

4-1-1948

The Employment Security Program (With Special Reference to Tennessee Unemployment Insurance)

E.J. Eberling

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Labor and Employment Law Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

E.J. Eberling, The Employment Security Program (With Special Reference to Tennessee Unemployment Insurance), 1 *Vanderbilt Law Review* 376 (1948)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol1/iss3/2>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

THE EMPLOYMENT SECURITY PROGRAM

(With Special Reference to Tennessee Unemployment Insurance)

E. J. EBERLING *

Employment security was one of the major programs for which provision was made in the Social Security Act of 1935. Under its terms a tax program was instituted which encouraged the states to enact unemployment insurance laws and expand their employment services. The Act imposed a federal tax on the payrolls of subject employers against which such employers were permitted to offset the major part of the taxes which they paid under state unemployment insurance laws. Since employers in states which did not enact appropriate insurance laws were liable for the full federal tax, the states acted speedily to set up unemployment insurance programs. Within less than two years after the passage of the Social Security Act, unemployment insurance laws had been enacted by all 51 jurisdictions, including the 48 states, the District of Columbia, Alaska and Hawaii.¹

It is the purpose of this study to examine briefly the federal role in this program, then to analyze in some detail the state phase with emphasis upon the organizational patterns, legal requirements, administrative procedures and precedents related to unemployment insurance operations.

FEDERAL REQUIREMENTS IN RESPECT TO STATE UNEMPLOYMENT INSURANCE LAWS

The Social Security Act provides for a federal tax of 3 per cent on taxable payrolls. Subject employers are permitted an offset of 90 per cent against their total tax liability if a similar tax is collected under a state unemployment insurance program. The offset is not reduced by the operation of experience rating programs instituted by most of the states. All subject employers must, however, pay the remaining .3 per cent of taxable payrolls to the Federal Government, which uses these funds to reimburse the states for the cost of administering their programs.

Before an employer can receive the credit offset against the federal tax, however, his state unemployment insurance program must comply with standards of administration required by the Federal Government. In general these include the development of such procedures as the Social Security Administration finds to be reasonably calculated to insure payment of full benefits to workers when due. Similarly the state agencies must establish and maintain personnel standards on a merit or civil service basis and make

* Professor of Economics, Vanderbilt University. Consultant and Chief of Research, Tennessee Department of Employment Security.

1. Before the enactment of the Social Security Act, Wisconsin was the only state which had an unemployment insurance law.

1-a. The cases cited in the remainder of Prof. Eberling's article are taken from the Administrative Manual of the Tennessee Dept. of Employment Security; these citations are otherwise unpublished.

such reports as the Social Security Administration may require.² All funds collected by the state agencies must be deposited promptly with the Secretary of the Treasury of the United States.

The federal law requires also that; (1) All benefits must be paid through public employment offices, (2) All money withdrawn by the state from the state unemployment fund must be used solely for the payment of insurance benefits, (3) Benefits must not be denied by a state agency to any individual for refusing to accept work, (a) if the position offered is vacant because of a labor dispute, (b) if the wages, hours, or other conditions of work are substantially less favorable to the individual than those in similar work in the locality, (c) if as a condition of employment the individual is required to join a company union or to resign from any bona fide labor organization.

A FEDERAL-STATE PROGRAM

Other than for these federal requirements, however, the states are free to establish any kind of program they desire so far as coverage, eligibility conditions, benefit provisions, financial and other details are concerned. While there is considerable variation among the state programs in respect to these items, their basic elements are in substance quite similar, and together with the federal requirements mentioned above comprise what is commonly known as our nation-wide employment security system. After more than ten years of experience in operations, the federal-state program of job placement and job insurance has become an integral part of the American economy. It may well be characterized as constituting one of the best answers to those critics who question the ability of the capitalistic system of free enterprise to protect its working population against the privation caused by loss of wages arising out of involuntary unemployment.

This program provides the services of a nation-wide public employment exchange system with its major functions of job placement, vocational counseling, aptitude testing, occupational and labor market analysis, and special services for veterans and the physically handicapped. Likewise it affords the protection of unemployment insurance to about 42 million workers. Over \$7 billion are now available in the reserves of this system to protect workers against the loss of income caused by cyclical, seasonal, technological and other forms of involuntary unemployment. That it will be a bulwark against a severe depression goes without saying. Covered workers are assured a minimum weekly income in case of involuntary unemployment, which, spent in the market, constitutes an addition to the purchasing

2. The Federal unemployment insurance tax provisions are contained in the Federal Unemployment Tax Act, which is part of the Internal Revenue Code, while the other provisions are included in the Social Security Act which is administered by the Social Security Administration.

power of the community and furnishes employment to other workers.

The federal role in this program has already been outlined briefly. The basic substance of the program however, so far as the individual worker, employer and local community are concerned, is to be found in an analysis of state laws and procedures. To do this for all 51 jurisdictions would involve a task beyond the scope of this article. An understanding of the fundamental aspects of administrative organization and procedure involved in the conduct of the state phase of this program can be derived from an analysis of these items in respect to a given state. With this in mind, the remainder of this article will center attention upon the Tennessee Employment Security Act, its organizational and administrative aspects.

ADMINISTRATIVE ORGANIZATION

The Tennessee Unemployment Compensation Law was passed by a special session of the legislature in December, 1936. The first contributions from employers were collected for that year. Two years were required to build up reserves. The payment of benefits to unemployed workers began January 1, 1938. Under the original act, the Unemployment Compensation Division was created in the Department of Labor with two coordinate Sections, the Unemployment Compensation Section and the Employment Service Section. The Division was administered by a Director, who in turn was subject to the supervision and direction of the Commissioner of Labor. The 1947 legislature amended the original law, creating a new state department with the title of Department of Employment Security, to be administered by a Commissioner appointed by the Governor. The name of the law was changed from Tennessee Unemployment Compensation Law to Tennessee Employment Security Act. The two major phases of the employment security program, namely, job placement and job insurance, were recognized in the new act by the establishment of two coordinate Divisions, the Division of Unemployment Compensation and the Tennessee State Employment Service. Each one of these divisions is headed by a full-time civil service Director. In addition, the administrative pattern of the agency provides for a Field Section which has immediate supervision of the activities of 51 local offices and 81 itinerant points dispersed throughout the state; the Board of Review, Appeals Tribunal, and Advisory Council. There are seven staff sections which serve the Department as a whole—Legal, Public Relations, Business Management, Premises and Layout, Personnel and Training, Research and Statistics, and Administrative Analysis.

This administrative organization conducts currently the program of employment security in the state. About 1,000 employees, all of whom are on a civil service basis, are engaged in these activities. As pointed out previous-

ly, the two major functions of this program are job placement and unemployment insurance. The discussion which follows is concerned primarily with the unemployment insurance function.

THE BENEFIT FORMULA

The administration of unemployment insurance involves two major activities: (1) the payment of benefits to eligible workers, and (2) the collection of contribution taxes. As is the case with any other insurance program, the payment of benefits is made only to qualified individuals. In order to qualify for benefits, claimants must comply with eligibility conditions related to (1) the benefit formula (2) the labor market (3) procedures for filing claims. All claimants for benefits are subjected to what is called a financial determination of eligibility, the purpose of which is to ascertain whether the claimant is "covered" by the program, that is, how much insured wages he has earned in the periods required by the law.

Such determinations are made upon the basis of the benefit formula which is set forth in a table in the law.³ This formula has been amended several times since the inception of the program in order to provide more adequate benefits in accordance with the increased cost of living. At present the weekly payments allowed in the table range from a minimum of \$5.00, graded by equal dollar amounts, to a maximum of \$18.00. All claimants are entitled to receive their respective weekly benefit amounts for a flat duration period of twenty weeks, provided they remain eligible during this period. The amount a claimant is entitled to receive each week depends upon the

3.

TABLE I
TENNESSEE
Benefit Formula

COLUMN A <i>Wages Paid in Highest Quarter of Base Period</i>	COLUMN B <i>Weekly Benefit Amount</i>	COLUMN C <i>Qualifying Wages Paid in Base Period</i>	COLUMN D <i>Maximum Total Benefit in Benefit Year</i>
\$ 50.00 through \$100.00	\$5.00	\$125.00	\$100.00
100.01 through 150.00	6.00	180.00	120.00
150.01 through 182.00	7.00	210.00	140.00
182.01 through 208.00	8.00	240.00	160.00
208.01 through 234.00	9.00	270.00	180.00
234.01 through 260.00	10.00	300.00	200.00
260.01 through 286.00	11.00	330.00	220.00
286.01 through 312.00	12.00	360.00	240.00
312.01 through 338.00	13.00	390.00	260.00
338.01 through 364.00	14.00	420.00	280.00
364.01 through 390.00	15.00	450.00	300.00
390.01 through 416.00	16.00	480.00	320.00
416.01 through 442.00	17.00	510.00	340.00
442.01 through 468.00	18.00	540.00	360.00
468.01 and over	18.00	540.00	360.00

amount of insured wages he earned in the highest quarter of his base period.

He is entitled to receive the weekly benefit amount determined by this factor only if he has also earned the minimum qualifying amount of total insured wages in his base period. His base period is the first four of the last five completed calendar quarters immediately prior to the date he first files a valid claim for benefits. Likewise he can receive the full duration of benefits (20 weeks) only once in a benefit year, which is the 52 week period beginning with the week in which he filed his first claim for benefits. For example, suppose an insured worker filed a claim for total unemployment benefits on March 1, 1948. His base period would be the last quarter of 1946 and the first three quarters of 1947. His benefit year would be the 52 calendar week period beginning with March 1, 1948. It should be clear that the payment of weekly benefits is based upon two components in the formula: (1) the highest quarter's insured earnings which determine the weekly benefit amount and (2) the total insured wages in the base period. For example, if a worker earned between \$50 and \$100 in the highest quarter of his base period he would be entitled to receive the minimum payment of \$5.00 a week, if otherwise eligible, provided he had earned insured total wages in his base period equal to at least 25 times his weekly benefit amount, or \$125. Likewise a claimant who earned between \$100.01 and \$150.00 in the highest quarter of his base period would be entitled to \$6.00 a week if he earned at least 30 times his weekly benefit amount, or \$180.00, as total wages in his base period. To receive the maximum weekly benefit of \$18.00 a claimant must have earned insured wages in his highest quarter of \$442.00 or over, and 30 times \$18.00, or \$540.00, as total insured wages in his base period. The minimum qualifying wages required in the base period are 30 times the weekly benefit amount in all cases, with the one exception of the minimum weekly benefit amount of \$5.00.

One feature of the formula which is unique with the Tennessee program is that if a claimant fails to earn the minimum qualifying wages in his base period required by the formula as corresponding to his weekly benefit amount, he is allowed to qualify for that weekly benefit amount on the table for which he has earned the required minimum qualifying base period wages. Thus a claimant who earned, for example, \$125.00 in his highest quarter, which would qualify him for a \$6.00 weekly benefit, but who earned only \$170.00 in his base period instead of the required \$180.00, would be allowed to draw \$5.00 a week for which the qualifying base period wages are \$125.00, instead of being wholly disqualified from the receipt of any benefits.

Another feature of the benefit formula is the payment of benefits for

partial unemployment. A worker is deemed to be partially unemployed for any week of less than full-time work in respect to which the wages payable to him are less than the weekly benefit amount payable to him in the event he were totally unemployed. His partial benefits are determined by the difference between his weekly benefit amount for total unemployment and that part of the wages payable to him for any such week in excess of \$3.00. Thus if a worker entitled to an \$18.00 weekly benefit amount actually earned during a given week \$10.00 he would be entitled to receive \$11.00 partial benefits. The present benefit formula in Tennessee assures a totally unemployed worker, on the average, about 38-50 per cent of his full-time weekly wage as a weekly payment. For highly skilled workers in the upper wage brackets this proportion would be much lower than for semi-skilled or unskilled workers whose earnings are generally much less.

All claimants are required to complete a waiting period of one week of unemployment between the time they file their initial claim for benefits and the beginning of their first compensable week. This period is designed to conserve funds by preventing payment of benefits to claimants with very short periods of unemployment. It also serves to give the agency time to process the claims. It should be noted however that with a one-week waiting period of unemployment, the claimant ordinarily does not receive his first check until sometime within his third week of unemployment, that is, a week after the end of his first compensable week of unemployment.

As indicated previously, all eligible claimants under the Tennessee Act are entitled to receive weekly payments for a flat duration period of 20 weeks. The duration of payments is undoubtedly a most important element in the benefit formula since the principal objective of unemployment insurance is to bridge the gap between jobs. The Tennessee plan in this respect is much better than those of most state laws which provide a variable duration period based upon previous earnings, thus limiting the potential period of payment in many instances to ten weeks or less.⁴ As of June 30, 1946, only 16 states out of the 51 in the system provided for flat duration periods for all eligible claimants.

THE STATUS OF THE CLAIMANT IN THE LABOR MARKET

The labor market status of the claimant for unemployment insurance is the second important consideration in determining his eligibility to receive benefits. Actually in point of time this determination usually pre-

4. Studies show that in a "good" year like 1941 about half of all the eligible workers in the U. S. failed to be reemployed before their benefit rights expired. During the same year nine states with variable potential benefit duration periods provided an average potential duration of less than 11 weeks for all eligible claimants.

cedes the financial determination. Here it should be emphasized that the basic principle of unemployment insurance is to pay benefits only to genuinely unemployed workers who are actively in the labor market. Hence to be eligible for benefits a worker must be involuntarily unemployed, he must be able to work⁵ and available for work and he must be registered for work at a local public employment office and continue to report at such office as required by the regulations of the agency. He must also demonstrate that he is actively seeking work on his own account.

DISQUALIFICATIONS AND DENIALS

To insure further that only genuine unemployment is compensated, the Tennessee Act imposes certain disqualifications and denials of benefits designed to achieve this objective. Thus a worker is disqualified for benefits if "he has left work voluntarily without good cause." This disqualification results in a postponement of the payment of benefits for a period of 1 to 6 weeks in addition to the waiting period. Likewise a worker is disqualified if he is discharged for misconduct. This disqualification results in a postponement of benefits for a period of 1 to 10 weeks varying "in each case according to the seriousness of the misconduct." In cases of gross misconduct the worker may have his benefits postponed for more than a year. A worker is also disqualified if the "Commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commissioner." Such disqualification results in a penalty of postponement of benefits for 1 to 6 weeks. In connection with this disqualification it is important to note that in determining whether any work is suitable, the Commissioner must consider the degree of risk "involved to his health, safety and morals, his physical fitness and prior training, his length of unemployment, prospects for securing local work in his customary occupation and the distance of the available work from his residence." A worker otherwise eligible cannot be denied benefits if he refuses to accept work in cases where the position offered is vacant due to a strike, lockout or other labor dispute, or if the wages, hours, or other conditions of the work offered are substantially less favorable than those prevailing for similar work in the locality, or if as a condition of employment he would be required to join a company union or resign from or refrain from joining any bona fide labor organization. Workers who are on strike cannot receive any benefits during the period the strike is in prog-

5. By amendment in 1947 no claimant is considered ineligible to receive benefits if he becomes ill after he has registered for work, provided no work which would have been considered suitable at the time of his initial registration, is offered to him after the beginning of his period of illness.

ress. Finally, any worker is disqualified for any week in which he receives (1) wages in lieu of notice, (2) compensation for temporary partial disability under the Workmen's Compensation Law of any state of the United States, (3) Old Age Benefits under the Federal OASI program, provided however, if such payments are less than his weekly benefit amount, he is entitled to receive the difference.

The most common reason for rejecting a worker's claim for benefits, however, is not found in the disqualification provisions per se. Rather, most claimants are denied benefits because they are found to be "not available for work." This denial of benefits is effective as long as the condition exists which caused the denial. For the years 1946 and 1947 about 25 per cent of all initial claims were rejected on this issue, whereas benefits were postponed for only 4 per cent. Generally the conditions which result in this finding are listed in the note below.⁶

A review of the provisions for disqualification and denial of benefits should make it clear that this is the area in which arise some of the most baffling problems in the whole program. Financial determinations are subject to fixed specifications in the law and the facts concerning a worker's wages. On the other hand, the eligibility conditions relating to the labor market status of the claimant involve many questions of administrative discretion and judgment. A considerable body of precedent has been built up in the more than ten years experience in the payment of benefits. Some of the more important rulings which have been made by the agency are outlined in the note below.⁷

-
6. (1) Claimant is physically unable to work.
 - (2) Claimant lacks transportation facilities.
 - (3) Claimant restricts availability.
 - (4) Circumstances restrict claimant's availability.
 - (5) Claimant is not considered unemployed.
 - (6) Claimant's availability is limited to temporary or part-time work.
 - (7) Claimant's availability is limited by wage demands.
 - (8) Claimant's failure to furnish sufficient information.
 - (9) Claimant lives too far from available work.
 - (10) Claimant is self-employed.

7. *Ability to Work*

- (1) A claimant who voluntarily quits employment because of pregnancy; limits re-employment to light work and then fails or refuses to furnish a doctor's certificate as to ability to perform said work: *Held*, not able to work.
- (2) No woman, particularly one engaged in industry where the coordination of mind and muscle is involved, should be allowed to work later than 90 days before the expected birth of her child, and is therefore not considered able and available for work during said period. This holding is predicated on the holding of medical specialists. On the same basis a woman is not considered able and available for work during the 30-day period subsequent to confinement.

Availability for Work

- (1) A claimant who had been unemployed for a year testified that during that time he had made no effort to secure work other than registering for work with his local employment security office: *Held*, not on the labor market therefore not available, as the mere registering for work did not suffice to raise the

PROCEDURES FOR FILING CLAIMS

The third class of conditions which must be complied with before the claimant can draw benefits relate to the procedures which are required for the filing of claims and their disposition. The law states "that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commissioner finds that—He has made a claim for benefits with respect to such week in accordance with such rules or regulations as the Commissioner may prescribe."

presumption of availability, as there must be some evidence of actual presence in the labor market.

- (2) The presumption that a claimant is not in the labor market, which is raised by a prolonged period of unemployment in which no effort is made to obtain work is overcome when it is shown that same was due to conditions beyond the claimant's control, and when it appears that immediately upon the changing of said conditions, claimant began actively seeking employment. From the date on which said conditions changed, claimant held to be available.
- (3) A female claimant with minor children who require care and attention must have made arrangements for their care and have a suitable person engaged for this purpose in order to be classified as available for work.
- (4) A claimant whose employability is conditioned upon the employer making work available at claimant's home is not in the labor market and therefore not available. To be available for work a claimant must be hireable in the usual and ordinary manner. Making work available in the home is the unusual and extraordinary and is classified as a means of obtaining services not otherwise available.
- (5) A claimant who, after receiving one full series of unemployment compensation warrants, is unemployed during the remainder of the benefit year; files a new claim establishing a new benefit year and when, during a prolonged period of unemployment makes only a negligible effort to obtain work: *Held*, not to be in the labor market, therefore not available.
- (6) A claimant who lives in a rural community where no work is available, the nearest point of available employment being some twenty-five miles distant, and where claimant is not qualified by education, training, or experience to demand or obtain work paying sufficient wages to justify commuting expenses: *Held*, unavailable for work.
- (7) A claimant quits employment with good cause, where said quitting is for the purpose of moving with husband to a locality where said husband is employed and is making his home; however, if by so doing claimant has no chance of becoming employed in said locality and cannot make herself available for opportunities elsewhere, claimant could not be considered available for work.
- (8) A claimant who is a member of a band of singers; does a radio broadcast; appears in church gatherings when afforded opportunity and will not accept work that would interfere therewith: *Held*, to be employed and not available for work.
- (9) A claimant who has the responsibility for the care of an invalid mother and is unable to accept work on the third shift but can accept and perform work on either first or second shift and has placed no other limitations upon services: *Held*, available for work.
- (10) A claimant to be available for work within the meaning of the Tennessee Employment Security Act, must be in the labor market; actively seeking employment at the prevailing wage in work which said claimant is qualified to do, and if work utilizing claimant's highest skill is not available but there is work at the next highest skill, said claimant must be ready and willing to accept same.
- (11) A claimant does not unduly restrict availability by limiting employment to types of work other than weaving, where it appears that claimant has worked in textile mills for many years and is well qualified by training and experience to perform various other operations carried on in said industry, and where it also appears that as a result of the activities necessary to keep looms in operation, claimant suffered severe headaches and nervousness.

In order to outline concretely the substantive aspects of the procedures for filing claims and their disposition we will consider several hypothetical cases. First let us assume that John Smith has been regularly employed for

- (12) A claimant who depends upon his union to place him in employment and does not make any independent efforts to find work, cannot be considered in the labor market, nor available for work.
- (13) A claimant who for no other reason than a desire to change to some other occupation, excludes from acceptable employment, work in which said claimant is, by previous training and skill, fully qualified, unduly restricts availability and fails to meet availability requirements of Tennessee Employment Security Act.
- (14) An individual primarily engaged in farming is not eligible for benefits. An individual so engaged cannot be considered as being eligible for benefits between lay-by time and harvesting time, or between harvesting time and seeding time. This is on the theory that the individual thus engaged is not in an unemployed status, as farming has been determined to be a fulltime, year-around job.
- (15) An individual charged with the care and sustenance of an infant must establish that arrangements have been made with some capable person to look after and care for the infant before claimant may be considered available; in addition, the infant must be bottle-fed, or it must be possible for it to be placed on formula feeding immediately.

Limited Availability

- (1) A claimant who is a registered nurse restricts availability to such an extent as to remove herself from the labor market, when said claimant is unwilling to accept employment in the usual nursing profession and limits said employment to day time industrial nursing.
- (2) A claimant was laid off for lack of work and 5½ months later testified that he had not worked since the date of said lay-off; had had several chances to become employed by accepting non-union work, which was refused because he was a member of the union and because he was unwilling to accept work: *Held*, unavailable for work.
- (3) An individual who places a minimum wage requirement upon employability, which is in excess of previous earnings and above that which training and experience could demand or which could not be sustained in the individual's community or locality has so limited availability for employment as to remove the individual from the labor market and render said individual unavailable for work.

Voluntarily Quitting

- (1) A claimant who quits employment after having been reprimanded: *Held*, to have quit with good cause, where the language used by the employer is abusive and the insinuations made are not justified under the facts.
- (2) A claimant formerly employed as a buttonhole machine operator, who quit employment after returning to work following a mass lay-off, when over protest, said claimant was placed on a machine operation requiring the use of the feet, where the continuous use of the feet aggravated an adhesive condition resulting from an appendectomy: *Held*, to have quit work with good cause.

Discharge for Misconduct in Connection with Employment

- (1) A claimant who was absent from his work one day and was discharged upon his return, *held*, to have been discharged for misconduct in connection with employment, where claimant failed to notify his employer that he would be absent and where no effort was made by claimant to obtain a replacement during said absence.

Failure to Accept Suitable Work

- (1) (a) A claimant who refuses part-time work carrying the same wage rate and being the same type of work formerly performed by claimant, when full-time work is not available: *Held*, to have refused suitable work.
(b) A claimant who refuses part-time work, as above set out, and limits availability to full-time employment with an unreasonable minimum wage requirement, places such a limitation upon employability as to entirely remove claimant from the labor market and render him unavailable for work.

several years by the X Corporation, which is an employer subject to the Tennessee Employment Security Act. The corporation lays off Smith because of lack of work. The law and regulations of the Department require first that the employer have posted in suitable places within his plant notices prepared by the Department outlining the procedures for filing claims and the rights of his workers under the Act. Likewise when he lays off a worker he must fill out a Department form known as a separation notice which contains identifying information and a statement as to the reason for the lay-off. In the case of Smith, this would be "lack of work." If Smith followed the usual procedure, he would then go to the local office of the Department, register for work and likewise file an initial claim for benefits if no suitable work is immediately available. His initial claim would be immediately transferred to the central office for financial determination.

As soon as the central office had determined his benefit rights with respect to his weekly benefit amount and whether he had earned sufficient wages to qualify him to receive such amount, a notice of the findings of this determination would be mailed to all his employers in his base period to the effect that he had filed a claim for benefits and if he remained eligible he would be paid the amounts indicated on the notice. In the meantime he would be notified to report at the local office at stated intervals so as to maintain his eligibility to receive benefits by filing continued claims for benefits. In other words, he would have to file a claim for each week of unemployment. This requirement not only certifies that he has completed a week of unemployment, but also gives the local office a check, each time he reports, upon his availability for work and an opportunity to refer him to work if any suitable job openings are recorded in the local office. If he is not referred to a job and he remains unemployed and likewise, continues to report at the local office and file his continued claims, a check for his weekly benefit amount will be mailed to him each week up to a maximum of 20 weeks. After he receives his twentieth check, he has exhausted his benefits for his benefit year and cannot receive further payment until after the expiration of such benefit year.

Several items in the procedure above should be emphasized. First, Smith's initial claim was based upon a separation from his job caused by lack of work as certified by his employer. There would be no question then, but that this was a case of involuntary unemployment. Second, it was assumed that no suitable work could be found for Smith by the local office, nor could he find any as a result of his own effort. Incidentally, he would be required to show that he was actively seeking work on his own account.

Now let us assume that the local office did have a job opening for Smith either at the time he filed his initial claim or at a later period while he was

in a compensable status. Suppose Smith refused to accept the job, claiming it was not suitable. His claim would then be referred to a special deputy in the local office who would review the facts in the case and make a decision immediately. The deputy would then notify the claimant of his decision with the reasons therefor. If the deputy in this instance decided that the job was suitable, he would then disqualify the claimant "for refusal to accept suitable work" for a period of 1 to 6 weeks. If not disqualified further, as he well might be, he could then draw benefits after he had served the period of disqualification. But of course the decision of the deputy would not be final. The law provides for the right of appeal, hence Smith could file an appeal from the decision "within ten calendar days after the delivery of such notification (decision of deputy), or within 15 calendar days after such notification was mailed to his last known address." Otherwise the decision of the deputy is final. The appeal would be heard before an Appeals Referee who can "affirm, modify, or set aside the findings of fact and decision of the deputy." If the decision of the Appeals Referee is unfavorable to the claimant, he can in turn appeal to a still higher level, the Board of Review.⁸ Likewise the Board of Review can "remove to itself or transfer to another Appeals Referee proceedings on any claim pending before an Appeals Referee." Any decision of the Board of Review is the final decision of the Commissioner. It should be emphasized that in the procedure described above the issue was between the claimant and the Department. Of course, any base period employer of Smith could have objected to his receiving benefits at the time such employer received notice of determination of Smith's benefit rights and filed an appeal from the decision to pay him on the grounds, for example, that he had a suitable job opening for Smith. There are always three "interested" parties in the payment of benefits; the Commissioner, the claimant and his base period employers.

Decisions of the Board of Review become final in the absence of an application by any interested party for rehearing within ten days after notice thereof. Judicial review of the decision is permitted by the Act only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided under the Act. Within ten days after the decision of the Board of Review has become final any party aggrieved thereby may secure judicial review by filing a petition of certiorari in the Chancery Court of the county of such party's residence against the Commissioner for review of the decision. The findings of fact of the Board of Review in such cases of judicial review are conclusive, the jurisdiction of the court being confined to questions of law. Appeals may be taken from the judgment and decree of

8. The claimant must file his appeal within ten days of notification or mailing of decision of the Referee.

the Chancery Court to the Supreme Court of Tennessee as provided in other civil cases.

Generally speaking, "straight" lack of work claims such as that of Smith would be paid promptly unless questions arose concerning his availability for work or refusal to accept suitable work.

Now there is a second class of claims which are subject to investigation and decision by a special deputy as soon as the claimant files his initial claim for benefits. These cases would involve separations from work for reasons other than lack of work, such as voluntary quit, discharge or strike. In the case of a voluntary quit the deputy would have to decide whether the claimant left "work voluntarily without good cause." Either the claimant or his former employer could appeal from the deputy's decision in the manner described previously. Likewise in cases of discharge, the facts are immediately investigated when the claimant files his initial claim, to determine whether the conditions under which the claimant was discharged constituted misconduct or gross misconduct. Decisions in these cases could also be appealed by the interested parties. Finally, separations arising out of a labor dispute are promptly investigated to determine whether the claimant is participating in the dispute, or belongs to a grade or class of workers in the plant who are engaged in the strike, or belongs to a department in the plant engaged in the strike. Decisions of the deputy in these latter cases are subject to the same procedures as outlined above.

This review of the claims procedures should make it clear that the objective of these procedures is to pay benefits promptly when due, but likewise to ensure that such payments are made only to those who are genuinely unemployed.

SIGNIFICANCE OF BENEFIT PAYMENTS

That the workers of the state have been aided greatly by this program is shown by the record of benefit payments. Since benefits first became payable,⁹ the Agency has paid out in state insured payments over \$58 million, or an annual average of \$5.8 million. The largest annual amounts were paid in 1946 and 1947 while the smallest amounts were paid during the later years of the war when employment in the state was at an all-time high. As many as 100,000 claimants have received payments during a given year. Most of these payments were made for total unemployment, not more than 3 per cent of the total amount being paid for partial unemployment. About 7 per cent of the total, in an average year, is paid under the Inter-State Benefit Program. Under this plan, claimants who worked in insured employment in Tennessee and then left the state, can file claims in other states against their Tennessee wage credits and receive benefits subject to the rules and regulations of the

9. January, 1938.

respective agencies concerned. Similarly Tennessee residents who work in insured employment in other states and then return to Tennessee, can file claims in Tennessee against their out-of-state wage credits and receive benefits if eligible. These latter payments would not of course, show up in the Tennessee totals of benefits paid.

Although the dire threats of a post-war depression did not materialize after V-J Day, nevertheless there was a tremendous amount of job shifting during the months immediately following the cessation of hostilities. During that period this program fulfilled a most important role in the economy in helping workers bridge the gap between jobs, or veterans to make the shift from service activities to peace-time employment. It will, of course, play an even more important role if and when, as some economists fear, we are threatened by another great depression. Approximately \$150 million have been collected from employers since 1936. As of December 31, 1947, \$58 million had been paid out in benefits, which with interest earnings leaves a net balance in the Unemployment Trust Fund of Tennessee of \$99 million as of December 31, 1947. This amount would be sufficient to pay the average weekly benefit of \$12.85 for 1947 for the full twenty-weeks to 385,214 unemployed persons. This represents about 79 per cent of the number reported as working in covered employment in September 1947. Based upon the past experience of the agency it is reasonable to assume that present reserves are large enough to assure solvency of the funds barring the occurrence of another great depression such as we had in the early thirties.^{9a}

COVERAGE AND CONTRIBUTIONS

Approximately 10,000 employers are currently subject to the Tennessee Employment Security Act. They report a total employment of about 500,000 workers which is approximately 50 per cent of the total labor force of the state. Employment which is not covered by the Act includes agricul-

9a. This discussion of the significance of benefit payments should not overlook the importance of payments made by the Tennessee agency under contract with the Veterans Administration to unemployed or self-employed veterans. Under the terms of the Servicemen's Readjustment Allowance Act, unemployed veterans are entitled to receive \$20 a week unemployment allowance for a period of 52 weeks. Likewise a self-employed veteran who makes less than \$100 a month in his business is entitled to receive the difference between his earnings and \$100. This Act is administered in Tennessee by the State Department of Employment Security under the same rules and regulations generally that apply to claimants for state insured unemployment benefits. Since the beginning of this program (September, 1944) over \$95 million have been paid in benefits to Tennessee veterans. Out of a total of about 340,000 Tennesseans who served in the armed forces during the war, about 45,000 have already exhausted their benefits under this program. The number receiving benefits has declined steadily from a peak of about 70,000 in May 1946 to 25,000 in February 1948.

tural labor, domestic service in a private home, maritime service,¹⁰ employment by railroads,¹¹ government units, federal, state or local,¹² services performed by an individual for close relatives, administrative and teaching services in educational institutions, services performed as a clergyman and related services in churches such as musicians, singers, members of choirs¹³ and finally, services performed by agents or field representatives of insurance companies. In addition to these excluded employments, employees of employers in subject industries are not covered either, if their respective employers have less than 8 workers for a period of 33 weeks or more within a calendar year, unless such employers elect coverage. Many difficult problems arise in determining liability for coverage related to such questions as predecessor-successor relationships, status of sub-contractors, affiliated concerns through common ownership, etc. The bulk of the workers in non-agricultural industries such as mining, construction, manufacturing, wholesale and retail trade, transportation and public utilities, real estate and finance and service industries are covered, however.

The payment of unemployment insurance benefits is financed by contribution taxes paid by liable employers directly to the state agency.¹⁴ The tax of .3 per cent which subject employers pay directly to the Federal Government, as pointed out previously, is used to finance the cost of the state administration. No taxes for this program are collected in Tennessee from employees.¹⁵ State contribution taxes were collected from liable employers in Tennessee for the year 1936 at the rate of .9 of 1 per cent, 1.8 per cent for 1937 and 2.7 per cent beginning with January, 1938. These taxes are levied only upon the

10. Congress has established a temporary unemployment compensation system for maritime employees effective from July 1947 to June 1949.

11. Railroad employees are covered by the Railroad Unemployment Insurance Act of Congress. 52 STAT. 1094, as amended.

12. Tennessee governmental units may elect coverage under the Law. Employees of the Department of Employment Security have been covered by election of the Commissioner of the Department.

13. By amendment of the 1947 legislature, maintenance, clerical, and in general, employees other than those mentioned above, of non profit organizations, were covered by the act.

14. All contributions collected by the state agency must be deposited promptly with the State Treasurer in the clearing account. He in turn, must immediately deposit such funds with the Secretary of the Treasury of the U. S. to the credit of the account of Tennessee in the Unemployment Trust Fund (See Section 904, Social Security Act, as amended). The Commissioner requisitions monies from time to time from this Fund to pay unemployment insurance benefits.

15. The federal tax of .3 per cent is limited to employers while the question of state taxes upon employees is left to the state legislatures to decide. As of July 1, 1946 employee contributions for unemployment insurance were required in only Alabama and New Jersey. Employee contributions in Rhode Island and California are at the present time collected to pay the cost of sickness insurance which is administered by the State Employment Security Agencies.

The Social Security Amendments of 1946 permit states to withdraw from the Federal Unemployment Trust Fund any amounts contributed by employees and to use them for cash sickness or disability benefits.

first \$3,000 of annual earnings of each covered employee.¹⁶ All subject employers paid the standard rate of 2.7 per cent upon taxable payrolls until the legislature in 1943 amended the law by adopting a system of experience rating.¹⁷ This system is predicated upon the theory that unemployment is largely within the control of individual employers and that the cost of unemployment benefits should be allocated to the particular employer responsible for it. Thus employers who succeed in stabilizing their employment and who thereby reduce their unemployment costs are given lowered tax rates.

Under the Tennessee Plan of experience rating each employer's account is reviewed as of December 31 of each calendar year. A determination is made of the total contributions he has paid to the agency up to that date. The total benefit payments which have been charged to his account are then subtracted from this figure to determine his net contributions.¹⁸ This latter figure is then divided by his most recent annual taxable payroll to obtain his reserve ratio. His reserve ratio determines the rate of contributions he pays.¹⁹ Under the scale of rates as established in 1944, rates were graduated with nine classes, from a minimum of 1 per cent to 3.3 per cent. By amendments in 1947 the minimum was lowered to .75 per cent and the maximum to 2.7 per cent.²⁰ During the war period when the rates extended to a maximum of 3.3 per cent of taxable payrolls, the effect of the formula was to assign the new war production industries the maximum rates. The federal unemployment tax provisions require that no employer be assigned a rate lower than the standard one of 2.7 per cent until his account has been available for benefit charging for a

16. Earnings of an individual worker in excess of this amount are not liable for taxes. This is in conformity with similar provisions of the federal taxes for Social Security, both Old Age and Survivors Insurance and Employment Security.

17. The federal provisions which permit states to establish experience rating plans are found in Section 1601 and 1602 of the Federal Unemployment Tax Act.

18. The benefits paid to an individual worker are charged to the accounts of his employers in the base period in the proportion that the wage credits earned with each employer bears to the total wage credits he earned with all employers (in the base period).

19. Rates determined on the basis of a given calendar year's experience become effective the following July 1. This gives the agency an administrative "lag" period in which to review all accounts and determine the new rates.

20. See Table 2. If the amount in the reserve funds exceeds \$100 million, the rate of each employer entitled to a reduced rate will be lowered one step on the table, with a minimum rate of .50 per cent. As the reserves are nearly \$100 million (April 1, 1948) it is quite likely they will exceed \$100 million in the near future.

TABLE 2
Tennessee Experience Rates

<i>Rate</i>	<i>Reserve Ratio</i>
.75 per cent	12 per cent and over
1.0 per cent	11 per cent and less than 12 per cent
1.2 per cent	9½ per cent and less than 11 per cent
1.5 per cent	8 per cent and less than 9½ per cent
1.8 per cent	7 per cent and less than 8 per cent
2.1 per cent	6 per cent and less than 7 per cent
2.4 per cent	5 per cent and less than 6 per cent
2.7 per cent	less than 5 per cent.

consecutive 36 month period. But this requirement does not apply to increases in rates above the standard rate. Hence new employers under the Tennessee Plan were "rated up" immediately following the first December 31 that their accounts were in the file.²¹ The effect of this rate-up of war-time employers was to provide a kind of war-risk insurance against large layoffs by such employers in the post-war period and hence insure solvency of the reserves.

Several features of the Tennessee Plan of experience rating should be emphasized; first, the plan has operated in such manner as to assure ample reserves against any reasonable expectation of large benefit withdrawals and resulting shrinkage in the fund; second, the basic principle of the present rate formula is to increase the rates in periods of rising business activity and to reduce them during periods of declining activity. This is accomplished by using the most recent annual taxable payroll as the base for determining the ratio of net contributions to payrolls. Obviously when payrolls are expanding, the ratio will be smaller than when they are declining. For example, if an employer had net contributions of \$100,000 and if his most recent annual taxable payroll were \$1 million, his reserve ratio would be 10 per cent, which would give him a tax rate of 1.2 per cent. But if the following year he expanded his payroll to \$2 million, his net contributions remaining at \$100,000, his reserve ratio would drop to 5 per cent, while his tax rate would increase to 2.4 per cent. This tendency of the tax rates to increase with expanding payrolls and decline with shrinking payrolls is modified somewhat by changes in benefit charges which in turn effects a change in net contributions. Even with this modification of the principle, however, the Tennessee Plan is unique in this respect;²² third, because of the long continued cyclical upswing in payrolls during the past eight years, the sharp decline in benefit payments during the later years of the war and the failure of a sharp recession to develop after V-J Day, the rate increases brought about large accumulations in the reserves, which led to the rate revisions of 1947, lowering in general the whole rate structure.

As a result of the operation of experience rating, employers have been saved (between July 1, 1944 and the third quarter of 1947) a total of over \$19 million. This is the difference between what they paid and what they would have paid if the rate had remained at 2.7 per cent.

There is one defect in the present rate structure which should be remedied, namely, all new firms coming under the coverage of the Act are required to pay the standard rate of 2.7 per cent for a minimum period of 39 months before they can be entitled to a reduction in rate. This was an

21. The maximum rate was 3.3 per cent.

22. Tennessee is the only state where this principle is operative. Experience rating plans in other states generally provide for an increase in rates during periods of declining payrolls and decreases in rates with expanding payrolls.

appropriate requirement during the war when many huge new war plants began production in the states, thus sharply increasing the potential liability against the fund. However, under peace-time conditions, this feature is no longer desirable, as it penalizes new industries. It would be much more in order, if new industries could, for example, be assigned the average rate paid by all industry in the state.²³ There is a further argument for this revision also, in the fact that when the program was first started, employers paid taxes on their payrolls of .9 per cent for the first year and 1.8 per cent for the second year.

THE ROLE OF THE EMPLOYMENT SERVICE

Little has been said in this article concerning the role of the employment service in the administration of employment security. A review of the previous discussion relating to the problem of determining the eligibility of claimants to receive benefits should indicate what an important part the employment service plays in the program. Job registration and job placement and their relationship to the work test are basic in the administration of employment security.

STATISTICS AND RESEARCH

Nor has anything been said here of some of the very important by-products of this system such as the development of area, state and national employment statistics programs, the organization and development of labor market information including occupational analysis programs, characteristics of job seekers, and many other useful types of data.

In fact, the many different types of information and statistical series which are now derived from the operations of this system provide a basis for the decisions and action of the administrator and legislator, and likewise, contribute much valuable data for community and business planning and for use as resource material in the field of social science research.

THE FEDERAL-STATE RELATIONSHIP

It should be apparent from the discussion to this point that in general, the states administer employment security. The state agencies deal directly with liable employers who pay the contributions and with the job-seekers and claimants for unemployment insurance. They maintain the necessary records, hire and pay administrative personnel and determine the immediate

23. It would take an amendment by Congress to the Federal Unemployment Tax Act to make this possible. By average rate in this instance is meant the ratio of annual total contributions of all employers to their aggregate annual taxable payrolls. This rate might well be made effective for three years after which such employers would be rated according to their unemployment experience as defined in the formula.

policies and procedures which govern administrative action. The federal role, as mentioned previously, involves the responsibility of (1) determining whether the states are complying with the standards of administration prescribed in the Social Security Act, (2) of making grants to the states based upon states budget requests to pay the entire cost of administration and (3) of determining what employers are subject to the Federal Unemployment Tax Act and collecting the tax. The first two of these functions are carried on by the Bureau of Employment Security of the Social Security Administration; the third by the Bureau of Internal Revenue. In addition to dealing with these two agencies however, state administrators must work with the headquarters, U. S. Employment Service of the U. S. Department of Labor, and the Servicemen's Readjustment Allowance Division of the Veteran's Administration in respect to employment service activities and the payment of unemployment allowances to veterans.²⁴ This is a complicated arrangement which means, for example, that funds for administration of the state program are allocated by three different federal agencies, the Bureau of Employment Security, the U. S. Employment Service and the Veteran's Administration. The funds allocated by the Bureau of Employment Security are derived, as pointed out previously, from the .3 per cent federal tax levied upon employers. Since the inception of the program, the cumulative collections from this source have amounted to about three times the sums returned to the states for administration. In the case of the more highly industrialized states, much more is collected by the .3 per cent tax on employers than is returned to those states for administrative costs of unemployment insurance.

There has been considerable agitation among these states in recent years for an amendment to the Social Security Act (known as the 100 per cent offset plan) whereby the .3 per cent tax would be paid to the respective states, out of which they would pay their administrative costs. Some of the less highly industrialized states, however, oppose this plan as the .3 per cent tax collections are actually less than their administrative costs. The question of the allocation of funds is, however, only one of several areas wherein sharp differences of opinion may arise between state administrators and the federal agencies concerned. Questions concerning the costs of administration, the efficiency of a given procedure, the size of the staff in a particular state, the amount of the grant, etc., are a constant source of difficulty. Nevertheless it must be admitted that in general the program has been well-administered. As experience has been gained in administration, it has been

24. These agencies have achieved a fairly close working arrangement with respect to budget allocations to the states so that the federal-state procedures, though cumbersome, do work.

possible to establish more precise categories of costs and to define more accurately the legitimate needs of the state agencies for funds and personnel. Procedures for federal review of budgets and administrative procedure have been simplified to some extent.

Many advantages have been cited for a straight-out national system of administration of employment security such as exists in the case of Old Age and Survivors Insurance. The fact remains, however, that the present federal-state system has worked well. It has provided certain basic national standards of administration at the same time that it has made possible a considerable degree of experimentation on the part of the individual states. Much credit for the achievements which have been made must be given to the Interstate Conference of Employment Security Agencies. This organization of state administrators, which was established soon after the Social Security Act was passed, has carried on throughout the ten years of its existence, a constructive program of developmental and research activities which have done much to effect a better working relationship of federal and state administrators. Its committees on legislation, statistics and public information, time and cost analysis, benefit procedures and administrative analysis have made notable contributions to the body of knowledge in this field. The country has in this program today a national system of protection against one of the greatest evils of our time, namely, involuntary unemployment. That it will be strengthened and improved further as conditions warrant, is to be expected.

Meanwhile with ample reserves, experienced administrators and staff, it is well-equipped to cope with the day-to-day problems of temporary unemployment which are inherent in a dynamic society and to move in quickly and efficiently to moderate greatly the shock of another severe depression, if and when it occurs.