94th Congress
2d Session

COMMITTEE PRINT

Unemployment Compensation Amendments of 1976

Description of the Provisions of H.R. 10210 (Public Law 94–566)

Prepared by the Staffs of the

COMMITTEE ON FINANCE

OF THE

U.S. SENATE

AND THE

COMMITTEE ON WAYS AND MEANS

OF THE

U.S. HOUSE OF REPRESENTATIVES

Prepared for the use of the Senate Committee on Finance and the House Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

78-154 WASHINGTON : 1976

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I. Unemployment Compensation Provisions

A. COVERAGE PROVISIONS

Farmworkers.—In the past, farm employment has been exempt from the Federal unemployment tax. As a result, protection of farmworkers under unemployment compensation programs has been a matter of State option. H.R. 10210 makes the Federal unemployment tax applicable to farm employment if the farm operator, in either the current year or the preceding year, has a payroll of at least $20,000 in any calendar quarter or has 10 or more employees in 20 weeks during the year. This extension of the Federal unemployment payroll tax has the effect of bringing farm employment meeting these criteria within the coverage of all State unemployment compensation programs. Coverage is effective as of January 1978.

In the case of farmworkers who are hired by a farm labor contractor ("crew leader") rather than by the farm operator, the bill provides that the crew leader will be considered the employer and thus be responsible for paying the unemployment tax and submitting the required reports if he provides the service of mechanized equipment—crop dusting, mechanized harvesting, et cetera—or if he is registered under the Farm Labor Contractor Registration Act. Since that act now requires registration for most crew leaders—an exception is made for those operating both within a 25-mile radius of their homes and for no more than 13 weeks per year—H.R. 10210 generally makes the crew leader the employer. The bill provides, however, that the farm operator be considered the employer in cases where the crew leader is in fact the farmer's own employee and in cases where the farmer and the crew leader have a written agreement under which the farm operator will act as employer for unemployment compensation purposes.

The bill exempts from unemployment compensation coverage aliens who are brought into the United States on a temporary basis to work during peak agricultural crop seasons under sections 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act. This exemption from coverage expires January 1, 1980.

Under the provisions of H.R. 10210, an estimated 459,600 farm jobs and 17,400 farm employers will be subject to the Federal unemployment tax. This represents 40 percent of all farm employment and 2 percent of all farm operators.

State and local government employees.—State and local government employment is exempt from the Federal unemployment payroll tax. However, under legislation enacted in 1970, the States were required to provide unemployment insurance for employees of State operated hospitals and institutions of higher education. In addition, about one-half of the States have gone beyond the Federal requirements and provide mandatory coverage for State employees and permit local governments to opt for coverage.

Under H.R. 10210, State and local government employment will continue to be exempt from the Federal unemployment payroll tax. States will be required, however, to provide State coverage for such employment as a condition of continued participation in the Federal-State unemployment compensation program. (Failure to participate would, in effect, raise the Federal unemployment tax on employers in the State from 0.7 to 3.4 percent and would deprive the State of Federal funds to meet administrative expenses and part of the benefit costs for benefits paid after the 26th week of unemployment.)

All State and local government employees will be covered except elected officials, members of the legislature or judiciary, persons in policymaking or advisory positions which are designated as major, nontenured positions or as ordinarily requiring less than 8 hours work per week, members of the National Guard, prisoners, and persons hired for temporary jobs in emergency situations. With the above exceptions, all employment after December 31, 1977 will be covered. Under the bill, the State law will have to permit the employing entity to determine whether to pay for its coverage through contributions equivalent to the State payroll tax or by reimbursing the fund retroactively for benefits paid to its former employees.

The provisions of H.R. 10210 extend coverage under the unemployment compensation program to approximately 588,000 State employees who are not now covered and to about 7.7 million employees of local governments.

Payment to school employees during vacation periods.—H.R. 10210 requires that benefits be denied during vacation periods between academic terms (or years) to professional school employees who have a contract for, or reasonable assurance of, reemployment during the upcoming term (or year). The bill also permits States to deny benefits during vacation periods on the same basis to nonprofessional school employees.

Extended benefit costs.—At present, the Federal extended benefit account in the unemployment trust fund pays one-half of the costs of benefits under the Federal-State Extended Unemployment Compensation Act. That act provides in times of high unemployment for up to 13 weeks of added benefits after a worker exhausts his regular benefit eligibility. This 50 percent Federal funding is provided from the Federal unemployment payroll tax. H.R. 10210 includes a provision which eliminates this 50 percent Federal funding for the cost of extended benefits for State and local government employees, whose employment is exempt from the Federal tax. (The Federal accounts

will continue to pay the administrative costs attributable to coverage of employees of State and local governments.)

Elementary and secondary nonprofit schools.—Prior to the 1970 amendments, nonprofit organizations, which are exempt from taxation under the Internal Revenue Code, were covered as employers for unemployment compensation purposes only at the option of the States. The 1970 amendments required States to provide coverage for nonprofit employers who have at least four employees in at least 20 weeks of the year. However, an exception in the law allowed States to exclude from coverage nonprofit elementary and secondary schools. H.R. 10210 repeals this exclusion, thus requiring coverage for such schools on the same basis as it has been required for other nonprofit entities.

Domestic workers.—Domestic employment in private households has been exempt from the Federal unemployment payroll tax and such employment has been covered under State unemployment compensation programs in only three States. H.R. 10210 makes such employment subject to the unemployment tax, effective January 1978 (and, therefore, effectively requires its coverage under State programs) in the case of any employer who pays domestic wages of $1,000 or more in any calendar quarter of the current or preceding year. It is estimated that this will result in coverage for some 128,000 domestic jobs.

Transitional benefits.—The new coverage provided under H.R. 10210 for agricultural workers, domestic employees, employees of State and local governments and of certain nonprofit schools is effective as of 1978. As of January 1, 1978, newly covered workers will begin accumulating wage credits necessary to qualify for unemployment compensation should they become unemployed. In most States these workers will not have accumulated enough wage credits to qualify for benefits until the last quarter of 1978. The transition provisions in H.R. 10210 provide that, if a State agrees to pay benefits to newly covered workers as of January 1, 1978, benefits paid through June 30, 1978, based on wage credits earned prior to that date, will be reimbursed from Federal general revenues. States will also be reimbursed after June 30, 1978 in cases where they pay benefits based on newly covered wages earned prior to January 1, 1978.

Inclusion of Virgin Islands.—Under prior Federal law, the Virgin Islands was excluded from the Federal-State system of unemployment insurance. The Virgin Islands has for several years had a similar unemployment insurance program, however, and the territorial government has formally requested that the Virgin Islands be included in the Federal-State system.

The inclusion of the Virgin Islands in the Federal-State unemployment system is provided for in H.R. 10210. This extends to that jurisdiction the Federal unemployment tax and thus increases slightly the revenues to the Federal accounts in the unemployment trust fund. At the same time, H.R. 10210 provides new or modified funding for the Virgin Islands programs as shown in the table below:

FUNDING CHANGES FOR VIRGIN ISLANDS UNEMPLOYMENT PROGRAM UNDER H.R. 10210

Expenditure type	Current funding	Funding under H.R. 10210
Regular benefits	Territorial tax	Territorial tax.
Administrative costs:		
Compensation system.	do	Federal trust fund accounts.
Employment service	Federal general funds.	Federal trust fund accounts and general funds.
Extended benefits	Not in effect	50 percent territorial tax, 50 percent Federal trust fund accounts.
Loans	Federal general funds.	Federal trust fund accounts.

B. FINANCING PROVISIONS

Increase in Federal unemployment tax rate.—H.R. 10210 increases the gross Federal unemployment tax rate from 3.2 percent to 3.4 percent while leaving the tax credit at 2.7 percent. This adds 0.2 percent to the net Federal tax rate raising it from the present level of 0.5 to a new level of 0.7 percent. This increased tax rate will take effect in January 1977 and will continue in effect until all general revenue advances to the extended benefit account in the unemployment trust fund have been repaid, after which the existing 0.5 percent net tax rate will again become applicable. The increase in the net Federal tax rate will affect only the amounts collected by the Federal trust fund accounts.

Increase in taxable earnings.—H.R. 10210 also increases from $4,200 to $6,000 the amount of annual earnings subject to taxation. This increase is effective January 1978 and affects both Federal and State taxes. Since States set their own tax rates and may adjust their tax rates to take account of the new tax base, the exact impact of the increase on State revenues will depend upon subsequent action by the States.

Timing of loans to States.—When States find it necessary to borrow from the Federal accounts in the unemployment trust fund to meet their unemployment benefit obligations, prior law required that the funds borrowed for any month be applied for in the preceding month. H.R. 10210 includes a provision permitting States to apply for loans covering a 3-month period. Under this provision, States will be able to make a single application covering the 3-month period, but the advances will continue to be paid out to the States on a month-by-month basis.

Costs of benefits to former Federal employees.—When unemployment benefits are paid by a State to a former member of the armed

services or Federal employee, the costs of the benefits attributable to Federal employment are funded from Federal general revenues and the costs, if any, resulting from non-Federal employment are paid from State funds. At present, the amount of Federal reimbursement is determined by computing the amount of benefits actually paid to an individual over and above the compensation which would have been paid if his Federal employment had not been used in computing his benefits. H.R. 10210 provides instead that the Federal and State portions of the cost of benefits will be based on the relative Federal and non-Federal wages of the individual during the base period on which his unemployment compensation is computed. Thus, if an individual had $4,000 of wages in his base period and $1,000 of these wages came from a Federal agency employer, 25 percent of his unemployment benefits would be paid for from Federal general revenues.

C. EXTENDED BENEFIT TRIGGERS

The Federal-State Extended Unemployment Compensation Act of 1970 provides for the payment of additional weeks of benefits to individuals who exhaust their benefit entitlement under the regular State programs. The additional entitlement provides the same weekly benefit amount as the regular entitlement and continues for half as long as the regular entitlement. Thus, an individual entitled to the maximum duration of 26 weeks of regular benefits could receive up to 13 additional weeks of extended benefits. Half the funding of the extended benefits comes from State unemployment taxes and half comes from the Federal tax.

Change in national trigger.—Benefits under the extended benefit program are payable only in periods of high unemployment. Permanent law makes the program effective in all States when the national insured unemployment rate on a seasonally adjusted basis reaches 4.5 percent for 3 consecutive months, and the program continues in effect until that rate declines below 4.5 percent for 3 consecutive months. (A temporary provision which expires December 31, 1976 permits States to participate in the extended benefit program when the national trigger rate is 4 percent rather than 4.5 percent.) H.R. 10210 modifies the permanent law by providing that the program will be in effect in all States when the seasonally adjusted 4.5 percent national insured unemployment rate for a given week and the 12 previous weeks (rather than for 3 consecutive months) averages 4.5 percent or more and will cease to be in effect when that rate averages less than 4.5 percent.

Change in State trigger.—From December 1971 to November 1974, the national insured unemployment rate was below the permanent law 4.5 percent rate which triggers the extended benefit program into operation in all States. When the national trigger is "off," States participate in the program only if the State trigger requirements are met. Under permanent law, the extended unemployment compensation program becomes effective in a State when two requirements are met. The rate of insured unemployment in the State (not seasonally adjusted) must reach a level of 4 percent or more averaged over a 13-week period and the rate for that 13-week period must be at least 20 percent higher than the average of the State insured unemployment

rate in the same 13-week period of the preceding 2 years. H.R. 10210 retains the permanent law provisions with respect to State triggers. However, the bill permits States to waive the "20 percent higher" requirement whenever the rate of insured unemployment in the State is at least 5 percent. This provision is effective after March 1977 when the existing waiver of the "20 percent higher" provision expires.

D. PROVISIONS RELATED TO BENEFIT ELIGIBILITY

Disqualification for pregnancy.—In order to qualify for unemployment compensation benefits, a worker must be able to work, be seeking work, and be available for work. In a number of States, an individual whose unemployment is related to pregnancy has been barred from receiving any unemployment benefits. In 1975 the Supreme Court found a provision of this type in the Utah unemployment compensation statute to be unconstitutional. H.R. 10210 will prohibit States from continuing to enforce any provision which denies unemployment compensation benefits solely on the basis of pregnancy (or recency of pregnancy). Pregnant individuals will, however, continue to be required to meet generally applicable criteria of seeking work, availability for work, and ability to work.

Finality of Federal agency findings.—State unemployment compensation agencies are required to grant an impartial hearing to persons whose claims for unemployment benefits are denied. In any case where all or part of the employment on which benefits are to be based was with a Federal agency, however, the findings of that agency have not been subject to review by a State agency hearing officer insofar as they concern: the fact of Federal employment, the period of Federal service and amount of Federal wages, or the reasons for terminating Federal employment.

H.R. 10210 allows these issues to be decided by the State agency hearing officer.

Professional athletes.—H.R. 10210 prohibits the payment of benefits to a professional athlete during periods between two successive sports seasons if the athlete had been professionally participating in such sports during the previous season and there is reasonable assurance that he will participate in such sports during the following season. The provision is intended to deny benefit to professional athletes in the off season.

Illegal aliens.—H.R. 10210 prohibits payment of benefits to an alien unless he has been lawfully admitted to the United States for permanent residence. Any data or evidence of citizenship or permanent residence will have to be uniformly required of all applicants for unemployment compensation. A determination of whether an individual is an illegal alien must be based on a preponderance of evidence.

Disqualification for receipt of pension.—Under H.R. 10210 the States will be required, after September 30, 1979, to reduce unemployment compensation benefits by the amount of any public or private pension (including social security retirement benefits and railroad retirement annuities) based on the claimant's previous employment.

E. NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Description and purpose of the Commission.—H.R. 10210 establishes a National Commission on Unemployment Compensation for the purpose of undertaking a comprehensive examination of the present unemployment compensation system and developing appropriate recommendations for further changes. The Commission is to be comprised of three members appointed by the President Pro Tempore of the Senate, three members by the Speaker of the House of Representatives, and seven by the President. Selection of members of the Commission will be aimed at assuring balanced representation of interested groups including at least one representative of labor, industry, the Federal Government, State government, local government and small business.

The Commission will be authorized to appoint such staff as it requires and to contract for necessary consultant services. The final report of the Commission has to be sent to the President and to Congress by January 1, 1979, and the Commission terminates 90 days after the report is submitted. An interim report will be required by March 31, 1978.

Agenda items for the Commission.—H.R. 10210 specifies that the Commission's study shall include, without being limited to, the following items:

(1) Examination of the adequacy, and economic and administrative impacts, of the changes made by H.R. 10210 in coverage, benefit provisions, and financing;

(2) Identification of appropriate purposes, objectives, and future directions for unemployment compensation programs, including railroad unemployment insurance;

(3) Examination of issues and alternatives concerning the relationship of unemployment compensation to the economy, with special attention to long-range funding requirements and desirable methods of program financing;

(4) Examination of eligibility requirements, disqualification provisions, and factors to consider in determining appropriate benefit amounts and duration;

(5) Examination of (A) the problems of claimant fraud and abuse in the unemployment compensation programs; (B) the adequacy of present statutory requirements and administrative procedures designed to protect the programs against such fraud and abuse; and (C) problems of claimants in obtaining prompt processing and payment of their claims for benefits and any appropriate measures to relieve such problems;

(6) Examination of the relationship between unemployment compensation programs and manpower training and employment programs;

(7) Examination of the appropriate role of unemployment compensation in income maintenance and its relationship to other social insurance and income maintenance programs;

(8) Conduct of such surveys, hearings, research, and other activities as it deems necessary to enable it to formulate appropriate

recommendations, and to obtain relevant information, attitudes, opinions, and recommendations from individuals and organizations representing employers, employees, and the general public;

(9) Review of the present method of collecting and analyzing present and prospective national and local employment and unemployment information and statistics;

(10) Identification of any weaknesses in such method and any problem which results from the operation of such method;

(11) Formulation of any necessary or appropriate new techniques for the collection and analysis of such information and statistics; and

(12) Examination of the feasibility and advisability of developing or not developing Federal minimum benefit standards for State unemployment insurance programs.

In addition, the conference report on H.R. 10210 directs the commission to include in its studies an examination of the payment of unemployment compensation to retirees and the denial of compensation to employees of educational institutions between terms.

F. OTHER PROVISIONS

Extension of SUA program.—H.R. 10210 extends the Special Unemployment Assistance (SUA) program through December 1977 (claims filed by then could continue in payment status through June 30, 1978). It also modifies the program so that SUA benefits would be based on the same period of work used for regular unemployment compensation. Nonprofessional employees of schools would not be eligible for SUA payments during vacation periods when they have reasonable assurance of employment for the postvacation school term.

Unemployment compensation and AFDC–UF.—H.R. 10210 requires unemployed fathers who apply for aid to families with dependent children-unemployed fathers (AFDC–UF) to collect any unemployment compensation to which they are entitled before they can receive any AFDC–UF benefits for which they might qualify. In those cases where an individual collecting unemployment compensation meets the State AFDC–UF eligibility requirements, the State is required to supplement unemployment compensation benefits up to AFDC–UF benefit levels otherwise payable. The bill also provides, in connection with the requirements for registering for employment under the Work Incentive program and the unemployment compensation program, that the Secretaries of Labor and of Health, Education, and Welfare are to enter into agreements with each State which is willing and able to do so. These agreements will provide for the simplification of the procedures involved in such registration and, where possible, for a single registration to satisfy the requirements of both programs.

Information furnished to AFDC and child support agencies.—State employment offices will be required to furnish specified information to welfare agencies for the purpose of administering the AFDC or child support programs. The State employment service will be reimbursed by the welfare or child support agencies for the cost of supplying this information.

II. Supplemental Security Income Provisions

Services for disabled children.—H.R. 10210 requires the Social Security Administration to refer blind and disabled children under age 16 who are receiving SSI benefits to the crippled children's or other appropriate State agency. This agency will be responsible for administering a State plan which must include provision for counseling of disabled children and their families; the establishment of individual service plans for children under 16; monitoring to assure adherence to the plans; and provision of services to children under age 7, and to children who have never been in school and require preparation to take advantage of public educational services.

A total of $30 million is made available for the operation of State plans for each of three fiscal years, beginning with fiscal year 1977; there are no non-Federal matching requirements. The amount will be allocated to the States on the basis of the number of children age 6 and under in each State. Up to 10 percent of the State's funds may be used for counseling, referral and monitoring provided under the State plan for children up to age 16. The remainder of the funding is available for services to disabled children under age 7 and those who have never been in school. The bill requires that the funds authorized under the provision may not be used to replace State and local funds now being used for these purposes. The funds may be used in the case of any program or service only to pay that portion of the cost which is related to the additional requirements of serving disabled children over and above what would be required to serve nondisabled children.

Criteria for determining child disability.—H.R. 10210 requires the Secretary of HEW to publish criteria to be used in determining disability for children under age 18 within 120 days after enactment of the provision.

Institutionalization of a spouse.—H.R. 10210 provides that if a spouse is institutionalized the two persons involved will be treated as individuals rather than as a couple for purposes of applying their separate incomes in computing the SSI benefit amount.

Protection of medicaid eligibility.—H.R. 10210 provides that no recipient of SSI will lose eligibility for medicaid solely as the result of the operation of the cost-of-living benefit increase provision under title II of the Social Security Act. It protects the individual only against the loss of medicaid, and is effective only in the case of future social security benefit increases.

Change in SSI savings clause.—Under H.R. 10210, payments to States under the 1972 savings clause provision will not be reduced to reflect Federal SSI benefit increases in 1977 and 1978. This will enable the three "hold harmless" States (Hawaii, Massachusetts, and Wisconsin) to pass through the Federal increases in those years without added State costs. No other States are affected.

SSI payment to persons in institutions.—H.R. 10210 excludes publicly operated community residences which serve no more than 16

residents from being deemed public institutions in which individuals are ineligible for SSI benefits. It also provides that Federal SSI payments may not be reduced in the case of assistance based on need which is provided by States and localities. It repeals section 1616(e) of the Social Security Act which provides that Federal SSI payments be reduced in the case of payments made by States or localities for medical or any other type of remedial care provided by an institution. It adds a requirement, effective October 1, 1977, that each State establish or designate State or local authorities to establish, maintain and insure the enforcement of standards for categories of institutions in which a significant number of SSI recipients are residing. The standards have to be appropriate to the needs of the recipients and the character of the facilities involved. They are to govern admission policies, safety, sanitation and protection of civil rights. H.R. 10210 also requires each State to make available for public review, as a part of its social services program planning procedures under title XX, a summary of the standards and the procedures available in the State to insure their enforcement. There must be made available a list of any waivers of standards which have been made and any violations of standards which have come to the attention of the enforcement authority. Federal payments are to be reduced dollar for dollar by the amount of any State supplementation in the case of persons who are in group facilities which are not approved under State standards as determined by the appropriate State or local authorities.

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