued. At about the same time, the program structure changed to the call center and UI staff were moved out of local offices.

Starting in September 2002, eligibility reviews will begin again. A new unit will be established to handle eligibility reviews. Claimants will be randomly selected for a review. Those eligible for selection must have filed for at least six weeks and have claimed benefits during the previous week. Those selected will receive a letter explaining that they have five days to complete an internet-based questionnaire that inquires about the types of jobs he or she is looking for and the nature of employer contacts.<sup>116</sup> If the claimant does not respond to the initial request, another letter will be sent five days later. If the claimant still does not respond, benefits will be denied until he or she complies. Once a claimant has been reviewed, he or she will not be contacted for another eligibility review for at least seven weeks.

## **H. Suitable Work**

A number of elements are considered in the determination of suitable employment. For example, work is not suitable if it presents a risk to a claimant's physical or mental health, if it conflicts with honestly held religious or moral convictions, or if the claimant does not possess the physical capacity to perform the work. Suitable work is also a function of prior experience, prior training, prior earnings, length of unemployment, prospects for securing work in customary occupation, distance of the available work from his residence, and working conditions. These will be described briefly below.

- *Prior Experience.* The definition of suitable work depends in part on the length of unemployment. A worker is given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, after a claimant has filed continuously for 1/3 of the weeks of benefit entitlement, any job similar to work performed during the base period is considered suitable. After a claimant has filed continuously for 2/3 of the weeks of entitlement, any work the claimant could reasonably expect to perform based on the skills, training, and recent employment history becomes suitable.

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<sup>116</sup> Claimants who do not have a computer at home can access the Internet at the local employment center or library.

- *Prior Training.* The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation.
- *Prior Earnings.* Work is not suitable if the wage is substantially lower than the prevailing wage for similar work in the area, or if it is less than the state or federal minimum wage. As with prior experience, an acceptable wage is dependent upon the length of unemployment. At the time of filing an initial claim, work paying less than the highest wage earned by the claimant during his or her base period is not suitable unless the claimant has no real expectation of being able to find work at that wage. After a claimant has been filing continuously for 1/3 of the entitlement weeks, any work paying a wage earned during the base period is suitable. After filing continuously for 1/2 of the weeks of entitlement, work paying a wage 10 percent less than the lowest wage earned by the claimant during the base period becomes suitable. After filing continuously between 1/2 and 2/3 of the weeks of entitlement, a claimant must gradually reduce the wage demanded until it reaches the prevailing local wage for work in that occupation.
- *Length of Unemployment.* As the length of unemployment increases the claimant's demands with respect to earnings, working conditions, job duties and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment.
- *Distance of the Available Work from the Claimant's Residence.* Work must be within customary commuting patterns as they apply to the occupation and area. Work is not suitable if it would require a move from the current area of residence unless that is a usual practice in the occupation.

## I. Trends Over Time

Non-separation determinations, as a percent of claimant contacts, declined in Utah between 1989 and 1999 from 12.1 percent to 5.1 percent. The drop in non-separation determinations was due in part to at least two factors. First, eligibility reviews were discontinued in the mid-1990s. Thus, failure to appear for a review no longer resulted in a determination. In addition, prior to the centralized call center structure, claimants registered for work with the employment service. UI staff was co-located with the employment service, so if claimants failed to register, UI was notified and the claim was flagged for adjudication. Currently, the employment centers do not contact UI if claimants fail to register. Finally, because of the federal Benefit, Timeliness and Quality (BTQ) guidelines, many of the non-separation allowances are considered non-issues and are removed rather than adjudicated.

The percent of non-separation determinations that resulted in denials has been increasing. In 1989, 57.5 percent of non-separation determinations resulted in benefits being denied. This increased to 66.6 percent in 1999.

## V. NON-MONETARY DETERMINATION APPEALS

There are four levels of UI appeals: An administrative law judge located in DWS, the Workforce Appeals Board, the Court of Appeals, and the Utah Supreme Court.

The first level of appeal is a hearing before an administrative law judge (ALJ). Claimants and employers have 15 days from the date of the adjudicator's decision to file an appeal. Appeals are submitted in writing to DWS. A notice of the hearing date is sent to the claimant and employer, along with the relevant documentation (the UI application, employer notice of claim filed, the claimant statement, the adjudicator's fact-finding statement). ALJ hearings are usually conducted over the telephone, although in rare cases they are held in person. Hearings generally last from one to two hours. In about one-third of the appeals, employers have representatives. ALJs issue written decisions via mail to both parties within two or three weeks of the hearing.

According to UI staff, the adjudicator's decision is overturned about one-third of the time. Often, the decisions are overturned because the adjudicator was unable to get the facts from all parties involved.

If a party disagrees with the ALJ's finding, an appeal can be filed with the Workforce Appeal Board within 30 days of the hearing decision. Instructions for filing an appeal are included on the ALJ's hearing decision. UI staff estimate that 8 to 10 percent of ALJ decisions are appealed to the Board. This Board is comprised of three panels, each with three people (a chair, a labor representative, and a management representative). The Governor appoints the members. The three Boards rotate with each one meeting approximately every third Tuesday.<sup>117</sup> The Board's panels do not conduct hearings; rather, the panelist base their decisions on a review of the record from the ALJ hearing. DWS legal staff presents the case to the panel and writes the decisions. Generally, there is a decision within six weeks of filing the appeal. The Board overturns less than 10 percent of ALJ decisions.

One issue that arose during our meetings with the appeals staff is how DWS handles overpayments to claimants. If the adjudicator's finding was in favor of the claimant and the ALJ or Workforce Board subsequently overrules the Department, an overpayment results. In Utah, there are fault-based and no-fault overpayments. A fault-based overpayment would result if it was determined that the claimant provided false information to DWS. He or she would be responsible for repaying the benefits that had been paid to date. An example of a no-fault overpayment is as follows: the claimant provided an accurate description of separation (e.g., discharged for attendance problems), the employer provided no information during the adjudication stage, and the adjudicator found in the claimant's favor. The employer appealed the decision, provided additional details about the separation, and the ALJ found in the employer's favor. Because the claimant did not provide false information and the employer failed to provide relevant information that would have affected the adjudicator's decision, the reversal would result in a no-fault overpayment. DWS would not initiate a collection from the claimant; instead, the payment would be recovered through the offset of future benefits.

Appeals, as a percent of determinations, increased 35 percent between 1989 and 1999, from 9.5 percent to 12.8 percent. UI staff suggested a number of reasons for the increase. For one, the volume of claims has increased, resulting in more determinations. Additionally, more experienced staff retired, and newer adjudicators might be more prone to having their decisions appealed. Finally, a number of employers hire representatives. Often, these representatives will

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<sup>117</sup> If the caseload is very high, two Boards will meet on the same Tuesday.

not participate in the determination process. Instead, they will wait until a decision has been made and will appeal it if it is unfavorable to the employer.

## VI. OTHER ISSUES

### A. Experience Rating

Utah uses a benefit ratio system for experience ratings. Employers pay taxes per individual on the first \$22,000 of earnings. The minimum tax rate is the “social cost,”<sup>118</sup> or 0.1 percent. About 64 percent of employers pay the minimum tax rate. The maximum rate is 8.1 percent; only about 1 percent of employers pay this rate.<sup>119</sup> The average rate is 0.6 percent. The average tax rate for new employers for the first fiscal year is 1.1 percent. Certain industries (e.g., construction, mining) pay higher first year tax rates.

The tax rate formula takes into account the trust fund reserve. If the reserve factor is equal to 1.0, there is no additional tax. If the legislature decides the trust fund balance is too high (as is the current situation), the reserve factor can fall below 1.0, in which case the tax rate would fall.

DWS staff try to educate employers about the experience rating system. When a new business opens in the state, an information packet is sent, which explains the UI system and tax structure. DWS also sends a newsletter periodically to employers that discusses experience ratings and how to reduce rates. There are also monthly employer seminars that address the experience rating issue. In addition, Utah has a program that will tell an employer how an additional claim will affect its experience rating. Employer representatives in particular keep track of experience ratings.<sup>120</sup> Small employers also pay careful attention to the effect of claims on rates because it takes about four years for such a company to reduce its tax after a layoff.

### B. Role of Employment Centers

There are 51 employment centers in the state that serve as one-stops. In addition to providing job search assistance, the centers offer training opportunities, supportive services (TANF, Food Stamps, Medical Assistance, and child care representatives are on site), and referrals to other agencies (e.g., child support). With regard to UI, the employment centers serve three roles: referral to the call center/web site, work registration, and profiling services.

There is no UI staff presence at the employment centers. Employment center staff do not advise people about the UI program. They do not want to give out incorrect information. Instead, interested parties are directed to brochures about the program. A potential claimant can use a center phone or computer to apply for benefits. If a claimant or applicant comes into the center with a specific UI-related problem (e.g., a check never arrived), staff have a direct line to UI staff (i.e., not the general call center number). Center staff will not talk to UI staff on behalf of claimants or applicants, but they will dial the number.

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<sup>118</sup> Employers with no claims pay the social cost, which compensates for employers that go out of business and cannot pay UI taxes.

<sup>119</sup> If an employer owes taxes, UI can add a surcharge to the maximum rate, creating a tax rate of up to 9.1 percent.

<sup>120</sup> About 10 percent of employers have a representative.

As noted above, UI claimants register for work at the employment center. Profiled claimants also receive services from employment counselors in the employment centers.

## VII. Unique Features of Utah's Program

Utah staff note that the major changes in 1990s strengthened the UI program. The centralized process means that all UI functions are in the same building. Call center staff and adjudicators are on the same floor, appeals staff are downstairs, and program managers are on site. This facilitates communication across the various program segments.

Staff also suggest that technological advances improved the program. Initial and continuing claims can be filed via telephone or Internet, perhaps making it easier for workers to apply for benefits and continue to file. They no longer have to go to a local office and wait in line to apply for benefits. Staff found that the reciprocity rate among professional workers has increased since the move to the call center and suggest this is due in part to the ability to file in the privacy of the home instead of the public employment office. Employers can now pay their UI taxes on-line. Finally, a new data warehouse strengthens program management. It will eventually combine UI, TANF, Food Stamp, child care, Workforce Investment Act and Wagner Peyser program data, thus facilitate analysis of individuals' program use. The current focus is on worker performance. Management reports, for example, can track non-monetary determination workloads, both overall and by adjudicator. One report lists the number of determinations by issue; the percent of decisions made within 14, 21, 27, or 28 or more days; and the percent allowed and denied. An early warning and pending decision report enables managers to examine, by adjudicator, the proportion of non-separation and separation decisions made within federal timelines (14 and 21 days, respectively). Thus, if a given adjudicator is making less than half of the determination decisions in a timely fashion, the manager can take actions to remedy the problem, such as adjust workloads or offer training.

When we asked UI staff to hypothesize why the reciprocity rate is low considering the non-monetary policies and procedures are not especially stringent (and some would say are quite liberal), they suggested that characteristics of the state's population may be a factor. Staff note that Utah is a conservative state and people pride themselves on self-reliance. Job seekers may not want to be involved with what they view as "government assistance." Another characteristic that might affect UI applications is the high proportion of workers who are in two-earner households. According to staff, the proportion of families with two earners is above the national average. Thus, some families might be able to rely on the second earner's income after a job loss, rather than applying for benefits. In addition, staff suggested that lack of knowledge about the UI program likely contributes to the lower-than-average reciprocity rate. Some job seekers simply do not know the program exists. Staff thought that an advertisement campaign to educate the workforce about UI would likely increase the proportion of unemployed workers applying for benefits.

## Washington Site Visit Report

To learn more about how Washington State defines and implements unemployment insurance (UI) non-monetary policies and procedures, staff from The Lewin Group conducted a visit to the state during the week of September 9, 2002. We met with state-level staff at the Employment Security Department (ESD), staff from the UI call centers in Seattle and Tacoma, appeals staff in Seattle, and staff from two WorkSource offices (the state's One-Stops) in Seattle and Tacoma.

This report begins by providing an overview of Washington's UI program, describes the process for submitting initial and continuing claims, outlines the separation and non-separation policies and practices, describes the appeals process, and discusses other issues of interest, including experience rating in the state, the role of the career centers, and the state's planned changes in the near future. The report concludes with a discussion of the features of Washington's program that we found to be unique to the state.

### I. GENERAL OVERVIEW OF Washington's Unemployment Insurance PROGRAM

The official mission of the UI Program is to "enhance the well being of the state workforce and business community through the timely and equitable payment of benefits and the collection of taxes and overpayments. The program promotes economic security for individuals, their families and their communities, and assists employers to maintain a stable workforce."<sup>121</sup>

According to staff at the state level, UI policies in Washington favor the claimant, brought about by several class action suits. For example, one court case (O'Brien vs. ESD) resulted in two directives to the ESD:

- Due Process – The state had to advise claimants of their rights when interviewing them with regards to a non-monetary issue which could affect their eligibility for benefits;
- Property Rights – Once claimants began receiving benefits, they were considered to have property rights to the claim and had be paid "conditionally" (instead of holding up payments) while determining nonmonetary eligibility.

In another important court case (Duncan vs. Turner & ESD), ESD was directed to give claimants the option of using an alternate base year when their claims were not valid using the regular base year.<sup>122</sup>

In addition, unions are strong and politically active in the state. In Washington, the largest unions represent aerospace, construction, and longshoreman workers.

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<sup>121</sup> State of Washington Unemployment Insurance: Administration, Taxation, and Claimant Assistance, 2001 Annual Report. Compiled by: Unemployment Insurance Division, Office of Research and Analysis.

<sup>122</sup> The 1987 legislature enacted an amendment to the law defining the base year that provided for the alternative base year claims. The Duncan vs. Turner case did not reach settlement because they withdrew after Duncan became eligible for a regular base year claim.

Overall, the state's reciprocity rate, as defined as the ratio of weekly UI beneficiaries to weekly unemployment, is in the top one-third of all states. This is driven by relatively high benefit duration, and not by a high inflow rate.<sup>123</sup> The state has a relatively low separation rate (16.4 percent of initial claims in 2001, versus a median rate of 18.1 percent among all states). It also has a lower separation denial rate than most other states (48.6 percent in 2001, versus a median rate of 53.4 percent). The state's non-separation rate (of continuing claims) is slightly lower than the U.S. median (2.2 percent for Washington and 2.5 percent among all states); the non-separation denial rate is slightly higher (75.2 percent for Washington and 74.1 percent for the U.S. median).

## A. Organizational Structure

Two divisions within ESD have relevance to this project: The Unemployment Insurance Division and the Employment and Training Division. Within the Unemployment Insurance Division, there are separate offices overseeing Benefits, Taxes, TeleCenter Operations, Technology and Data, Program Integrity and Quality Performance, Reemployment and Legislation, and Budget and Performance Monitoring. The Employment and Training Division oversees a number of programs, including WIA, Welfare-to-Work, and WorkFirst (the employment program for TANF recipients).

The Office of Administrative Hearings (OAH) is an independent state agency that hears appeals from decisions by various state agencies, including ESD.

The state began operating its first call center (referred to as a TeleCenter) in King County in February 1999. By November 1999, the state was able to serve all claimants in the state. It currently operates three TeleCenters in Seattle, Spokane, and Tacoma. The TeleCenters take all intake claims for the state, and adjudicate most, although not all determinations. The state also operates four separate adjudication units around the state, which allowed the states to retain staff who were unwilling to relocate to the TeleCenters.

The state operates 26 full-service WorkSource offices and 35 affiliates that offer more limited services. To qualify as a full-service office, the office must have ESD, DSHS, Community and Technical Colleges, and Workforce Development Councils (WDC) on the premises. UI funds 22 full-time equivalent (FTE) staff positions, who work in the offices and provide assistance to UI claimants. In addition, Employment and Training Division staff conduct the job search reviews and reemployment orientations for UI, and are trained to answer basic UI questions, primarily dealing with applying for assistance and filing weekly claims.

## B. Monetary Requirements

A claimant is eligible if he or she has 680 hours of work during the regular base year (first four of the last five completed quarters) or during the alternate base year (the last four completed

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<sup>123</sup> We are using Wayne Vroman's definition of inflow (ratio of first payments to new spells of unemployment), duration (the ratio of the average duration of benefits to the average duration of new spells of unemployment), and reciprocity (the product of inflow and duration).

quarters). The state first looks at whether the claimant is eligible for the regular base year; if ineligible during this period, the state will examine eligibility in the alternate base year.

## 1. Basic Eligibility

The weekly benefit amount (WBA) is calculated from the average of the total wages paid to the claimant in the two highest quarters of the base year time multiplied by 4%. For example, for a claimant who worked at least 680 hours and earned \$5,000 in quarter 1, \$7,000 in quarter 2, \$9,000 in quarter 3, and \$3,000 in quarter 4, the average of the high quarters (quarters 2 and 3) is \$8,000. His WBA is equal to \$320 (\$8,000 multiplied by 4%).

The state makes two exceptions to this formula. The claimant cannot receive more than \$496, regardless of the claimant's earnings. Also, claimants who have at least 680 hours will receive at least \$107, even if the formula would calculate a lower amount.

The total amount of benefits potentially payable on a claim (for regular UI) is found by taking the smaller of:

- 30 times the WBA, or
- 1/3 of the total gross wages in all four quarters of the base year.

## 2. Extensions

Three types of UI extensions are available to claimants who exhaust regular benefits:

- **Temporary Extended Unemployment Compensation (TEUC)** is a federal extension that provides an additional 13 weeks of unemployment benefits. The benefit is limited to those who applied on or after March 19, 2000 and the base year wages are more than 40 times the WBA or more than 1.5 times the high-quarter earnings. The WBA is the same as the regular WBA. The total amount that can be claimed is the lesser of: 50 percent of the total regular benefit entitlement or 13 times the WBA. Other requirements, including weekly filing and job search requirements, are the same as for regular benefits. Current federal law provides this benefit through 12/28/02. Benefits provided through this program do not affect employers' experience rating. The state of Washington was eligible for and received a second tier of TEUC benefits. Eligible claimants were entitled to an additional 13 weeks of TEUC.
- **Extended Benefits (EB)** is a federal-state partnership that provides up to 13 additional weeks after TEUC for individuals who qualified for TEUC. The total amount that can be claimed is the lesser of: 50 percent of the total regular benefit entitlement; 13 times the WBA; or 39 times the WBA minus all regular benefits already paid. The job search requirements are more stringent than for regular benefits: the claimant must make at least four job search contacts per week. In addition, suitable work is defined more broadly: it is any work that pays at least the state minimum wage or the WBA, whichever is more. Also, while union members are not required to look for other work to receive regular and TEUC benefits; for EB, union members must make at least three other job search contacts in suitable work that does not jeopardize the claimant's union status.

- **Training Benefits** are additional UI benefits paid to eligible dislocated workers enrolled in and making satisfactory progress in a full-time training program approved by UI. To qualify, claimants must have a long-term work history working in an occupation or using a particular set of skills that is determined to be in decline by their local WorkForce Development Council.<sup>124</sup> Most dislocated workers may receive up to 52 times their WBA. This amount is reduced by the amount of regular and extended benefits paid, but not TEUC, and is also limited by the amount of time required to complete the training plan. Workers in particular industries (primarily aerospace, forestry, and finfishing) might be eligible for up to 74 times their WBA, depending on when they applied.

### 3. Shared Work

The UI commissioner can approve a shared work compensation plan if: 1) the employer needs to reduce the weekly hours of work by between 10 and 50 percent for at least 10 percent of its employees; 2) they will continue to provide fringe benefits on the same basis as before the reduction in hours; and 3) the plan certifies the reduction is in lieu of temporary layoffs. A plan will not be approved for seasonal employers during the off season or for employers who traditionally use part-time employees. Also, the partially employed claimants need not seek other work or register with ES but must be available for all work offered by the regular employer. The shared work WBA is calculated by multiplying the regular WBA by the percentage of reduction in the individual's usual weekly hours of work. Staff at the state level noted several large employers in the state had been taking advantage of this provision in the past year, and that this was largely a goodwill effort on the part of the employers.

### C. Outreach Efforts

The state conducts a number of outreach efforts that are worth noting:

- Employers are legally required to post notices in a place convenient for employers to read, informing their workers that they may be eligible for unemployment benefits if they lose their jobs. It provides information on how they can file for UI over the phone or over the Internet. This poster is also provided in Spanish. Tax auditors will look for the poster during visits and remind employers of the requirement, but do not impose fines for not posting it.
- The state sends Rapid Response Teams to employers planning mass layoffs. The teams comprise staff from both UI and the WorkSource offices. Generally, the first meeting is an overview of the services that are available. In many instances, the team will return for a follow-up meeting to take mass (paper) applications.
- As is true in other states visited as part of this study, claimants generally learn about UI through word of mouth and not from direct advertising by the state. However, after launching the Internet site, the state did begin advertising the new option available for submitting

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<sup>124</sup> Depending on the area where claimants live, their occupation might be deemed in decline or in demand. For example, Pipelayers and Tool and Die Makers are considered demand occupations in Pierce County, but declining occupations in Spokane. On the other hand, Veterinarians and Architects are deemed declining occupations in Pierce County and demand occupations in Spokane.

claims on 15-second television spots during Seattle Mariners games. Later, the state created radio public service announcements.

- The state educates employers in several ways. It produces quarterly tax newsletters, has a special Internet site specifically for employers, sends a booklet to all new employers, and has special mailings when there are new policies.
- The Unified Business Identifier (UBI) is a one-stop service for businesses who need to register with a variety of state agencies. The Employment Security Department, the Secretary of State, and the departments of Licensing, Revenue, and Labor and Industries cooperate in this multi-agency coordination effort. The UBI periodically holds unemployment insurance tax workshops, led by ESD staff.
- The UI Advisory Committee, which includes staff from ESD, unions, employers, and legislative staff, meets quarterly to discuss significant developments in the UI program. Before ESD submits anything to the Legislative Branch, it is generally reviewed first by the Advisory Committee.
- Several community-based organizations in the state that provide services to migrant workers inform their constituents about UI benefits.

## **D. Issues Pertaining to Union Members and Other Specialized Labor**

### **1. Union**

Union members are generally ineligible for UI benefits while on strike. The exception is made when the claimant is not participating in, financing, or directly interested in the strike that caused the claimant's unemployment. Union members who are allowed benefits because of the exception test are not required to look for other work since they are considered employed by the struck employer.

A claimant who has been permanently replaced during a strike and is allowed benefits must be ready, able and willing to seek and accept any offer of work within the union's jurisdiction.

Locked out employees are generally entitled to receive unemployment benefits.

### **2. Seasonal Workers**

Some areas of Washington are highly agricultural communities and the work is seasonal in nature. However, according to staff at the state level, seasonal workers are expected to look for other work they are able to do during the non-season.

### **3. Interstate claims**

The state receives a fair share of interstate claims applications, primarily because it offers generous UI benefits. These claims are handled at the Pierce County TeleCenter. When claimants have the option of filing in Washington or another state, they will choose to file in Washington given the state's generous benefits. Also, since the state has a number of military

bases, it gets some claimants who have partial UCX and regular UC payments, causing a substantial amount of work for the UI staff.

## **II. Process for Submitting Initial and continuing claims**

### **A. Application Process**

Claimants can submit initial claims by telephone, Internet, or mail, or in-person at the WorkSource office. State staff estimated that about 75 percent of claimants submitted their claims by phone, 23 percent by Internet, and a handful by mail or in-person. The move from in-person claims to telephone and Internet has benefited the claimant population, according to the state. It is more convenient to file from the home, claimants can avoid long lines in the offices, and feel more comfortable using the more anonymous process. Also, claimants who speak other languages are better served by the TeleCenters.

The TeleCenter takes initial claims Monday through Thursday from 7:00 AM to 6:00 PM and from 8:00 AM to 5:00 PM on Friday. Claimants who live in Seattle, Spokane, and Tacoma are directed to call the local number for the TeleCenter in their area. All others are instructed to call a toll-free number which routes them to one of the TeleCenters depending on the prefix of their number. Callers from out of state are routed to the Pierce County TeleCenter (with the exception of commuters in Idaho, who call the Spokane center). The toll-free number does not extend to claimants in Canada.

When claimants file by phone, they are asked questions from the automated system that will direct the telephone to the appropriate queue. For example, staff with more training can handle “complex claims” (e.g., UCX, UCFE, combined wage claims, and temporary total disability cases), while staff who are bilingual will be assigned to specific queues depending on their language. As a result, staff can be assigned to multiple queues during the day, depending on the volume of calls that are basic, complex, and for special languages.

When they call in, the claimants’ job seeker record, which includes basic information with regards to their jobs in the base year, is pulled up. Claimants are requested to provide their Social Security Number (SSN); names and addresses of employers in the last two years; dates when they started and stopped working; reasons they left each job; and alien registration number if not a U.S. citizen. Staff estimated that basic initial claims take about 7.5 minutes and complex claims take 11 minutes.

The call center will send each applicant the “Unemployment Claims Kit.” which provides information on the process for filing for benefits and appealing decisions. It also includes information on local resources available to help them get back to work and provides a job search log that claimants are asked to use to document their job search activities. At the same time a notice is sent to every employer in the base period. (All past employers in the base year are held liable.)

The state began taking claims by Internet in May 2000. According to the state, the advantage of this option is that the claimant can apply 24 hours a day, 7 days a week. Also, particular days of the week, such as Mondays and Tuesdays, are very busy at the TeleCenter and claimants can avoid waiting in a telephone queue.

## **B. Special Needs**

As mentioned above, the TeleCenters have staff who handle special language queues (for Spanish, Vietnamese, Korean, and Russian speakers). If staff in the closest TeleCenter are not available, staff in one of the other TeleCenters can pick up the call. For other languages, the state uses the AT&T translation service. The TeleCenters are also equipped to take claims from hearing or speech impaired (TDD) individuals.

The WorkSource offices have TDY equipment. The office we visited in Tacoma was in the process of buying ADA adaptive equipment and adapting computer desks to accommodate wheelchairs. Individuals with limited English proficiency can request interpreter services.

## **C. Filing Continuing Claims**

After claimants apply for benefits they must file weekly claims, either by phone, the Internet or mail. They must do this even if they are waiting for a decision or appealing a denial of benefits. When they file a weekly claim, they report any gross earnings in the previous week, the number of hours worked, and the employer's name and address.

Most claimants prefer filing by phone, using the automated system, and this is encouraged by the state. The benefit of filing by paper is that they can claim for the previous two weeks; however, it results in a delay of benefits.

# **III. NON-MONETARY SEPARATION POLICIES AND PRACTICES**

## **A. Fact-Finding and Adjudication Process**

Issues that arise are allocated to adjudicators based on the last four digits of the claimant's SSN. A fact-finding interview is scheduled no earlier than 10 days after mailing the notice.<sup>125</sup> Staff complained that this requirement affects their ability to meet DOL's timeliness measures.

In the TeleCenters, the system can automatically schedule an interview for separation issues; in the separate adjudication units, staff have to schedule the interviews on their own. The interviews are conducted separately with the claimant and the employer. Interviews are not required, and in some cases, after the adjudicator receives the completed forms from the claimant and employer, he or she might determine that a follow-up call is not necessary. According to staff at the state, the move to the TeleCenter increased consistency in decision-making among staff. Staff and supervisors can discuss issues that arise and supervisors will review decisions.

After a determination is made, the claimant will receive a Decision Letter, which states whether he or she is disqualified from receiving benefits and the reason why. In addition, he or she might receive an overpayment assessment, which tells whether he or she has been paid too much, how much must be repaid, and the minimum amount to be paid each month. The state will waive the

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<sup>125</sup> The O'Brien vs. ESD court case directed the state to provide 5 days after the claimant received the notice, estimated by the state to be no more than 5 days after mailing the notice.

overpayment if the claimant was not at fault in causing it and is judged to be unable to repay it based on his or her financial situation.

In the O'Brien vs. ESD court case, the judgment directed the department to ensure due process rights to claimants which includes a written notice to the claimants explaining the following:

- Their eligibility for benefits is in question;
- A particular issue was raised;
- They can respond by mail or in person;
- They have the right to have any person, including an attorney help at the interview;
- They can question witnesses or parties present;
- They can access records or documents possessed by the department relevant to the issue raised; and
- The claimant must respond by a particular date.

When employers use third-party representatives, adjudicators must contact them and not the employer regarding a separation issue. As is true of many other states visited as part of this study, these representatives tend to wait until the issue reaches the appeals stage to contest a decision. One staff member estimated that as many as 25 percent of employers might use a third-party representative.

## **B. Issues Pertaining to Voluntary Quits**

The claimant has the burden of establishing good cause for quitting. Good cause includes the following situations:

- Because of a work connected reason. This includes risk to health, safety, and morals, physical fitness for the work, ability to do the work, and other work connected reasons deemed pertinent.
- To accept a bona fide offer of work.
- Because of personal illness or disability, or the illness or death of an immediate family member.
- To relocate to the place of the spouse's employment that is outside of the local labor market area. For quits occurring on or after February 13, 2000, good cause is allowed only if the claimant leaves work to relocate for a spouse's employment that is due to an employer-initiated mandatory transfer.
- To protect himself or herself (or an immediate family members) from domestic violence or stalking.

In ineligible due to leaving work voluntarily without good cause, the individual is disqualified for at least seven weeks and until he or she has earned wages equal to seven times his or her WBA.

While most voluntary quits are relatively straightforward, staff do encounter some cases that require staff to make judgment calls. A common scenario is when a client quits because the job functions changed or in one case we reviewed, the claimant claimed that the employer misrepresented what she would be required to do. This is a grey area and could result in different decisions made by different adjudicators.

An employer can request relief of benefit charges if the individual voluntarily left for reasons not caused by the employer. They must request a waiver within 30 days of the notification mailing date.

### **C. Issues Pertaining to Misconduct**

In issues of misconduct, the burden of proof lies with the employer. The state defines misconduct as ‘an employee's act or failure to act in willful disregard of the employer's interest where the effect of the employee's act or failure to act is to harm the employer's business.’<sup>126</sup> The harm may be either tangible, such as damage to equipment or vehicles, or intangible, such as an adverse effect on staff morale or damage to the employer's reputation. Errors of judgment or ordinary negligence normally do not constitute misconduct.

The state relies on case law to clarify the definition of misconduct. For example, in *Macey v. ESD*, the Washington State Supreme Court established a three part test for work connected misconduct. *Tapper v. ESD* added a fourth element:

1. The rule must be reasonable under the circumstances of the employment;
2. The conduct of the employee must be connected with the work;
3. The conduct of the employee must in fact violate the rule; and
4. The conduct must be intentional, grossly negligent, or continue to take place after notice or warnings and detriment to the employer's operations must be objectively demonstrated.

Examples of other pertinent cases include the following:

- *Galvin v. ESD*: Galvin had chronic attendance problems and was repeatedly notified that improved attendance was required. She thereafter took leave without approval, disregarding a specific employer directive. Her "disregard of the approval process demonstrated indifference to her employer's legitimate objective of the predictable work force. This willful disregard of the employer's interest justified a denial.”

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<sup>126</sup> *Benefit Policy Guide*

- **Wilson v. ESD:** Wilson was discharged for two incidents involving loss of store stock. The court found there was no evidence to show Wilson acted with an intent to violate the employer's policy, to cause the employer harm, or was in willful disregard of his employer's interest. At most his actions "amounted to negligence, incompetence or an exercise of poor judgment."
- **Dermond v. ESD:** Dermond worked as a telecommunications analyst. She was given a list of performance expectations after an incident and was discharged for violating those expectations. The court ruled that she directly violated a clear and reasonable policy. In addition, her direct refusal to discuss her violation amounted to an implicit declaration that she had no intent to comply in the future. This itself harmed her employer's operations by creating uncertainty.

Those who are fired or suspended for misconduct connected with work are disqualified for at least seven weeks and until they earn wages equal to seven times their WBA. If claimants are fired because of a work-related felony or gross misdemeanor, all hourly wage credits based on that employment are canceled.

Staff have some amount of discretion in determining some cases. For example, attendance violations can often be ruled differently by adjudicators. In one case we reviewed, a client was absent three times. However, the employer was easy going and did not provide warnings (verbally or written). In this case, the adjudicator ruled in the claimant's favor, although she admitted that another adjudicator might have determined that the claimant "should have known better."

#### **D. Trends Over Time**

The state experienced a 33 percent increase in initial claims from 2000 to 2001, which is about the median increase among all states. The state was hit hard by layoffs in the aerospace and high-tech industries. Shortly after September 9, 2001 Boeing announced that it would lay off as many as 30,000 workers. Since then, Boeing has been giving "pink slips" on a monthly basis to workers. Most of the 30,000 expected layoffs will show up in the 2002 and 2003 statistics. However, the instability caused by the announcement could have had an immediate effect on other industries, such as construction and retail. The high-tech sector experienced layoffs during the crash of the "dot.coms."<sup>127</sup>

In every year, the state receives the largest number of initial claims in January, after layoffs in the agriculture, construction, logging, and fishing industries.

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<sup>127</sup> From the 2001 Washington State Labor Market and Employment Report, in 2001, the computer and data processing services (excluding prepackaged software) lost 4,500 jobs; miscellaneous retail trade lost 2,300 jobs which, while seemingly unrelated, is largely comprised of retail-related "dot.coms" that sell goods over the Internet; electronic and electrical equipment lost 2,200 jobs; and industrial machinery and computer equipment lost 1,700 jobs.

## **F. Variation Across State**

Labor economists who study employment in Washington distinguish between the *Two Washingtons*, Eastern Washington and Western Washington, because of the great disparity in employment patterns. Eastern Washington is more rural and agricultural than Western Washington. In 1999, the per capita income was \$22,192 in Eastern Washington, and \$32,712 in Western Washington.<sup>128</sup> There are differences in unemployment trends as well that are worth noting. Historically, Eastern Washington has had much higher unemployment rates (in August 2001, the rate was 7.0% in Eastern Washington and 5.7% in Western Washington).<sup>129</sup> However, in the last year, unemployment rates in the western part of the state has increased to the levels found in the eastern part (in August 2002, the rate was 6.8% in Eastern Washington and 6.6 percent in Western Washington). This is due in part to the loss of jobs in the aerospace and high-tech sectors discussed above.

While there is variation in the type of employment found across the state and the trends in unemployment, the policies and practices at the UI centers do not vary, owing to the call-center approach. Any variation in practices across the state are likely to be found at the local WorkSource offices.

## **IV. NON-MONETARY NON-SEPARATION POLICIES AND PRACTICES**

### **A. Fact-Finding and Adjudication Process**

A non-separation issue is generally discovered from reports by the WorkSource office pertaining to the job search monitoring visit or based on claimants responses when filing a weekly claim. Similar to separation issues, the adjudication unit at the TeleCenter or one of the four outside adjudication units will conduct the fact-finding and make the determination.

### **B. Able and Available**

Able to work means the claimant is physically able to work; available to work means the claimant must be willing to accept any suitable work that fits his or her training, experience, and ability. It also means the claimant has a way to get to work and get child care. If a claimant is unavailable in a week, he or she is paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work. However, if unavailable for three days or more of a week, the entire weekly benefit is forfeited.

#### **1. Medical Verification**

In some cases, the department will require verification from a doctor that the claimant is able to work. If not able to work in his or her customary occupation, the claimant may still be eligible if he or she “shows an active effort to seek work in line with his/her physical abilities.”<sup>130</sup>

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<sup>128</sup> 2001 Washington State Labor Market and Employment Report.

<sup>129</sup> Washington Labor Market, September 2002. Prepared by Labor Market and Economic Analysis Branch.

<sup>130</sup> Benefit Policy Guide.

## **2. Commissioner Approved Training**

Attending school calls into question claimants' availability if attendance conflicts with their ability to seek and accept full-time work. If claimants are attending or plan to attend full-time training, they might be eligible for Commissioner Approved Training (CAT). They are eligible for CAT if jobs for which they are qualified do not exist or are decreasing in their labor market. The training must be for an occupation or skill for which there are reasonable job opportunities when they complete the training.

Claimants must complete a four-page application that includes questions on the type of training program, the schedule, main occupation, and past work experience. These applications are reviewed by UI adjudicators who received special training to conduct these determinations.

If approved, claimants are not required to look for work or to accept work as long as they regularly attend classes and make satisfactory progress in their approved training programs. They also need to have their school complete a progress report every six weeks and send it to the TeleCenter. If the training lasts longer than their regular benefits, they can also apply for the Training Benefits discussed in Section I.B.<sup>131</sup>

## **3. Hours Available**

Generally, a claimant must be available for the hours and shifts that are customary for his or her occupation. A claimant who is willing to accept only part-time work when a 40-hour week is customary for the occupation will be denied.

### **C. Disqualifying and Deductible Income**

When claimants work part-time in a given week, the WBA is deducted by the following:

Deduction = (Gross earnings - \$5) \* 75 percent

If the deduction is greater than the WBA, then the claimant is ineligible for the week. A worker can have significant earnings and still be eligible for benefits in Washington. Certain trade organizations use this provision to subsidize workers' income during low-peak times. This affects the state's reciprocity rate and benefit duration.

Severance payments generally do not count in determining eligibility of benefit amounts since they were assigned to a past period. However, "pay in lieu of notice" or "continuation pay" with full benefits that are guaranteed can affect the receipt of benefits. Also, if the employer pays a claimant for sick leave, holiday pay, or vacation pay, the claimant must deduct these payments if they are assigned to a specific week when they are working part-time and claiming for UI. If the employer provides vacation as a lump sum cash out, it is not deducted.

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<sup>131</sup> Note that to be eligible for Training Benefits, a claimant must be approved for CAT. However, a claimant might be approved for CAT, but not be eligible for the additional Training Benefits. The additional benefits are limited to dislocated workers in declining occupations and industries and are subject to the availability of funds.

Pensions (employer's contribution only) are deducted from UI benefits if the pension is based on work for the base year employer.

#### **D. Work Search**

Claimants are told to make at least three work search contacts or participate in an approved job search activity at the local WorkSource office and record these activities in a job search log. The state gives little guidance on what constitutes a valid contact. Claimants can apply for a job in-person, by phone, or by mail.

If the claimant is conducting an inadequate job search during the job search monitoring session (discussed in Section G below), staff will issue a "directive." According to the Benefits Policy Guide, "a directive must be written so a claimant has information on which to base his/her future actions and activities. The claimant must be allowed a reasonable length of time to comply with the directive. A directive is appropriate when the claimant needs to:

- Increase the number of work search contacts;
- Change the method of seeking work (from resume to in-person contacts, etc.);
- Expand the geographic area in which the work search is conducted;
- Seek work in a secondary occupation;
- Take other actions helpful in locating work."

#### **E. Profiling**

Washington state's profiling program is referred to as the "Claimant Placement Program" (CPP). Profiling occurs the week after claimants submit their initial claims, when a profile score is assigned. Each Monday morning, each office receives a list of claimants with high probability of exhausting their benefits (about 10 percent of all initial claims), sorted by their profile score. Many offices can handle the entire list, while other offices can accommodate only a portion of the list.

The offices send out letters to the claimants, mandating that they appear for a Profiling orientation for a particular session. The letter states that "failure to attend or to participate in scheduled reemployment services may result in denial of your unemployment insurance benefits." Small offices might receive as few as 15 to 30 names per week, while the large offices receive more than 500 names:

- The Pierce County Lakewood office gets from 500 to 700 names and call in about 400 per week to attend one of four workshops offered in the week (four staff share the responsibilities of conducting the workshops). About half show up. The vast majority of workshop participants are CPP clients, although non-CPP clients can attend.

- The Pierce County Tacoma office receives a list with 2,400 names on it each week, and they invite about 500. From this group, about 300 per week show up. In Tacoma, the workshops serves many non-CPP clients, who were referred from the partner organizations.
- The Seattle office receives a list of about 500 to 1,000 names, from which they invite about 300 each week. About 175 to 200 claimants show up for one of the daily workshops conducted in the week. UI claimants comprise about 90 to 95 percent of the group, with the remainder referred from one of the partners, including TANF.

Depending on the office, the orientation session, known as Module One, might accommodate between 15 and 35 individuals. This is an interactive, three-hour workshop, that involves conducting several individual and group exercises to help claimants understand their “destination” (next job) and how they can get there (described as their “journey”). During this session, staff provide information about the services available to the claimants at the WorkSource office, including the other modules that claimants can sign up for. These cover the following topics.

- Module Two: “Knowing yourself. Claimants examine “who they are.”
- Module Three: “Skills and Abilities Analysis”. Claimants learn how to identify, demonstrate, and package their skills and qualities for employers.
- Module Four: “The Job Market”. Claimants learn how to research the labor market, develop networks, and conduct informational interviews.
- Module Five: “Effective Job Search”. Claimants learn the most and least effective strategies for finding employment and conducting a job search on the Internet.
- Module Six: “Applications and Resumes”. Claimants learn how to complete applications, develop resumes, and design cover letter.
- Module Seven: “Interviewing”. Claimants learn helpful interviewing tips and practice interviewing skills.

The policy has been that claimants need to complete Module One to fulfill their profiling requirement. However, since April 2002, because the WorkSource has been transitioning to a new computer system that does not communicate with the UI computer system, no sanction is imposed for not attending the orientation. The state is working on integrating these two systems so that when claimants do not show for the session, this information will automatically be conveyed to UI. The state estimates that by January 2003, profiling will be mandatory again. A person who does not show will lose benefits for one week.

## **F. Work Registration**

The state automatically registers all claimants when they apply for UI, coding limited information such as their occupation code and previous job title. However, to access services at

the WorkSource office, claimants must complete a full registration, providing more detailed information about their past employment history.

Until recently, the state used the automatic registration information to match claimants with possible jobs. If the “Job Hunter” program found a possible match, it would notify the claimant when he or she called in to the weekly claims line. Claimants were not required to pursue these job leads. This program was discontinued when they moved to the SKIES (WorkSource) system, although the state is looking to replace it with another automated job referral system.

## **G. Eligibility Reviews**

Job search monitoring replaced eligibility reviews in 1999. This came out of legislation that directed an advisory group, made up of business and labor, to develop a job search monitoring plan.

About 10 percent of all claimants are randomly selected for job search reviews at the local WorkSource office. The state targets a greater share of claimants who have been on UI between 6 and 10 weeks, but also recognizes that individuals who have incurred more time on UI could still benefit from this review. The following percentage of claimants are selected for reviews.

<u>Weeks on UI</u>	<u>Percent of Group Selected</u>
6 to 10 weeks	15 percent
11to15 weeks	8 percent
More than 15 weeks	5 percent

The state sends lists to each office, who invite in as many claimants from the list as they can serve, in the order they appear (with those in the 6 to 10 week group served first). Some offices are able to serve all claimants on the list; others can only accommodate the first group.

In addition, the states includes an asterisk next to about 10 percent of the names on the list, which means these individuals have been randomly selected to have their work search activities confirmed with the employers. The UI Performance Audit Unit contacts the employers to learn whether they actually were contacted.

For their job search review, claimants must bring their job search logs and discuss their job search activities with a WorkSource worker. The local offices determine the process for reviewing the logs. In some offices, staff see claimants individually; in other offices, staff schedule group sessions, although must individually review the logs. Staff look to see that claimants are looking for jobs that are in their field and are appropriate for their level of experience. For those who have not conducted an adequate work search, staff are instructed to reemphasize the requirements (referred to as “issuing a directive”, above) and reschedule a meeting to take place two weeks later.

For those who have good cause (i.e., are working or were interviewing), the staff will clear the no-show. Otherwise, the claimant will be issued a “conditional payment,” which the adjudicator

would need to investigate. Those who do not have good cause are ineligible for benefits for the week. Staff estimated that only about 50 percent of claimants show up for the first review; claimants are more likely to come in for the second appointment. The state changed the policy in May 2002. Prior to this time, the office was not required to schedule a second appointment; now they are. This has increased the workload at the offices.

There is some variation across the state in how offices implement this requirement. As an example, in Pierce County, three FTE staff are responsible for the job search monitoring (1.5 in the Tacoma office and 1.5 in the Lakewood office). Each office does its own scheduling, downloading the lists on Monday and scheduling clients in for the following week. The state expects them to see 45 clients per each FTE, which means they need to schedule about 60 per FTE to account for no-shows. (Lakewood staff are almost always able to schedule all claimants on their list; Tacoma rarely schedules everyone on their list because they serve a more populated area.) In both offices, they see clients individually for 30 minutes.

In Seattle, there are two staff who have the responsibility of conducting the reviews. They get a list every week and send letters to about 110 to 115 each week, usually all from the group with 6 to 11 weeks of UI. Unlike Pierce County, Seattle conducts group orientations, where they discuss the job search requirements and services and then will review each claimants' logs individually with the claimant. The session only lasts 1 to 1½ hours, so the individual review is conducted quickly. The office offers three sessions each week, with about 25 claimants showing for each session (about two-thirds of the number scheduled). The majority who do not show have an employment-related excuse. The rest are potential issues.

## H. Suitable Work

The state defines suitable work as “employment in an occupation in line with prior training, experience, and education, unless regular work does not exist in the claimant’s area. Work would not be considered suitable if the wages, hours or other working conditions are not as favorable as the average for the claimant’s occupation in the local labor market.”<sup>132</sup>

In theory, the definition of “suitable” expands over time. After a period of time, any job for which the claimant is qualified might be considered suitable. However, unlike some states, Washington does not define the number of weeks after which the definition of suitability changes. Also, employers tend not to report instances of refusing suitable work, so these determinations are rare. In 2001, only 2.3 percent of all non-separation determinations were due to refusing suitable work.

The state might determine, in individual circumstances, that less than full-time work is suitable if:

- A disability prevents claimants from working the number of hours that are customary to the occupation;

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<sup>132</sup> Unemployment FAQs, Volume 1, Issue 4, July 29, 2002.

- They are actively seeking work for the occupation and hours they have the ability to perform; and
- The restriction on the number of hours they can work, the essential functions they can perform, and the occupations they are seeking does not substantially limit their employment prospects within their general area.

## **V. NON-MONETARY DETERMINATION APPEALS**

Claimants and employers who disagree with a written determination from UI adjudicators may ask ESD for a redetermination or appeal the decision to the Office of Administrative Hearings (OAH). If the redetermination is not ruled in their favor, this is automatically sent to OAH. Both parties may file an appeal by mail or fax.

### **A. Office of Administrative Hearings**

OAH is an independent state agency which conducts administrative hearings for other government agencies. The greatest volume of cases are UI cases for the ESD and public assistance benefits and child support cases for DSHS. Administrative Law Judges, all whom are attorneys, focus on one of the two primary areas as well as handle cases from other agencies (e.g., Liquor, Education, Licensing, and Labor and Industries). Currently, there are 38 administrative law judges (ALJs) assigned to the UI caseload. Each ALJ is typically scheduled for 24 to 26 hearings each week. Hearings are held four or five days per week, depending on the ALJs's schedule. Hearings typically last about one hour, although the amount of time depends on the complexity of the case and the number of witnesses involved.

An appeal must be filed within 30 days of the date the decision letter was mailed. Appellants are requested to state the reason for disagreement, any records that the ALJ should consider in making the decision, any witnesses they would like to have present at the hearing, and if they need an interpreter. However, they are not required to state their grounds for appeal – merely stating they wish to appeal is sufficient. Hearings may be held in person or by phone. If any party requests an in-person hearing, the state will consider their request. In addition, when the case appears to be especially complex and/or involves witnesses or interpreters, the state may schedule an in-person hearing. Only about 20 percent of all hearings are in-person.

This is a de novo hearing. At the hearing, ALJ will question the claimants, employers, and any witnesses. All testimony is taken under oath and tape recorded. Each party is given the opportunity to ask questions of the other party and witnesses and present written evidence. Adjudicators will occasionally participate, although this is rare. Representation is relatively common (about 30 percent of employers and 5 percent of claimants have representation). As a matter of course (statutory requirement), the ALJ will also assess the claimant's availability and work search activities (claimants are asked to bring their work search logs with them to the hearing).

In some cases, the claimant was paid "conditionally," meaning the claimant needs to repay the benefits if the ruling is not in their favor. The claimant can apply for a waiver, and if not granted,

can appeal this at a later date. In some instances, when the overpayment is a separate issue, the ALJ can rule on this in the initial hearing.

In calendar year 2000, the state received 25,388 lower authority appeals. In calendar year 2001, there were 30,357 appeals. About 75 percent of all appeals come from claimants, and 25 percent from employers. Also, 29 percent of all claimant appeals were reversed in the claimants' favor; 36 percent of all employer appeals were reversed.

OAH has had difficulty meeting DOL's timeliness measures. The office is supposed to hear and make decisions on 60 percent of all cases within 30 days. Last year, they did not meet the measure because of the increase in appeals.

## **B. UI Commission**

If either party disagrees with the ALJ's decision, they may file a Petition for Review (stating their reason for appeal, limited to five pages). A Petition for Review must be filed within 30 days of the mailing date of the ALJ's decision. The Commissioner's Office reviews the record of the hearing conducted by the ALJ and considers the arguments presented in the Petition for Review. On rare occasions the case is sent back to the ALJ to gather additional evidence and issue a new decision. After consideration of the hearing record and the Petition for Review, the Commissioner's Office will mail the claimant and the employer another written decision.

## **C. State Superior Court**

The Superior Court considers appeals to the UI Commission's decision. There are 29 superior court judicial districts in the 39 counties. The Court takes only about 20 cases each year.

# **VI. OTHER ISSUES**

## **A. Experience Rating**

In Washington, qualified employers are assigned to one of twenty rate classes, depending on the amount of UI benefits collected by an organization's former workers and their taxable wage base. There are also seven tax schedules, which shift upward and downward based on the level of the past year's trust fund reserve (as a share of total wages).

Currently, the state is using Tax Rate Schedule A, which taxes employers at rates ranging from 0.47 to 5.4. About 6 percent of all employers are taxed at the highest rate. This includes all delinquent employers (1.3%).

New businesses (operating less than two years) pay the industry average tax rate for the same type of businesses.

## **B. Role of Job Service and One-Stops**

As mentioned above, the WorkSource offices conduct the job search monitoring and profiling sessions. In addition, UI workers located in some offices handle Level II (complex) questions from claimants who walk into their local offices. Receptionists are trained to handle basic Level I

questions (e.g., how to file an initial claims and connect weekly with the telephone line). The UI workers are adjudicators so can restart payments, conduct redeterminations, etc., although mostly, they answer claimants' questions.

### C. Changes Planned in State

The state plans to implement several changes in the next year. First, the Legislature passed a bill providing UI benefits to victims of domestic violence while eliminating the requirement that such claimants satisfy normal work search requirements. Victims were previously entitled to benefits but had to comply with normal requirements. ESD is now drafting rules to implement the new law with formal rulemaking projected to begin in November 2002.

The state also has been concerned about UI duration, which has been increasing in part because of the economy and in part because of extensions. As a result, there has been some pressure to beef up job search monitoring and profiling in the state. As mentioned above, profiling is expected to be mandatory by early 2003.

In addition, the state is piloting an expert fact-finding system that is designed to direct adjudicators to the correct decision. The state is hoping it will lead to more consistent decisions across the state. Cases assigned to staff who are piloting this system are all reviewed by the BAM unit to assess whether using the system would potentially increase the state's performance on accuracy measures.

Finally, as discussed above, the UI and WorkSource computer systems will be reconfigured so that information on UI claimants job search monitoring and profiling attendance recorded in the WorkSource system will be communicated to the UI system.

## VII. Unique features of Washington's program

Washington State has implemented several unique policies that are worth mentioning.

- **UI retains a visible presence in the WorkSource centers.** Like most states that have moved to call centers, the state's presence at the local offices has diminished. However, the local offices are still involved in the UI program. In particular, the state developed an elaborate series of workshops as part of the CPP (profiling) program that UI claimants are invited to attend. While not mandatory, it appears that these workshops receive high levels of attendance. In addition, it enforces the job search requirement, by inviting about 10 percent of the UI claimant population into the offices for a review of their job search logs. Finally, some adjudicators are stationed in selected WorkSource offices to assist walk-in traffic with their UI questions.
- **The high unemployment rate in the state and availability of extended UI benefits continues to affect benefit duration.** In July 2000, Washington had the second highest unemployment rate in the country, at 7.1 percent, exceeded only by Oregon, with a rate of

7.3 percent.<sup>133</sup> Related to this, both Oregon and Washington are the only two states that offer a state extended benefit program. This allows claimants who exhaust their regular benefits and federal extended benefits (TEUC) to file for the state program. In addition, the state offers training benefits (extended UI benefits) to dislocated workers in particular industries/occupations to allow them to complete their training programs.

- **Unions in the state are politically active.** In 2001, about 20.0 percent of Washington workers were members of a labor union or employee association (or affiliated with a union or association). This is higher than the national average of 14.8 percent.<sup>134</sup> A number of policies appear to favor claimants (e.g., the expanded training opportunities), which is due, in part, to the strength of the unions in the state.

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<sup>133</sup> “Unemployment Rates for States ; Seasonally Adjusted, July 2002 (preliminary)”, U.S. Bureau of Labor Statistics Local Area Unemployment Statistics.

<sup>134</sup> From the Department of Census Current Population Survey (CPS).