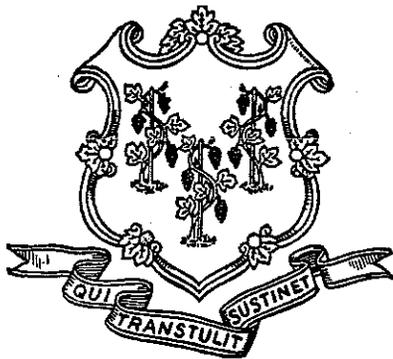


UNEMPLOYMENT COMPENSATION IN CONNECTICUT

Connecticut

General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

January 1995

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

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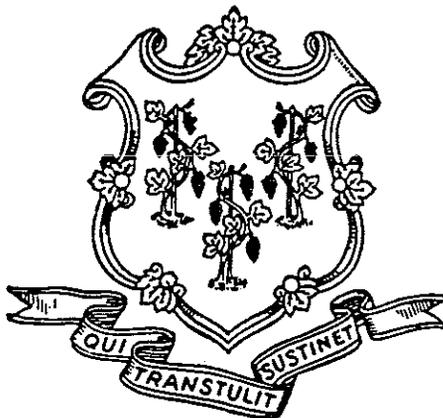
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**UNEMPLOYMENT COMPENSATION
IN CONNECTICUT**



**LEGISLATIVE PROGRAM REVIEW AND
INVESTIGATIONS COMMITTEE**

JANUARY 1995

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UNEMPLOYMENT COMPENSATION

EXECUTIVE SUMMARY

The Legislative Program Review and Investigations Committee authorized a study of the state's unemployment compensation system in March of 1994. The Unemployment Insurance program is administered by the state Department of Labor. The objective of the program is to reduce the financial hardship of unemployed workers by providing them with weekly benefits based on the workers' earnings while employed. Benefits of \$528.2 million were paid to more than 280,000 totally or partially unemployed Connecticut workers in FY 93. Funding to provide benefits comes from the state's Unemployment Compensation Trust Fund, which is financed by taxes paid by employers (\$316.8 million in FY 93), accumulated interest, and when necessary, money borrowed from the federal government.

Under the program, the Department of Labor operates 18 field offices where it accepts and processes unemployment claims, determines eligibility for benefits, conducts periodic eligibility reviews, and assists claimants in finding jobs. There is also an appeals division to hear and decide on appeals concerning unemployment compensation decisions. The department also registers and maintains records for more than 94,000 employers legally responsible for insuring employees. It conducts field investigations to determine if particular employers are subject to the law, performs audits of employers to ensure compliance with the law, and enforces collection of taxes from delinquent employers.

Connecticut's unemployment compensation system covers about 1.2 million workers, and is supported by taxes collected from more than 90,000 employers. In 1993, the department processed approximately 280,000 initial claims, and paid out more than \$582.2 million in benefits. The average weekly benefit was \$220, and the average durations of benefits per claimants was 18 weeks.

The study focused on the multi-level decision-making process that determines whether or not a claimant is eligible for benefits. Attention was also given to the costs of the system and, to a limited degree, some of the nonfinancial services offered to employers and workers. Several aspects of Connecticut's system -- benefit levels, taxes on employers, and the percentage of unemployed eligible for benefits -- were compared with other states' systems.

The report describes how the system is funded and provides some analysis on the recent solvency problems with the Unemployment Compensation Trust Fund. However, the legislature passed Public Act 93-243 to address the fund's financial crisis, increasing the taxes on employers that are used to finance the fund over six years. The changes were significant and were achieved as a result of compromises made by many parties. For this reason, the study did not direct any recommendations to the funding side of unemployment compensation.

The most notable finding of the study is the high percentage of eligibility decisions made that are favorable to claimants as opposed to employers. Connecticut's job separation approval rates much higher than the national average and most other states.

The committee analyzed several factors in an attempt to identify the reason for the high rate approvals favoring claimants. Although no factor could be singled out as the sole cause, the committee concluded that decisions by the Board of Review were a major contributor. The study also found very different decision outcomes among the Department of Labor's job centers and among the field offices of the Employment Security Appeals Division. There were also differences in decision outcomes depending on whether employers participated in the hearing process. Employers did much better in terms of having issues decided in their favor when they participated. Participation was a major problem at the appeals level where over one-third of the cases were dismissed because one or the other party did not appear.

Although the study outline indicated that it would not contain an analysis of how the system was financed, the committee did examine a number of matters that were related to costs including the department's efforts at detecting and recovering benefit overpayments. The committee found the department's recovery efforts placed too great a reliance on using a claimant's future benefits to offset his or her current liability.

The Department of Labor is currently in the final stages of a significant reorganization that will consolidate the unemployment compensation functions with employment services. The committee concluded that closer communication is needed between the department and legislative committees that oversee employment education and training programs, as the department embarks on a new direction of providing these services.

While the program review committee made no proposals to impose an unemployment tax on employees at this time, the committee believes that workers should take greater responsibility for their employment futures. The committee recommended that the department and the Advisory Board on Unemployment Compensation begin reexamining the traditional unemployment compensation system and promote individual initiatives.

The committee adopted a total of 14 recommendations aimed at bolstering fraud and abuse recovery, improving the monitoring of pooled benefits, increasing communication between the executive and legislative branches on policy and operation directions in employment services, and restoring confidence and improving participation in the eligibility determination process.

Recommendations

- 1. The Department of Labor shall annually compile and present to the Unemployment Compensation Advisory Board data on the outcome of eligibility determinations**

made in job centers and appeals offices operated by the department and the Employment Security Appeals Division.

2. **The Department of Labor, in cooperation with the Unemployment Compensation Advisory Board, shall analyze differences in the eligibility determination outcomes among job centers and appeals offices and if necessary develop policies, procedures, and legislative proposals to remedy any problems.**
3. **The Department of Labor and business interest groups should use such means as newsletters, brochures, and forums actively promote employer participation in the eligibility determination process.**
4. **The Department of Labor, in concert with the Unemployment Compensation Advisory Board, develop a legislative proposal to allow employers to participate in fact-finding and referee level hearings through means including, but not limited to, telecommunications.**
5. **A fee equal to one quarter of the claimant's projected weekly benefit rate or \$25, whichever is greater, shall be imposed on any employer or employee who files an appeal with the Employment Security Appeals Division. The fee shall be refunded upon the filing party's participation in the appeals hearing.**
6. **Where offsetting of benefits cannot fully recoup the amount of money overpaid the claimant, the claimant must be statutorily required to enter a repayment schedule that the Department of Labor believes the claimant can reasonably be expected to meet.**
7. **Where the claimant fails to repay according to the schedule, the Department of Labor shall track the wage file and other means to determine when the former claimant returns to work. The department shall be given the statutory authority to pursue garnishment of wage proceedings to recover overpayments in full.**
8. **The statutes should be changed to require that any claimant who is convicted under Section 31-273(d) (1) or (2) of fraudulently obtaining unemployment benefits permanently forfeit his/her rights to any future unemployment benefits.**
9. **The Department of Labor should initiate a statewide educational campaign to educate both employers and employees about their responsibilities under the unemployment compensation law.**
10. **C.G.S. Section 31-273(c) should be changed to require that any person, firm or corporation who knowingly employs any person and pays that person without declaring such payment in the normal payroll records shall make unemployment compensation tax contributions at the maximum rate provided in Section 31-225a for**

the period of one year following a hearing and determination by the Department of Labor of such non-declaration.

- 11. The Department of Labor, in combination with the Unemployment Compensation Advisory Board, annually examine the experience in pooling benefits and if necessary, take measures, including proposing legislation, to restrict non-charging provisions.**
- 12. The outcomes measured in any evaluation of the one-stop centers must include the number of persons finding employment or reemployment and the duration of that employment.**
- 13. The results of any evaluations of the one-stop centers shall be distributed to the labor, commerce, education, and human services committees of the General Assembly.**
- 14. The Department of Labor publish, as part of the guides to unemployment compensation, booklets that include:**
 - new precedential board decisions;**
 - the core precedential cases;**
 - brief instructions on how to use the precedent manual to research and prepare an appeals case; and**
 - the locations where the precedent manuals may be accessed.**

INTRODUCTION

The Legislative Program Review and Investigations Committee authorized a study of the state's unemployment compensation system in March of 1994. The Unemployment Insurance program is administered by the state Department of Labor. The objective of the program is to reduce the financial hardship of unemployed workers by providing them with weekly benefits based on the workers' earnings while employed. Benefits of \$528.2 million were paid to more than 280,000 totally or partially unemployed Connecticut workers in FY 93. Funding to provide benefits comes from the state's Unemployment Compensation Trust Fund, which is financed by taxes paid by employers (\$316.8 million in FY 93), accumulated interest, and when necessary, money borrowed from the federal government.

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SCOPE OF REVIEW

The Legislative Program Review and Investigations Committee's study focused on the multi-level decision-making process that determines whether or not a claimant is eligible for benefits. Attention was also given to the costs of the system and, to a limited degree, some of the nonfinancial services offered to employers and workers. Several aspects of Connecticut's system -- benefit levels, taxes on employers, and the percentage of unemployed eligible for benefits -- were compared with other states' systems.

The study also describes how the Unemployment Compensation Trust Fund is financed and provides some analysis on its recent solvency problems. However, the legislature passed Public Act 93-243 to address the fund's financial crisis, increasing the taxes on employers over six years to pay for the bonds issued to repay the fund's debts. The legislative changes were significant and were achieved as a result of compromises made by many parties. For this reason, the study did not direct any recommendations to the funding side of unemployment compensation.

METHODOLOGY

The information contained in this report was obtained through a variety of sources. Initial efforts focused on a review of historical and theoretical literature related to unemployment compensation. Also examined during the early stages of the study were state statutes, regulations, grant applications, and budget documents. Committee staff conducted a series of

interviews with business and labor leaders and employees of the Department of Labor and the Employment Securities Board of Review. Customer related activities of the department and the appeals division were subjected to numerous on-site observations over the course of the review. Finally, a considerable amount of quantitative data on the operation of the program in the state and nationally were acquired and analyzed.

REPORT FORMAT

This report is organized into five chapters. Chapter I provides an overview of the unemployment compensation system nationally and in Connecticut. Chapter II describes the organizational structure of the program. The financial aspects of the unemployment compensation system are explored in Chapter III. Chapter IV outlines the processes involved in operating the system and provides some outcome data. The findings and recommendations are presented in Chapter V. Appendix A contains the Department of Labor's response to this report. Appendices B, C, D, and E provide details and supportive data not included in the body of the report.

AGENCY COMMENT

It is the policy of the Legislative Program Review and Investigations Committee to provide the state agency subject to the review an opportunity to comment on the findings and recommendations prior to the publication of the final report. As noted above, comments from the Department of Labor are contained in Appendix A.

CHAPTER I

BACKGROUND OF UNEMPLOYMENT INSURANCE

NATIONAL BACKGROUND

The nation's unemployment compensation system is more than half a century old. At the time it was created it was -- and in many ways still is -- a public policy milestone. It created a federal-state partnership that is unique in design and implementation. The unemployment compensation program itself established economic security for American workers they had not had before.

The system however is constantly changing. The modifications have been both to respond to the federal-state tensions related to the program's policies and implementation, as well as to adapt the system to an ever-changing economy. Despite the changes, however, the two primary objectives remain the same: 1) to provide temporary wage replacement for unemployed workers who have demonstrated a strong attachment to the labor force; and 2) to assist in stabilizing the national economy during cyclical economic downturns.

This section will summarize the program as it was first created, some of the changes that have been adopted, and the issues that face the system in the 1990s.

The Creation of the Unemployment Compensation System

Federal initiatives. The Unemployment Compensation program was begun in 1935 as part of the Social Security Act. President Roosevelt had appointed a Committee on Economic Security in June 1934 to make recommendations to improve the economic security of individuals in the face of a deepening depression.

The committee issued its report to President Roosevelt in January 1935. The report emphasized the need for federal legislation, because it was believed that each state would never institute individual programs for fear of putting that state's employers at a competitive disadvantage. The President sent the report to Congress, asking them to pass legislation implementing the report without delay.

While Congress made a few changes to the Committee's proposals, by and large the report was adopted in legislation. The major initiatives were:

- the imposition of a federal excise tax of 1 percent of payroll (increasing to 2 percent in 1937 and 3 percent in 1938) on employers with 8 or more workers;

- a federal-state system that allowed states flexibility in developing the kind of unemployment insurance program they deemed appropriate;
- a system based on experience or merit rating, where individual employers would be assessed based on benefits paid to the employer's former workers;
- federal government grants to the states to fully fund the administration of their unemployment insurance programs, provided the states met certain minimum standards;

State Actions

Although the federal legislation passed, it remained incomplete until all the states took action. A great many states delayed approval, hoping that the courts would rule the law unconstitutional. However, the Supreme Court ruled in May 1937 that the unemployment compensation laws were valid. By July of 1937, all 48 states, the District of Columbia, and the territories of Alaska and Hawaii had passed the legislation necessary to implement an unemployment compensation programs. The following summarizes some of the initial measures undertaken by states to activate unemployment compensation.

Type of fund. Initially, most states used model draft bills provided by the federal Social Security Board to shape their systems. One of the areas where states differed was on the type of fund -- ranging from a completely individual employer-based fund to a totally pooled fund. Eventually, all states adopted a compromise position -- a completely pooled fund with each individual employer contributing based on its experience rating.

Financing. From the beginning, each state instituted a direct tax on its employers to support that state's system, a basic underpinning of the federal law. Both state and federal unemployment compensation taxes were initially based on total wages paid. It wasn't until 1940 that a federal taxable wage base limit was effected, which capped the amount of payroll that could be subjected to unemployment compensation taxes.

At first, nine states required employees, as well as employers, to contribute to fund the system. However, all original states but New Jersey have since abandoned that requirement, although by 1990, three additional states -- Alaska, Pennsylvania, and West Virginia -- instituted the employee participation, bringing the current number to four.

Coverage. The federal law initially required that all employers with at least 8 workers be liable for payment of the federal unemployment tax. While states could require more expansive coverage in terms of liable employers, they could not require less. Most states have gradually covered smaller employers, and at present all states mandate coverage for only one employee.

Benefit entitlements. One of the objectives of unemployment compensation system has always been to provide benefits to those persons who have had a substantial attachment to the labor market, and not to those with only a casual or intermittent connection. The earliest qualifying requirements centered around the number of weeks worked during a base period. Initially, the weekly rate was set at half the worker's the average weekly wage, and the duration of benefits was typically calculated at one week of benefits for every four weeks worked, up to a maximum of 16 weeks.

But recordkeeping on the part of employers to submit this type of information proved to be too cumbersome. Most states then adopted formulas for the three key elements: qualifying requirements, the weekly benefit rates, and duration. The formulas were based on quarterly and annual earnings rather than on direct measures of employment or on the weekly wage.

Eligibility Rules. Since the beginning, eligibility for unemployment benefits has always required that the claimant be involuntarily unemployed, and to be able and ready to work. The initial eligibility for benefits usually is tied to the manner in which the person became unemployed, while continued eligibility depends on the continued availability for work. Eligibility rules and reasons for disqualification have grown and become more complicated over the years, and continue to be a great area of controversy.

Federal Focus

Throughout the history of the unemployment compensation program, the federal government appears to have concentrated its efforts in two major areas: extending benefit coverage, especially those beyond the traditional durational limits, and ensuring the program's financial solvency.

The Employment Security Act Amendments of 1970 and the Unemployment Compensation Amendments of 1976 included significant extensions of coverage that the states had been unable or unwilling to make. The amendments mandated unemployment protection for employees of nonprofit organizations, state and local governments, and domestic and agricultural workers. The 1970 amendments also required that employers with one or more workers provide unemployment coverage, where previously employers with fewer than four workers were exempt.

At the same time the amendments limited the states abilities to cancel or reduce all benefit rights of disqualified claimants. The 1970 amendments also included an increase in both the federal tax rate and taxable wage base. The rate was increased to 3.4 percent and the base was increased from \$3,000 to \$4,200.

Extending benefits. The other major concern at the federal level was extending benefits to workers who exhausted their coverage during severe recessions. The federal government prior to 1970 had established two temporary extensions of benefits during the economic downturns of 1958-59 and 1961-62, but there was a belief that a permanent program was necessary to address

the issue. In 1970, as part of the Employment Security Amendments, the federal government adopted policy that allowed for the automatic extension of benefits during periods of high unemployment.

The amendments incorporated a financing scheme that split the cost of the extended benefits evenly between the federal and state governments. States were given the option of financing the extended benefits through either pooling the costs equally among all employers or taxing employers based on their experience. The 1970 provisions were required to be adopted in each state by January 1972 at the latest. Connecticut complied by adopting P.A. 1 in a Special Session in October 1970. These extended benefit provisions were used during the 1975 and 1976 recession, totalling \$4.8 billion in additional benefits, about 22 percent of regular benefits paid.¹ The federal extended benefit account had to borrow funds from the U.S. Treasury to help finance its share of these costs and the Federal Unemployment Tax was increased by 0.2 percent of taxable payrolls to pay off the debt.

Since the passage of the extended benefits program changes have been made periodically that affect the triggering criteria to start or terminate the program. During the 1970s, most of the changes relaxed the start and stop triggering mechanisms in order to initiate the extended benefit program sooner and have it last longer, while the 1980 changes reversed this trend and moved to significantly curtail the program.

In each period of high unemployment since 1970, the federal government has also initiated temporary programs that provided compensation to claimants who exhausted all 39 weeks of benefits (the 26 weeks of regular and 13 weeks under the extended program). These were totally financed by the federal government, although still administered at the state level, and used state unemployment rates as triggers.

In 1991, in the throes of a recession, the number of persons nationwide who exhausted their regular state benefits totalled more than three million. Because the federal government had enacted more restrictive triggering mechanisms in the 1980s fewer states qualified to offer extended coverage to claimants that had exhausted their benefits. Political pressure was exerted to develop an emergency federal program to provide additional benefits, which resulted in passage of the Emergency Unemployment Compensation Act in November of 1991.² The act was extended several times before it was terminated in February 1994. Because of its vast use, the federal government exhausted the funds specified for its use, and used general revenues.

¹ Saul Blaustein. Unemployment Insurance in the United States: The First Half-Century (Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research, 1993), p. 230.

² The number of additional weeks of benefits available under the EUC depends on three factors: 1) when the claimant first applied for EUC; 2) the state's total unemployment rate and 3) the national total unemployment rate.

Targeted services. In addition to assisting regular claimants, the federal government has authorized special assistance for specific categories of workers affected by economic dislocation of one kind or another. The two main federal programs that address dislocated workers are Trade Adjustment Assistance (TAA) and Economic Dislocation and Worker Adjustment Assistance (EDWAA), although there are others that serve workers affected by such federal actions as the Clean Air Act or by cuts in the defense industry.

The TAA is the largest of the special programs, and provides extended cash benefits and training assistance to workers whose jobs are lost because of import competition. The EDWAA changed the rules for prior federally sponsored training under the Job Training Partnership Act (JTPA) so that certain categories of workers are given priority for training and related services.

Ensuring financial solvency. In recent years, Congress has taken a more demanding position in forcing states to better manage their unemployment compensation funds. Those states whose funds had solvency problems or that had already borrowed federal money to keep their funds afloat were expected to alter their own tax and benefit entitlements to improve individual state fund positions, and avert financial crises that threatened the viability of the compensation system. Prior to this shift, federal policy objectives had always been directed toward expanding the program and increasing the benefits. Spurred by fiscal concerns and public perceptions of claimant abuse and lax administration, the federal government began to tighten the rules concerning extended and supplemental benefits. Many states followed suit with their programs by making eligibility criteria more restrictive and holding the line on benefit growth.

Measures adopted by the federal government following the mid-1970s recession, and accompanying financial crisis were aimed at encouraging state solvency. Those actions included:

- raising the federal taxable wage base, eventually to \$7,100 where it is today;
- raising the federal tax rate -- it is now 6.2 percent of taxable wages; and
- changing the loan and repayment provisions for those states that borrow from the federal loan fund to pay benefits.

NATIONWIDE TRENDS AND THE CURRENT PICTURE

The unemployment rate of the nation and individual states is perhaps the most closely watched economic indicator in the country. Therefore, it is important to know on what that statistic is based. The unemployment rate that is most commonly used is the **total unemployment rate**, and is arrived at through a monthly survey of households known as the current population survey (CPS).

The survey is conducted by the Bureau of the Census for the Bureau of Labor Statistics (BLS) on some 60,000 households nationwide. The survey data are used to determine a wide variety of variables in the labor market including labor force participation, occupational distribution, earning differentials among worker groups, and unemployment.

The questionnaire used for this survey had changed little since 1967. But, because the U.S. economy had undergone significant changes since then, most notably the growth in service jobs and decline in factory work, and the more prominent role of women, especially mothers, in the workforce, the Bureau of Labor Statistics (BLS) and the census bureau redesigned the questionnaire. The use of the new survey instrument was begun in January 1994. Statisticians expected that the new questionnaire would yield results placing the unemployment rate about half a percentage higher than it had been. In fact, this did occur with the national unemployment rate, and therefore the Bureau of Labor Statistics cautions comparison of unemployment rates before and after the January 1994 change.

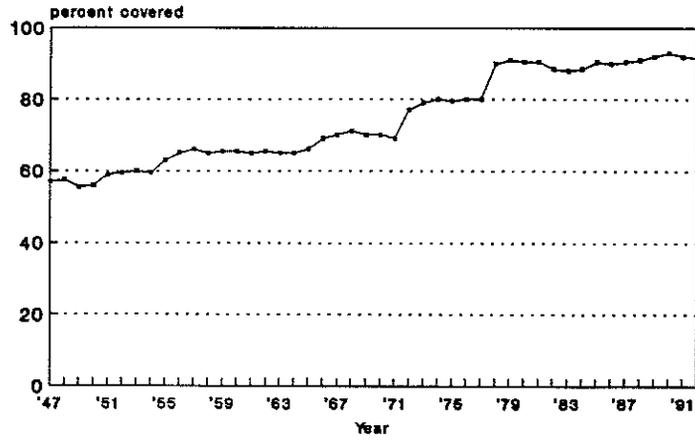
Individual state unemployment estimates are prepared monthly. Eleven states derive their labor force data from the Current Population Survey, the other 39 states, including Connecticut, whose CPS samples are too small to produce reliable estimates, use a regression model developed by BLS. The model incorporates claims data from the Unemployment Insurance (UI) program and place-of-work employment estimates from a business establishment survey as well as data collected from the state's portion of the national CPS household sample. (Connecticut's CPS sample includes approximately 600 households) Using this model the Connecticut Department of Labor's research unit publishes a monthly estimate of the state's unemployment rate. The rate is revised in subsequent reports as the estimated data used in the model are replaced with actual data.

The other common measure of unemployment is the **insured unemployment rate**, which is based on the number of unemployed workers claiming jobless benefits. The number of persons collecting benefits is nationally less than half of all unemployed workers. In 1991, for example, there were 8.4 million unemployed workers nationwide, while only 3.4 million, or 40 percent, collected benefits.

Expanded coverage. One of the most dramatic changes that has taken place in the unemployment system is the growth in the percentage of the nationwide work force covered by unemployment compensation. As depicted in Figure I-1 on page 7 this percentage has grown steadily, reaching more than 90 percent in 1992. The expansion in the covered workforce is due mainly to broadening the mandates on which employers must participate in the program, and which employees they must cover.

FIGURE I-1.

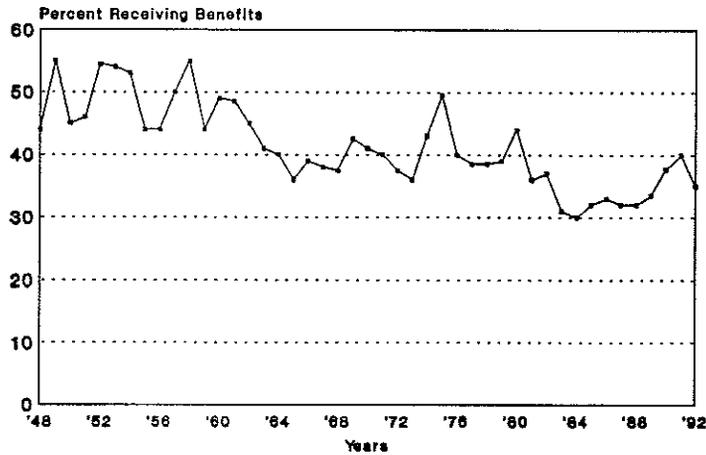
**Annual Covered Employment 1947-1992
As a Percent of Total Employment**



Source: Economic Report of the President (1993), and Employment and Wages, BLS/USDOL

FIGURE I-2.

**Percent of Unemployed Receiving Benefits
Nationwide Experience: 1948 - 1992**



Source: GAO Report on Unemployment Insurance (Report #93-107)

Decline in reciprocity rate. Paradoxically however, while the percentage of covered workers has grown, the percentage of unemployed workers who are eligible to collect unemployment benefits has dropped nationwide. Figure I-2, on the previous page, tracks that decline from 1948 through 1992. As shown in the diagram, the percentage of unemployed collecting benefits of the total number of all unemployed had dropped to 28.5 percent in 1984, the lowest rate since these data have been collected.

While the percentage collecting benefits has increased somewhat since 1984, it is still much less than half of all the unemployed, although the ratio varies from state to state. Table I-3 below shows the percentage of the total number of unemployed collecting benefits in each state or jurisdiction for 1992. As the table shows, the percentage of the unemployed receiving benefits ranges from a low of 20.7 percent in Virginia to 60 percent in Alaska. Connecticut ranks 11th highest in terms of the percentage of workers able to collect benefits, with 45.2 percent of workers collecting compared to a nationwide average of 36.2 percent. While the state's rate may have been higher than usual during 1992 because of the recession, Connecticut's 10-year average from 1980-1989 was about 5 percentage points higher than the national average.

The literature suggests that there are two main reasons for the decline in the number of unemployed workers eligible to collect benefits. The first is attributed to major demographic changes. Many people who entered the labor force during the 1960s and 1970s (e.g., women and young people) were also those likely to be unemployed since they were the last to be hired and first to be laid off. However, many in this category did not have sufficient time and earnings to qualify for benefits, thus increasing the proportion of ineligible unemployed workers.

The second reason is a statistical quirk. As discussed above, the number of employees covered by the unemployment compensation system increased significantly during the 1970s. A major portion of the increase was attributable to inclusion of employees of state and municipal governments, and non-profit organizations, workers who historically are less likely to become unemployed than other workers in the labor force. Thus, the percentage of covered workers receiving benefits declines because the base number is growing faster than the number of covered workers becoming unemployed at any given time.

Other reasons cited for the decline are the changes in federal and state law during the 1980s. As states saw the solvency of their unemployment trust funds at risk, they took measures that restricted eligibility, such as raising the amount of prior earnings an unemployed worker must have in the base period to qualify for benefits. Hence, many unemployed workers who previously may have been able to collect benefits were now deemed ineligible.

The decrease in the percentage of the workforce that is unionized is also cited as a possible reason for the decline in the rate of unemployed workers receiving benefits. Unions had assumed a role of providing information and advocating for their members in the process. Their diminished role in the workplace may contribute to the decline in application for and/or receipt of benefits.

| Table I-3. Percentage of Total Unemployed Collecting UI Benefits in 1992 | | | |
|---|-------|---------------|-------|
| STATE | % | STATE | % |
| Virginia | 20.7% | Maryland | 35.0% |
| New Hampshire | 23.6% | Tennessee | 37.2% |
| Florida | 24.5% | Minnesota | 37.3% |
| Texas | 24.6% | Iowa | 37.4% |
| Indiana | 24.7% | Nebraska | 37.6% |
| West Virginia | 24.9% | Massachusetts | 38.9% |
| South Dakota | 25.0% | Arkansas | 39.2% |
| Oklahoma | 26.4% | Missouri | 39.4% |
| Colorado | 27.3% | New York | 39.7% |
| Arizona | 27.9% | New Jersey | 39.9% |
| New Mexico | 28.4% | California | 40.7% |
| Louisiana | 28.6% | Delaware | 40.7% |
| Georgia | 28.9% | Maine | 43.0% |
| Alabama | 29.0% | Pennsylvania | 44.6% |
| Utah | 29.4% | Kansas | 44.9% |
| Mississippi | 29.6% | Connecticut | 45.2% |
| Puerto Rico | 29.7% | Rhode Island | 46.2% |
| North Carolina | 30.6% | Idaho | 46.7% |
| Kentucky | 30.8% | Oregon | 46.9% |
| Ohio | 33.1% | Nevada | 46.9% |
| North Dakota | 33.1% | Washington | 47.1% |
| Wyoming | 33.9% | Wisconsin | 47.4% |
| Michigan | 33.9% | Vermont | 48.3% |
| South Carolina | 34.4% | Hawaii | 50.0% |
| Montana | 34.6% | DC | 51.2% |
| Illinois | 34.7% | Alaska | 60.0% |
| National Average | | 36.2% | |
| Source of Data: Bureau of Labor Statistics referenced in Report of Advisory Council on Unemployment Compensation, February 1994 | | | |

Current problems. Indications are that the nature of unemployment has changed. Workers who are laid off are now less likely to return to their previous jobs than ever has been the case. This frequently results in individuals spending longer periods unemployed, and often exhausting their benefits. As discussed earlier, both federal and state governments have historically taken actions to assist through extended benefits and other services to dislocated workers. However, despite government efforts, the Congressional Budget Office found that even one to three years after being dislocated, half of the workers who had lost their jobs either are not working or have jobs that pay less than 80 percent of what their old jobs paid.

These problems threaten the entire unemployment compensation system. A 1993 GAO report indicated that the program's ability to meet its long-standing objectives -- economic security for the worker and to put money into a recessionary economy -- is now jeopardized. The current economy and its structural changes undermine the system's ability to provide economic security for those who are laid off, and challenge its efforts to provide the long-term unemployed with the assistance necessary to reenter the workforce. These needs of the worker, of course, must be balanced with the interests of the employers, which, through payroll taxes, finance the system.

To address these issues, Congress, in late 1991 established the Advisory Council on Unemployment Compensation. The Congress mandated the council "to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program and to make recommendations for improvement".³ The council submitted its first of three annual reports in February 1994. It devoted most of its efforts to findings and recommendations to bolster the extended benefits program, but the report acknowledged that it was only a first step in "a comprehensive rethinking of the Unemployment Insurance system as the foundation of the job and income security for U.S. workers".

CONNECTICUT'S UNEMPLOYMENT COMPENSATION SYSTEM

In response to the initial federal legislation creating the national unemployment compensation system, Connecticut created its program in 1938. Over the years, Connecticut's program has been through many changes, most of them in response to federal mandates.

Connecticut's system in 1994 covers approximately 97 percent of the 1.8 million workers employed in the state. The system is financed entirely through assessments on the more than 95,000 employers in the state. Private employers are taxed by the state Department of Labor as well as the federal government, while state and municipal governments and non-profit organizations have the option of reimbursing the state's Unemployment Compensation Trust

³ Advisory Council on Unemployment Compensation. Report and Recommendations Transmitted to the President and Congress. February 1994, p.4.

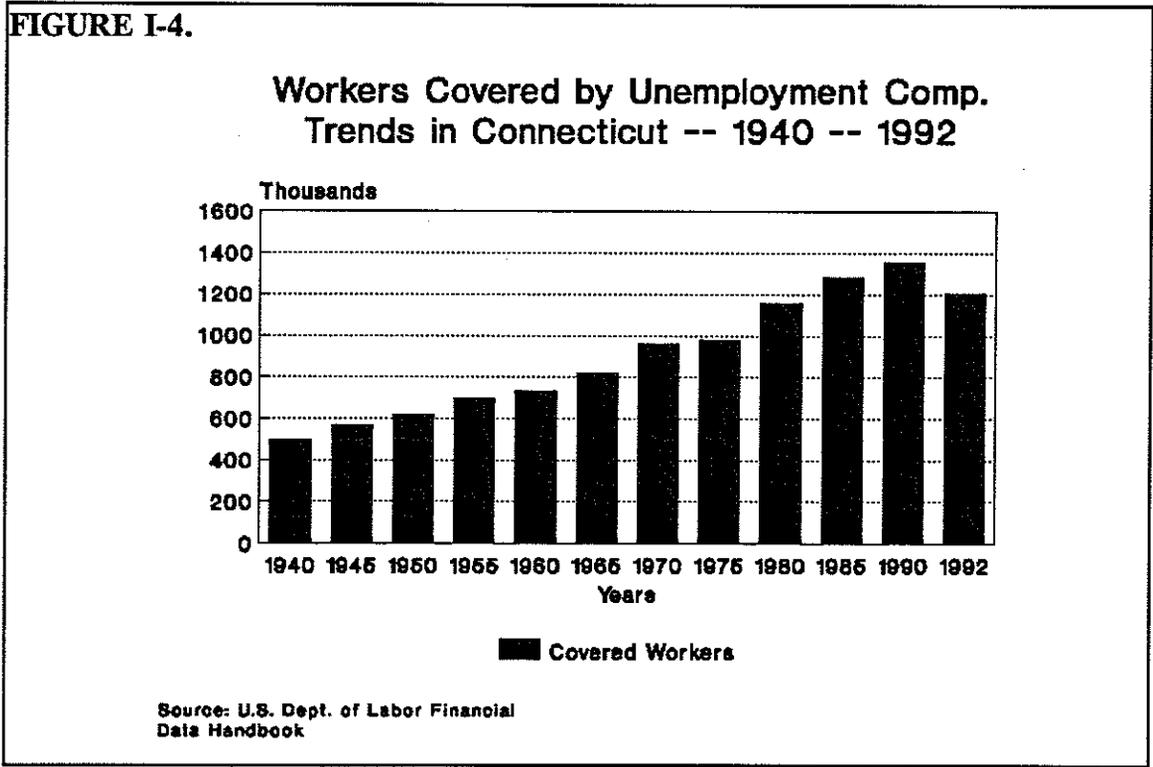
Fund for benefits paid on the employer's behalf. The assessment process is described later in Chapter III. Total taxes collected in FY 94 to finance the fund totalled more than \$410 million dollars.

The benefits paid to a claimant are directly related to the claimant's earnings while employed. The state DOL's computerized system calculates that rate based on earnings information submitted by the claimant's former employers. Connecticut claimants may also collect an allowance for dependents. The minimum weekly benefit rate in Connecticut is \$15, while the maximum is \$317, not including dependency allowance, and the maximum duration for collecting benefits is 26 weeks. Chapter IV contains a full description of Connecticut's unemployment benefit structure.

Trends in Connecticut

Covered workers. The number of employed workers in Connecticut that are covered by the unemployment compensation system has grown more than three-fold since the program began. In 1938, Connecticut's system covered 404,323 workers. The latest data show that for 1992 the number increased to 1,203,922 covered employees, (although this is actually a slight decrease from the two previous measurements taken in 1985 and 1990). Figure I-4 shows the trends in the number of covered workers in Connecticut from 1940 through 1992, marked in five-year intervals. Part of the growth is, of course, due to the expansion of the workforce, but some of the increase is related to a gradual broadening of the definition of covered workers.

FIGURE I-4.

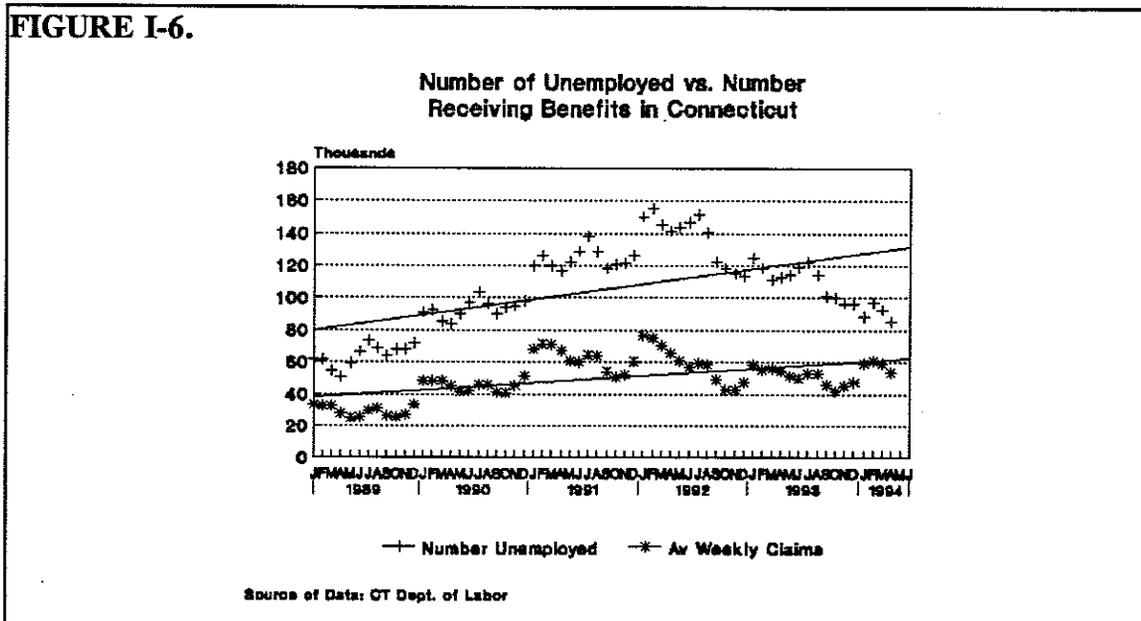
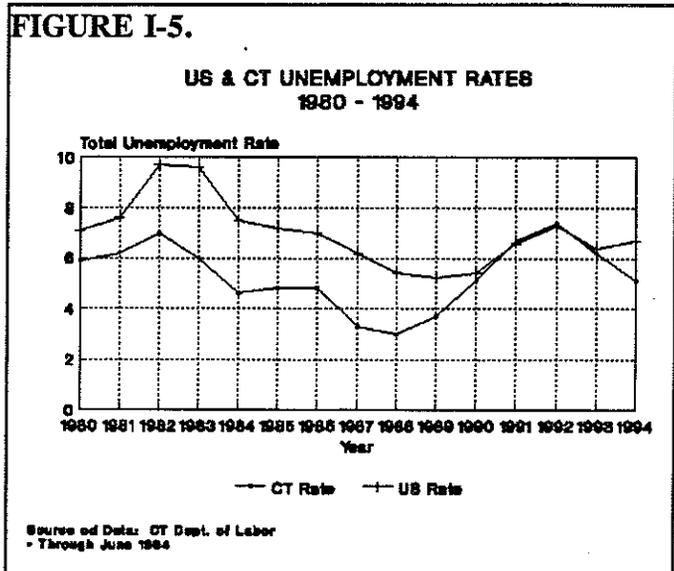


Unemployment Rates in Connecticut

Figure I-5 shows that over the past 15 years both the national and state total unemployment rates have generally moved in the same direction. The changes in the direction of unemployment rates shown in the graph reflect the cycle nature of employment data. Figure I-5 also illustrates that while the employment picture was better in Connecticut than in the nation during the most of the period, the rates of change were much greater here than in the nation as a whole.

As mentioned previously, the total unemployment rate is always higher than the insured unemployment rate. This is shown in Figure I-6, which graphs the number of persons unemployed and the average number receiving benefits each month from January 1989 to April 1994. The gap between the two points plotted for each month represents the number of unemployed persons not collecting benefits.

The two trend lines superimposed on the graph show the gap widened during the period. The actual plotted data show a slight narrowing over the past six months. Whether this narrowing represents a real shift in the trend caused by a change in the state's economy or some other factor, or merely a short-term fluctuation remains to be determined.



CHAPTER II

OVERVIEW OF THE DEPARTMENT OF LABOR

PURPOSE

The Department of Labor (DOL) was established in 1873 to protect and promote the interests of the working men and women of Connecticut. In pursuit of its mission the department offers a variety of services to persons temporarily unemployed or seeking work, including income support, training opportunities, and job search assistance. The department also assists individuals actively engaged in the work force by providing mediation, arbitration, and other labor relations services. It ensures compliance with the state's wage and hour laws and occupational health and safety requirements governing the public sector.

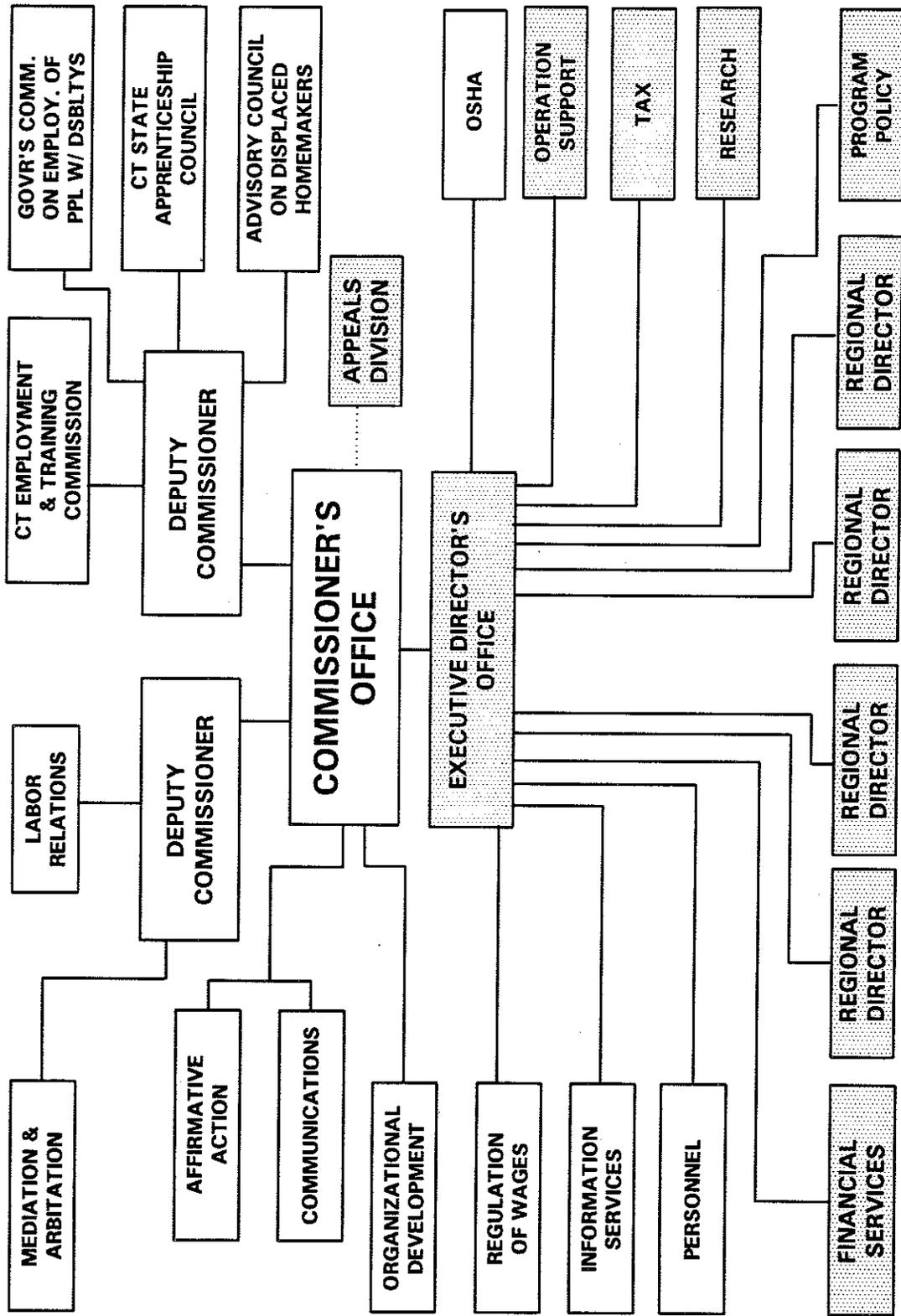
ORGANIZATION

The Department of Labor is in the final stages of a major reorganization that began two years ago. Prior to 1991, the department was organized into vertical hierarchies centered around specific functions. Services provided to the temporarily unemployed were located in two major divisions, unemployment insurance and job services. As a part of the reorganization the two divisions were merged and their parallel management structures consolidated. In the process, several layers of management were eliminated and much of the decision-making authority shifted from the central office to local offices.

Figure II-1 depicts DOL's central office structure as of June 1994. The department's top management consists of the commissioner, two deputy commissioners, and the executive director for employment security. The shaded boxes identify units that have a significant role in employment security matters. Some, including the executive director's office, operations support, and program policy units buttress front-line functions and play major policy roles. Others, such as the financial services and research components provide the data and expertise needed by policy makers. The remaining shaded units shown in Figure II-1, appeals, regional directors' offices, and the tax division provide or oversee the provision of direct services to individuals and employers that deal with the department on employment security matters. The commissioner's office, information services, and personnel, all of which have a department-wide focus, are not highlighted because their direct influence over employment security matters is limited. A brief description of the shaded units follows.

The importance of the *executive director's office* is reflected in the fact that all the shaded units, except the appeals division, report to the director. This structure is consistent with the executive director's statutory responsibility to administer matters related to unemployment compensation and the state job service (CGS Sec. 31-237). The executive director is appointed by the commissioner subject to the approval of the governor.

FIGURE II-1. DOL CENTRAL OFFICE ORGANIZATIONAL STRUCTURE



The *program policy unit* provides legal assistance to DOL in employment security matters. It represents the department before the Employment Security Board of Review, and issues directives and conducts training sessions on the interpretation and application of statutes, regulations, and board precedents. It provides assistance to job center adjudication specialists in the determination of benefit eligibility. A critical role of program policy unit, which will be detailed later, is working with the executive director in formulating and implementing policies that govern the department's operation in employment security matters.

Functions encompassing a wide range of responsibilities have been consolidated in the *operation support unit*, as a result of the department's reorganization. A major role played by the unit is to serve as a resource providing expertise in specific programs to the department's field offices. Staff of various subunits specialize in specific programs and serve as an information resource for front-line personnel and assist in developing policies, procedures, and training materials for implementing the programs. Another function of the operation support unit is to provide staff to seek, design, and implement new technologies and specially targeted programs. The unit also houses a quality control mechanism to meet federal requirements and to continuously measure the performance of various aspects of the department's employment security activities.

The *Tax Division* is responsible for identifying employers liable for unemployment insurance coverage, maintaining all wage reports, notifying employers of their tax obligations, and processing their payments. The division houses the merit rating unit that tracks benefits paid to claimants and assigns the costs to the appropriate employer's account for use in calculating the employer's tax rate or reimbursement amount, if the employer qualifies as a reimbursing organization. The division enforces compliance with state statutes through a program of field audits.

The *regional directors' offices* created under DOL's reorganization plan are the primary link between the department's central office and its 18 field offices, which are now called job centers. Each of the 4 regional directors is responsible for overseeing the job service and unemployment insurance activities of 4 to 5 job centers.

Under the reorganization plan, field offices are in the process of being transformed into comprehensive customer service centers. In the past, the unemployment insurance and job service functions were separate operations merely located in the same facility. Now, as part of the initial step in restructuring the offices, management of the two functions has been integrated. In addition, the line staff have been cross-trained and the official scope of their jobs has been broadened to enable them to perform both the unemployment insurance and job service functions.

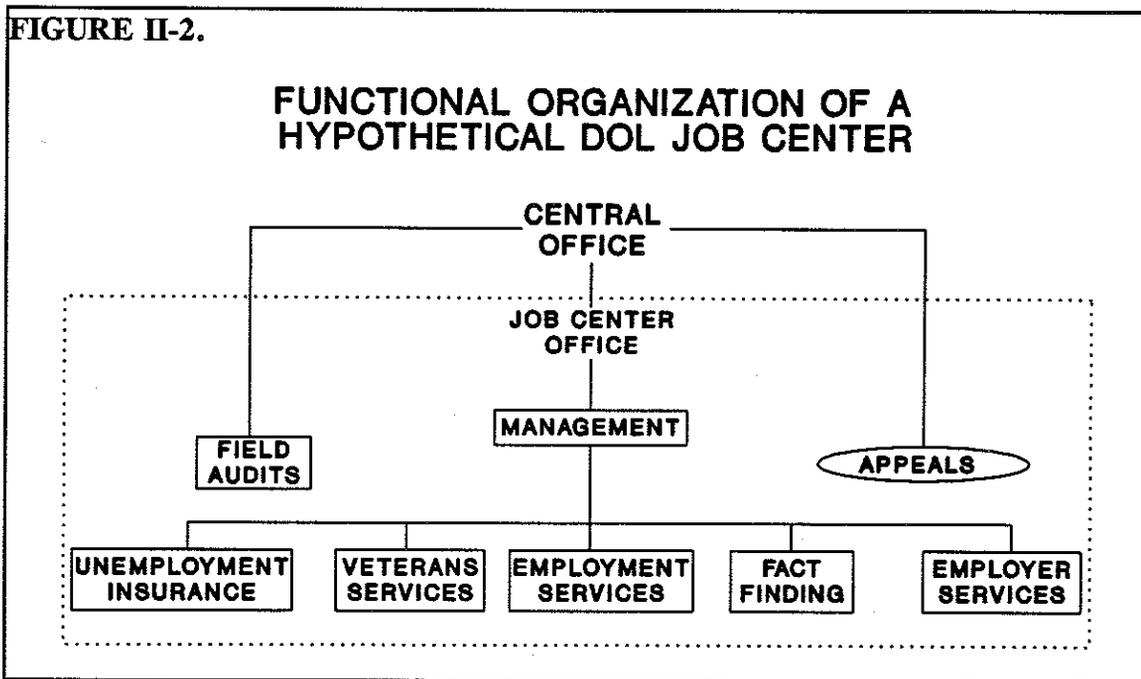
The department's ultimate goal is for the offices to serve as one-stop customer service centers for all persons seeking work. Regardless of their current employment circumstances, the center will assess the individual's employment need, develop an employment plan, and provide or arrange for training, job search, or other services to meet identified needs. The

centers are constructed to service both employees and employers, with the employee group including persons not traditionally viewed as customers of the department, such as public assistance recipients and individuals who have not yet entered the labor force.

The department's 18 job centers vary in the type of functions carried out and number of staff located on site. The variation is primarily due to the demographics of the area served. Figure II-2 is presented to show the functional organization of a hypothetical, large job center. It should be noted that smaller job centers would not have one or more of the following units: appeals, field audit, or employer services. In the case of smaller offices, such units would be based in job centers located in adjacent areas.

As shown in Figure II-2, a full service job center consists of the following functions: unemployment insurance, employment services, fact finding, appeals, veteran services, employment services, and field audits. All of the functions listed except appeals and field audits are under the administrative control of the job center director. A brief description of each function follows.

The *unemployment insurance* function provides temporary financial assistance to qualified workers who have become totally or partially unemployed through no fault of their own and are ready, willing, and able to accept suitable work. The *employment services* function is designed to help unemployed individuals find work and employers fill job openings. Under this operation individuals are screened and certified for vacancies for which employers have indicated to DOL a willingness to accept referrals. This service is intended to help unemployed persons obtain skill training and make career changes.



Fact finding is the name given to the department's process for making an initial determination as to whether a person should be disqualified from receiving benefits based on nonmonetary criteria. The purpose of the *veterans services* function is to insure that veterans receive the special employment services they are entitled to under state and federal laws. The *employer services* function is designed to provide employers with a direct link to the job centers. The unit's role is to identify and meet employers' needs for workers including matching employers with qualified workers and training programs that teach the type of skills that the employer is seeking.

Appeals is a quasi-judicial function for handling petitions from parties dissatisfied with fact-finding decisions. The unit is part of the Employment Security Appeals Division, which as will be described later is an independent function housed within the DOL. The appeals unit reports directly to the appeals division and operates outside of the control of the job center director.

The *field audit* function is responsible for enforcement of the tax laws associated with financing the state's unemployment compensation system. The unit that performs this function is part of the tax division and reports to the central office through a separate channel that bypasses the job center and regional director.

The *Employment Security Appeals Division* shown in Figure II-1 as attached to the commissioner's office by a dotted line, is a statutory unit established within DOL to hear appeals from claimants and employers regarding the granting or denial of unemployment benefits (CGS Sec. 31-237b). Although it is financially and administratively supported by DOL, the division is considered an independent operation that functions as a quasi-judicial agency. It is organized into two sections, an upper division known as the Employment Security Board of Review and a lower branch known as the referee section.

The board consists of three members appointed by the governor. The chairperson is designated by the governor from a list submitted by the commissioner of administrative services and serves as the head of the appeals division. The chairperson is a member of the state's classified service. The other two members, one with a background as an employee and the other with experience as an employer, serve conterminously with the governor. The governor may also appoint alternate members who have full board powers. The alternate members are compensated on a per diem basis.

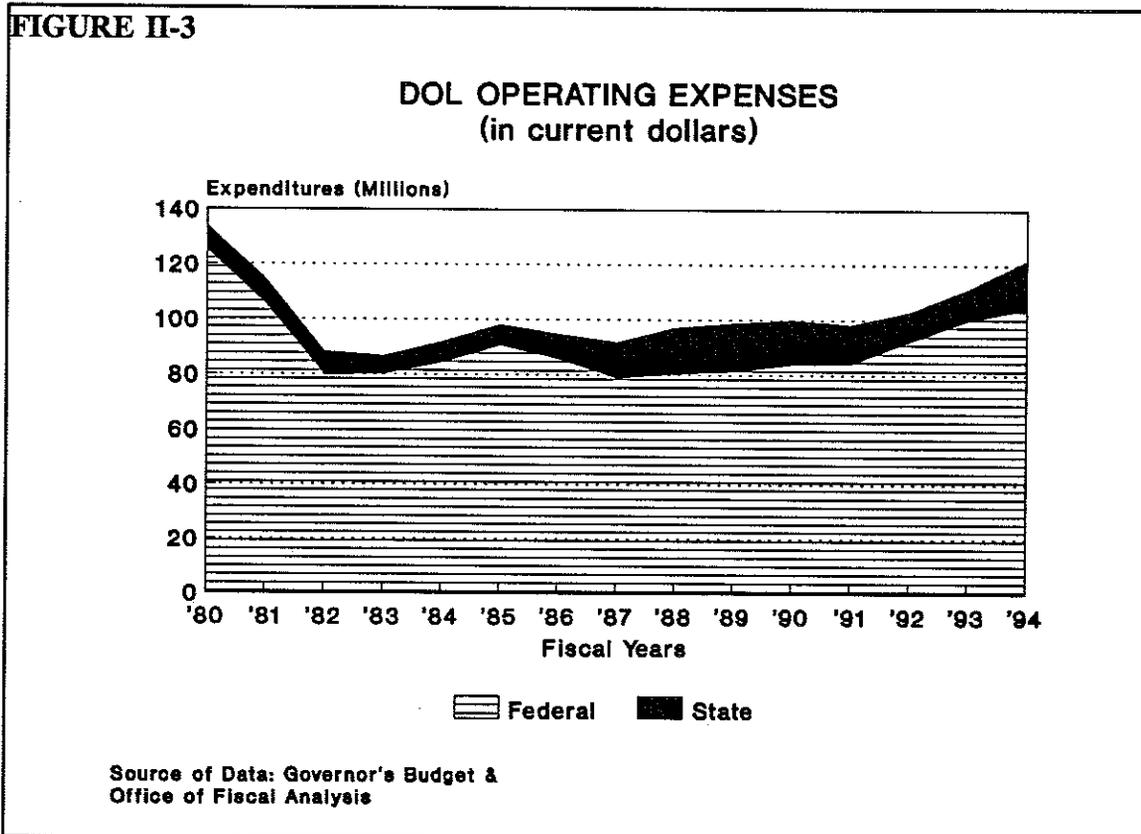
The referees section is headed by a chief referee who is appointed by the chairperson from among the division's referees. Referees are appointed by the board and are members of the state's classified service.

The *Financial Services Office*, one of the two units identified in Figure II-1 as providing data and expertise, functions as the department's budget office. It is responsible for interpreting federal financial guidelines and putting together a budget that reconciles the department's policy desires with its financial limits. The office also handles the department's financial reporting to

the state and federal governments. The other unit identified as falling into the data and expertise category was the *Office of Research*. This unit works closely with the U.S. Bureau of Labor Statistics and receives substantial financial support from it. The research office is responsible for collecting and disseminating data on the job service and unemployment insurance programs, as well as the overall health of the state's economy. It is a primary resource for labor statistics in the state.

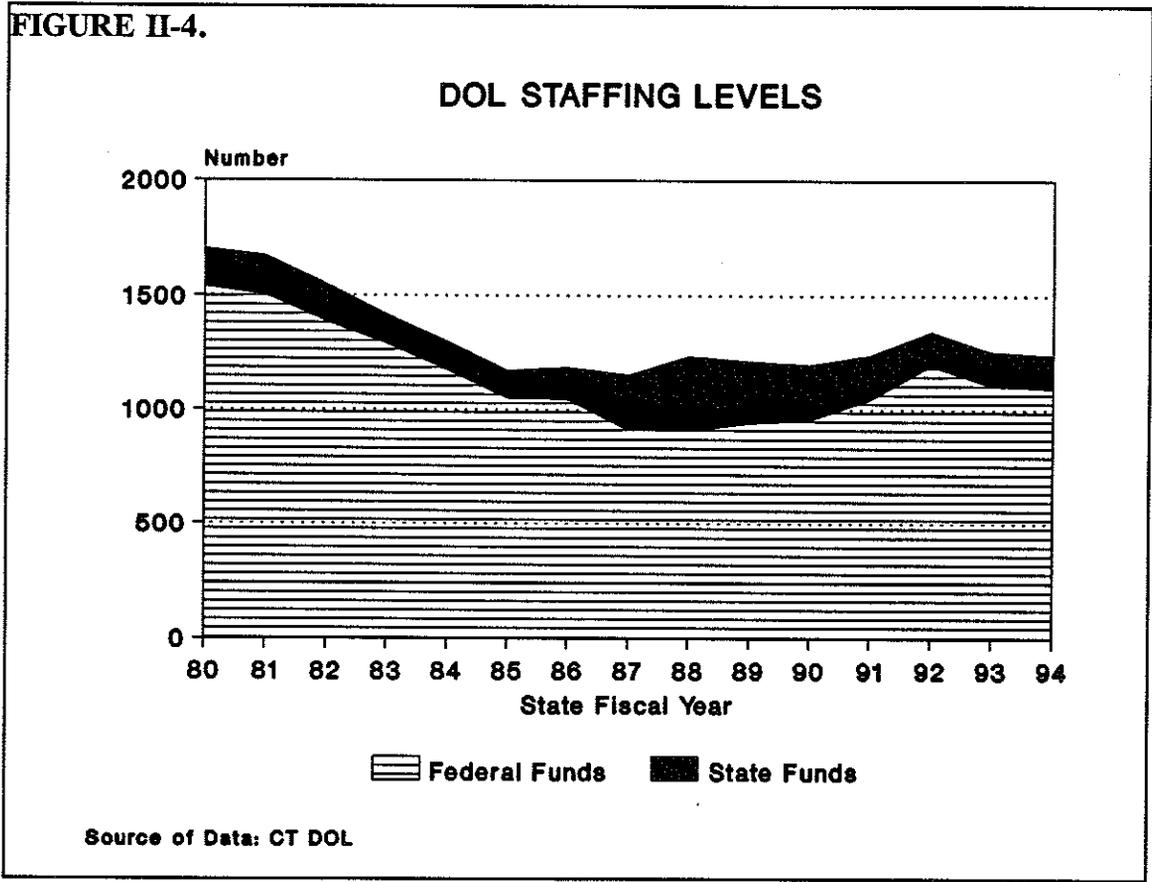
RESOURCES

The Department of Labor's operating expenses are supported by the federal and state governments. Figure II-3 charts the expenditures for state fiscal years 1980 through 1994 in current dollars (i.e. adjusted for inflation) and displays the portion of funds supplied by each level of government. The graph illustrates that a relatively small share of the operating funds are provided by the state and that any significant changes in expenditures are tied to shifts in federal funding levels. Generally, such shifts are related to changes in the state and national rates of unemployment.



Most of the federal funds flowing into the department are targeted for the administration of employment security programs. The state General Fund supports the department's activities in the areas of occupational safety and health, regulation of wages, the board of mediation and arbitration, board of labor relations, and certain job training programs. A major consequence of DOL's reliance on federal money is that the federal government can affect the department's operations in ways that may not always be agreeable to the state. It also reduces the state's policy options and complicates the process for changing the program.

In FY 94 the Department of Labor employed approximately 1,230 staff, the vast majority of whom were supported by federal funds. Figure II-4 shows a downward trend in the number of staff during the period covered by the graph and some instability in the staffing levels. The yearly variability in staff levels is primarily related to a formula that ties federal funding to state and national economic indicators, as well as the overall availability of federal funds. The influence of the formula is shown by the increase in federally financed staff between 1989 and 1992, a period of rising unemployment in Connecticut.



The employment security activities of the department consume a majority of its available resources. The units most directly involved in this aspect of the department's operations are the executive director's office, appeals division, policy planning unit, operation support unit, tax division, and the job centers. Combined these units account for nearly 900 staff and almost \$60,000,000 of department's operating budget. Adding resources provided by other supporting units such as personnel and information services would increase the total staff to just under 1,100 and expenditures would rise to \$79.4 million. The allocation of resources to these units is shown in Table II-5.

| Table II-5. STAFF AND EXPENDITURE DATA FOR STATE FISCAL YEAR 1994 | | | | |
|---|---------|----------------------|--------------------|--------------------|
| Unit | # Staff | Federal Expenditures | State Expenditures | Total Expenditures |
| Executive Director's Office | 16 | \$1,352,000 | \$0 | \$1,352,000 |
| Program Policy | 7 | \$573,980 | \$0 | \$573,980 |
| Appeals | 62 | \$4,088,604 | \$0 | \$4,088,604 |
| Tax | 176 | \$11,650,783 | \$0 | \$11,650,783 |
| Operational Support | 134 | \$9,031,103 | \$0 | \$9,031,103 |
| Job Centers | 493 | \$33,223,271 | \$0 | \$33,223,271 |
| Total | 888 | \$59,919,741 | \$0 | \$59,919,741 |

Source of Data: CT DOL

POLICY DEVELOPMENT

Because unemployment insurance is an economic security program where benefits are awarded to those deemed qualified and denied to those considered ineligible, policies affecting the eligibility and determination process are extremely important. Workers insured under the system, and employers who finance the system both have major stakes in the development of unemployment compensation system policies.

There are a number of ways in which policies are developed that impact the unemployment compensation system. The *federal government*, which initially mandated that all states implement the program, has a very important role in affecting how the program operates in all states and jurisdictions. Despite federal influence, however, states have broad control in determining how their individual programs will be implemented. One method is the traditional legislative route, exemplified in the 75 pages of the Connecticut General Statutes devoted to the unemployment compensation program and its operation in the state. Other policy-setting mechanisms used in Connecticut include case precedents set by the Board of Review, the Department of Labor's regulation making authority and its own internal policy committee, and

the newly created Advisory Committee on Unemployment Compensation. A brief description of the nonlegislative policy development approaches follows.

Since its creation in 1974, the *Board of Review's* decisions have been statutorily binding on all subsequent proceedings involving similar questions. However, the part-time status of board members and an ever-increasing caseload severely hampered both the board's ability to adequately review cases on appeal and maintain any type of documentation as a guide to case precedents.

In the early 1980s, the Board of Review's procedures came under scrutiny as a result of a lawsuit brought by New Haven Legal Assistance Association and a review of the board conducted by the Legislative Program Review and Investigations Committee. Major outcomes of the two efforts included a change in the status of the board's membership from part time to full time; a mandate for the board to conduct a more careful review of the case record before deciding an appeal; a requirement to develop at least some type of guide to board precedents; and a requirement to promulgate regulations for board procedures. Since the changes went into effect, the board's quasi-judicial role has become more formal and its power to use its case precedent authority to establish policy has taken on added importance.

The *Department of Labor* has also been forced to become more formal and explicit in terms of policy development, especially on determination of eligibility criteria for unemployment compensation. Prior to 1985, DOL primarily used policy letters to set forth new or revised criteria for determining eligibility for unemployment compensation. However, in 1985 DOL issued a policy letter that would have severely curtailed eligibility for seasonal workers. That letter met with a substantial negative response from both workers and employers. As a result, the legislature, in 1985, prohibited the department from using letters as a basis for setting policy on eligibility. Instead, the legislature required the department to develop regulations on or before July 1, 1986, that would establish all necessary criteria for the determination of a claimant's eligibility for unemployment compensation.

The prohibition of its authority to effect change through the policy letter mechanism has forced the department to use the state's regulation-making process to set new policies. The department has also recognized how pivotal the Board of Review's precedent-setting authority is in establishing policy. As a result, the department has used its statutorily provided status as a legal party in all appeal claims as an opportunity to shape policy through board decisions. The department indicates that it uses this mechanism mainly when DOL foresees potential problems in implementing statutes and prior board decisions.

The Department of Labor as part of its reorganization, is attempting to involve local offices in the development of policy concerning program implementation. Rather than top-down policy enforcement, where the central office establishes a policy and transmits it to the job centers for implementation, DOL has established a *policy committee* that includes job center directors as well as some of the division directors from the central office. The policy

committee's role is to advise DOL's executive director and the policy development unit on policies affecting the employment security programs.

None of the policy development mechanisms discussed above include participation by persons or groups from outside the Department of Labor. In 1993, legislation was passed that required outside input into matters affecting the department's employment security operations. As part of major unemployment compensation legislation contained in P.A. 93-243, the General Assembly mandated the creation of an *Unemployment Compensation Advisory Board* to advise the labor commissioner concerning policy for, and the operation of, the state's unemployment compensation system. The board consists of four members representing employers, who must be appointed with advice of statewide employer organizations, and four members representing employees who must be appointed with the advice of statewide labor organizations. The individuals are to be appointed by the Governor and legislative leaders. The eight members must elect a ninth to serve as a chairman.

The act initially prohibited the department from adopting regulations concerning the unemployment compensation system or the Employment Security Division unless a majority of the board approved them. This was subsequently repealed through P.A. 93-419. The act also expressly prohibits the advisory board from advising on the assessment on employers to repay the bonds authorized in P.A. 93-243 or on the billing or collection of those assessments.

CHAPTER III

FINANCING THE UNEMPLOYMENT COMPENSATION SYSTEM

EMPLOYER LIABILITY

Employer liability for payment of unemployment compensation contributions (taxes) is established through Section 31-223 of the Connecticut General Statutes. The law provides for three major categories of employers: 1) those with mandatory liability and who are required to pay taxes into the fund; 2) those employers with mandatory liability who are only required to reimburse the fund for benefits paid to cover former employees, but who do not pay taxes; and 3) those employers who are not liable, but who may or may not volunteer to participate. The following criteria encompass the primary ways in which employers become liable for covering their employees under Connecticut's unemployment compensation system:

- employers who were subject to the law prior to 1980;
- employers who are subject to the Federal Unemployment Tax Act (FUTA) and who employ one or more persons in Connecticut during a year;
- employers who acquire substantially all of the assets, organization, trade, or business of another employer who was subject to unemployment compensation, are immediately subject to laws of the unemployment compensation system;
- employers who paid \$1,500 in wages for any calendar quarter in the current or preceding calendar year;
- employers who had one or more employees (not necessarily the same employee) for at least part of the day in each of any of the 20 weeks during a one-year period (current or preceding calendar year);
- employers who hire workers at a state hospital or higher education institution provided that these employers are excluded from the FUTA but not from state unemployment compensation law;
- employers who engage agricultural workers and who pay cash wages of \$20,000 or more per quarter in either the current or preceding calendar year or who employ at least 10 or more individuals for at least part of a day for each of any 20 calendar weeks during a calendar year; and

- employers who hire person(s) for domestic service in a private home, college club, or chapter of a college fraternity or sorority and who pay cash wages of \$1,000 or more in a calendar quarter in the current or preceding calendar year.

Mandatory employers. The category of employers who are mandated to participate in unemployment compensation and who are required to pay a tax for that coverage make up the largest category of employers. Table III-1 shows that virtually all employers fall into this category. The table also provides numbers for domestic and agricultural employers. While these employers are also required to pay taxes, their mandatory liability for coverage is determined differently.

Reimbursing employers. The other category of employers, which makes up a relatively small number of all the employers in the state, may either be assessed the unemployment compensation tax or they may reimburse the fund for benefits paid out on behalf of workers whom they had employed. This category of employer is comprised of governments or non-profit organizations.

Exemptions. There are a few types of employers as well as types of employment that are excluded from liability. These employers may choose each year whether to cover voluntarily or not. Employers exempt include churches, or organizations supported largely by churches or association of churches, including church-supported schools. Types of employment exempt from coverage include: sole proprietors, duties as an elected official; unemployment work relief or work-training programs; vocational rehabilitation services for physically or mentally handicapped; national or state national guard activity; newspaper delivery by minors; service performed by real estate and insurance agents based solely on commission, service performed by students while in training, including student nurses, and medical interns.

The law prohibits coverage of service performed by an individual in the employ of his son, daughter or spouse, and service performed by children under 18 years old in the employ of either or both parents.

Profile of Major Employer Categories

Table III-1 outlines the major employer categories, the basic liability criteria for each, and the approximate number of employers in that category in January, 1994.

Table III-1. Categories of Employers Liable for Unemployment Compensation Tax

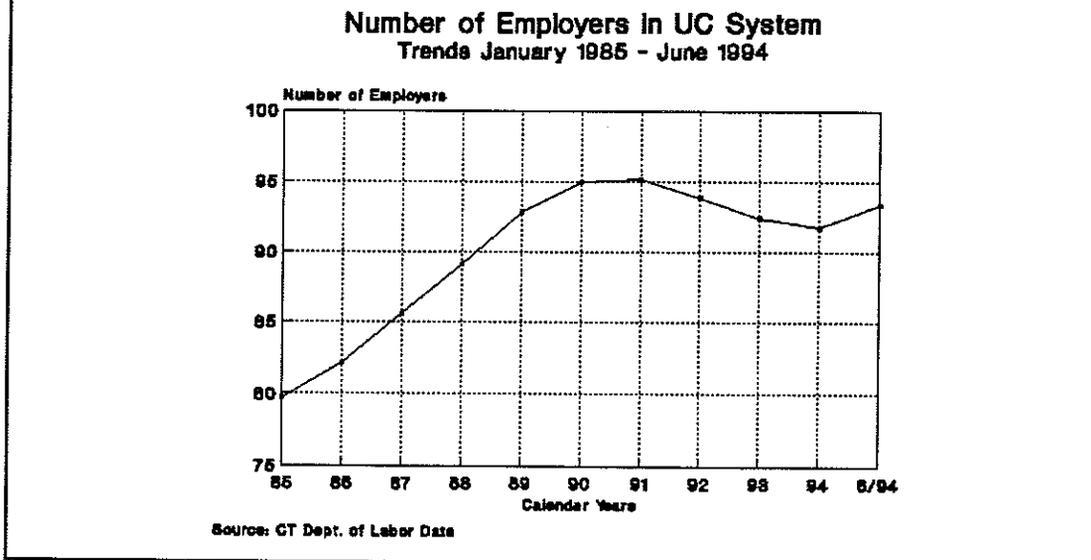
| Type of Employer | Approximate Number (as of Jan. 1, 1994) | Basic Criteria |
|------------------------|---|--|
| Taxable Employers | 84,557 | Have paid at least \$1,500 in wages in a quarter or have at least one employee any part of a day in any 20 weeks of the current or prior calendar year. Becomes liable from the beginning of the year or the first day of business |
| Reimbursable Employers | 1,420 | Must be a government or a non-profit organization exempt from federal income tax under 501 (c)(3), of the Internal Revenue code. Employer becomes liable after the first 13 weeks of wages paid. |
| Domestic Employers | 3,304 | Have paid cash remuneration of at least \$1,000 in any quarter of the current or preceding calendar year. Only cash is taxable, not lodging, clothing, etc. |
| Agricultural Employers | 2,348 | Have 1) paid cash of \$20,000 during any quarter of the current or preceding calendar year to one or more people employed in agricultural labor; or 2) employed at least 10 individuals during any day of any 20 weeks during a calendar year. |

Source of Data: CT Dept. of Labor

Trends in the Number of Employers

There are currently about 93,000 employers in the state of Connecticut who cover workers for unemployment compensation. Figure III-2 shows the trend in the number of employers in the program from 1985 through June 30, 1994. As the graph indicates, the growth had been steady (about 2.76 percent annually) until 1991, when the impact of the recession contributed to a decline in the number of employers. Overall, in the 10-year period, the number of employers providing unemployment coverage has increased by more than 13,000 (17%).

FIGURE III-2.



ASSESSING THE EMPLOYERS

The unemployment compensation benefit system in Connecticut is financed entirely through taxes on employers. The vast majority of employers are assessed three different taxes to fund the system: the charged rate tax; the fund balance tax, and the bond assessment tax. Exceptions include those governmental entities, and most nonprofit organizations that choose to reimburse the state unemployment compensation trust fund for any benefits paid to their employees. This is an option that is available to all employers in these two categories.

The amount of state unemployment compensation taxes paid by an employer is a function of the: 1) amount of wages paid by the employer that are subject to the state's taxable wage base; 2) amount of unemployment benefits paid to the employer's workers over a specified period of time; 3) solvency of the state's unemployment compensation trust fund; and 4) financial obligations associated with state bonds issued to pay off a debt to the federal government. A brief description of how each of the four components impacts taxes paid by employers to finance the trust fund and the state's bond debt follows.

Financing the Unemployment Compensation Trust Fund

Taxable wage base. Taxable wages are that part of an employer's payroll subject to unemployment compensation taxes. The taxable wage base is currently the first \$9,000 in wages an employer pays to each employee covered by the state's unemployment compensation law. The taxable wage base will rise each January from 1994 through 1999 in accordance with a schedule set out in Public Act 93-243 and shown in Table III-3. Wages paid to individuals above the base are not subject to the tax. To illustrate, assume an employer has 11 employees

including 2 part time workers who are each paid \$4,500 per year, and 9 full time workers who are each paid \$25,000 a year. The employers taxable wage base is \$90,000 [(\$4,500 X 2 -- the two part time workers) + (\$9,000 X 9 --the nine full time employees)]. The aggregate of taxable wages paid by an employer is crucial in determining the amount of taxes an employer owes. It serves as the base against which various tax rates are multiplied to produce the amount of money the employer owes.

| | |
|--------------|----------|
| January 1994 | \$9,000 |
| January 1995 | \$10,000 |
| January 1996 | \$11,000 |
| January 1997 | \$12,000 |
| January 1998 | \$13,000 |
| January 1999 | \$15,000 |

Source for Taxable Wage Data: Public Act 93-243

Charged tax rate. The charged rate tax is generally the largest component of an employer's unemployment compensation tax. The charged rate, also known as merit or experience rate, is based on the premise that an employer's contributions to the state's unemployment compensation trust fund should be related to that employer's use of the fund. The charged rate represents the ratio between the benefits paid to that employer's unemployed workers during a specified period of time and the total amount of taxable wages paid by their employer during the same period. The ratio calculated by this method is expressed as a percentage. For example, if during a three-year period the aggregate benefits paid to former employees in the above example were \$5,400 and taxable wages paid by the employer totaled of \$270,000 (\$90,000 per year X 3 years), the resulting benefit ratio would be 0.02 [$\$5,400$ (aggregate benefits paid) / $\$270,000$ (total taxable wages) = 0.02] and the employer's charged rate would be 2 percent.

The typical period upon which an employer's rate is based is the previous three years, ending each June 30. A three-year period is used because it levels the tax rate, by diminishing the sharp increases and decreases that might occur from year to year. However, if there are chargeable benefits for at least the 12 months preceding June 30, the employer can be rated based on that experience. If the employer does not have sufficient time on which to be experience rated, that employer's rate will be the higher of either 1 percent of the employer's taxable wage base, or the state's five-year benefit cost rate, which DOL computes annually by dividing the total benefits paid to all claimants in the state during the five years by the total taxable wages paid by all employers for the same period. The state's 5-year benefit cost rate for 1994 is 3.9 percent.

There is a minimum and a maximum charged rate that employers can incur -- .5 percent minimum and 5.4 percent maximum. The charges are assessed in increments of 1/10 of one percent. If the percent is not an exact multiple of 1/10 of 1 percent, the charged tax rate will be the next multiple higher. Thus, if the resulting percent yields less than .5 percent, that employer shall be charged .5 percent, but even if the resulting percent is greater than 5.4 percent, that is the maximum that can be charged.

Fund balance tax rate. A second component of the unemployment tax paid by an employer is based on a rate tied to the solvency of the state's unemployment compensation trust fund. The rate, known as the fund balance rate, is established each December 30 by the labor commissioner. The rate is the same for all employers, and is expressed as a percentage of the employer's taxable wage base. It is designed to insure the balance in the state's trust fund is maintained at 0.8 percent of the total wages paid by employers to covered workers during the 12-month period ending the preceding June 30.

Public Act 93-243 states that the annual fund balance tax rate cannot exceed 1.5 percent between January 1, 1994, and January 1, 1999. After that, it may not exceed 1.4 percent. The law requires that if the fund balance exceeds 0.8 of one percent of the total wages paid in the state as of December 30th of any year, the tax rate for the next year must be restricted to a level that will eliminate the excess balance. The rate for 1994 is the maximum of 1.5 percent.

Trust fund contributions. The total amount that an employer must pay to finance the state's unemployment compensation trust fund is calculated by multiplying an employer's aggregate taxable wages by its charged rate plus the fund balance rate. For example, adding the 1.5 percent fund balance rate to the 2 percent charged rate calculated for the employer in the previous illustration would produce a tax rate of 3.5 percent. If the taxable wages paid by the employer in the current year were \$90,000, the employer's trust fund taxes would be \$3,150.

The Department of Labor issues tax returns to employers quarterly. The employer completes the return based on its assigned contribution rate and taxable payroll for that quarter. The taxes are due on the last day of the month following the end of a calendar quarter. Interest is one percent per month, and penalties are due at the rate of 10 percent or \$50, whichever is greater, on contributions more than 30 days late.

Financing State Bond Obligations

Bond assessment rate. Historically, employers have been assessed a uniform tax to pay the interest due the federal government on money borrowed by the state when its trust fund was insolvent or near insolvency. In the first two years of borrowing from the federal government, no payments on the principal were due and none were made, as the state struggled to avoid raising taxes on employers. However, by 1993 continued non-payment of the principal would have jeopardized the credit the federal government gives state employers on their federal unemployment taxes. In response to the size of the state's debt (\$712 million as of June 30,

1993),⁴ and the rate of interest charged by the federal government, the state adopted P.A. 93-243. The act authorized the state to issue bonds and use the proceeds to pay off the federal government. The bonds, which carry a lower interest rate than the federal government was charging, will reduce the cost of financing the state's debt by an estimated \$112 million.

The act created a fund, named the Advance Fund, to receive the initial revenue from sale of the bonds, assessments collected from employers to pay off the bonds, interest on investment income, and any funds from the federal government. The administrative costs of issuing the bonds, establishing and running the fund, and collecting the assessments from employers are all chargeable to the fund.

The bonds and all expenses associated with the advance fund are to be paid through annual special assessment on employers. The State Treasurer determines the amount that will need to be collected to pay off the debt and interest and the commissioner of labor sets the bond assessment rate accordingly. The rate is expressed as a percentage of the employer's charged rate, which yields a specific assessment rate that varies directly with the charged rate. In determining the amount owed, the employer's specific assessment rate is multiplied by the employer's taxable wages for the previous year ending June 30. For 1994, the commissioner set the overall assessment rate at .34 (or 34 percent of the employer's charged rate). Thus, the employer in the above examples would have a bond assessment rate of .0068 [.34 (assessment rate) X 2.0 (charged rate) = .0068]. Plugging this rate into the formula yields an assessment of \$612 [.0068 (bond assessment rate) X \$90,000 (taxable wages) = \$612].

Federal Assessments

In addition to the state taxes collected to fund the unemployment compensation benefit system, the federal government also levies a tax on all employers in the state. Currently, the Federal Unemployment Tax Act (FUTA) charges employers 6.2% of the first \$7,000 of each employee's wages. However, the federal government allows an offset or credit of 5.4% to employers in each state that has a federally approved unemployment insurance plan. Therefore, the net federal tax rate is 0.8 percent (or \$56) per worker (0.8 X \$7,000). In the case of the employer used the examples above this would amount to an additional tax of \$560 [.008 (federal tax rate) X \$70,000 (federal taxable wages) = \$560]. Table III-4 shows the impact of the various taxes and assessment on three sample employers with different taxable wage bases.

Funds collected from the federal tax are allocated into three unemployment insurance funds: the Employment Security Administration Account, which finances the entire state and federal administrative costs (permitting state taxes assessed on employers to pay for benefits only); the Extended Unemployment Compensation Account (EUCA), which pays 50 percent of extended benefit payments and 100 percent of emergency unemployment compensation; and the

⁴ Research Bulletin. National Foundation for Unemployment Compensation & Workers' Compensation, August 1993, p.5.

Table III-4. Examples of Unemployment Compensation Taxes Assessed Against Three Sample Employers

| | Col. 1 Taxable Wages | Col. 2 Charged Rate | Col. 3 Charged Tax | Col. 4 Fund Balance Rate | Col. 5 Fund Balance Tax | Col. 6 Contribution to Fund | Col. 7 Exp. Bond Assmt. Ratio | Col. 8 Result. Bond Assmt. Rate | Col. 9 Bond Assmt. | Col. 10 FUTA Tax | Col. 11 Total State and Fed. UC Tax |
|------------|-------------------------|------------------------|-----------------------|-----------------------------|----------------------------|--------------------------------|----------------------------------|------------------------------------|-----------------------|---------------------|--|
| Employer A | \$90,000 | .5 | \$450 | 1.5 | \$1,350 | \$1,800 | .34 | .17 | \$153 | \$560 | \$2,513 |
| Employer B | \$90,000 | 3.0 | \$2,700 | 1.5 | \$1,350 | \$4,050 | .34 | 1.02 | \$918 | \$560 | \$5,528 |
| Employer C | \$90,000 | 5.4 | \$4,860 | 1.5 | \$1,350 | \$6,210 | .34 | 1.83 | \$1,647 | \$560 | \$8,417 |

Key to Assessment Formulas:

Charged Rate Tax: $\text{col.2} \times \text{col.1} = \text{col.3}$

Fund Balance Tax: $\text{col.4} \times \text{col.1} = \text{col.5}$

Total UC Trust Fund Tax: $\text{col.3} + \text{col.5} = \text{col.6}$

Bond Assessment Tax: $\text{col.7} \times \text{col.2} = \text{col.8}$ $\text{col.8} \times \text{col.1} = \text{col.9}$

Federal Unemployment Tax Act (FUTA) Tax: $.08 \times \$7,000 \times \text{Covered Employees} = \text{col.10}$

Total Unemployment Compensation Taxes: $\text{col.3} + \text{col.5} + \text{col.9} + \text{col.10} = \text{col.11}$

The table above illustrates the effect that experience rating has on the amount of unemployment compensation taxes employers with identical taxable wage bases. Employer A has a taxable wage base of \$90,000 as do Employers B and C but the charged rate Employer A incurs is the minimum allowed by state statute, and thus the amount of taxes paid to the trust fund is significantly lower than that paid by Employer B or C. The bond assessment is also affected by the charged rate, so that employer's with lesser charged rates will incur a smaller bond assessment as well. The fund balance tax and the federal FUTA tax are not tied to employer's experience, and relate only to the particular employer's taxable wage base. Thus, with the examples in the table, these two taxes have the same effect on all employers.

Employer B, whose charged rate is in the mid-range of the statutory minimum and maximum, will pay more than Employer A but less than Employer C. Employer C, again with the same taxable wage base, but with the maximum charged rate allowed pays total unemployment compensation taxes that are more than three times higher than Employer A of similar size. It should be noted, however, that if the maximum charged rate were not capped, and the full impact of an employer's use of the fund were reflected in that rate, the employer's tax would be even higher.

Federal Unemployment Account (FUA), which provides loans to states experiencing insolvencies in their accounts.

POOLING OR NON-CHARGING BENEFITS

Every state, including Connecticut, allows the charges for some unemployment insurance benefits awarded to claimants to be pooled among all employers, rather than charging those benefits to the individual employer. These "noncharging" provisions have been enacted generally because it seemed unfair and unreasonable to have certain charges assigned to an individual employer.

The National Foundation for Unemployment Compensation and Workers' Compensation, in its 1994 annual update of state unemployment compensation laws, grouped the reasons for pooling into the following eight major categories:

- federal-state extended benefits;
- reimbursements to other states for benefit costs on combined wage claims;
- benefits paid pursuant to a decision later reversed;
- benefits paid to a claimant who voluntarily quit a previous base period employer without good cause;
- benefits paid following a discharge for misconduct;
- benefits paid following a refusal of suitable work;
- employer continues claimant on some part-time basis during base period;
and
- "other".

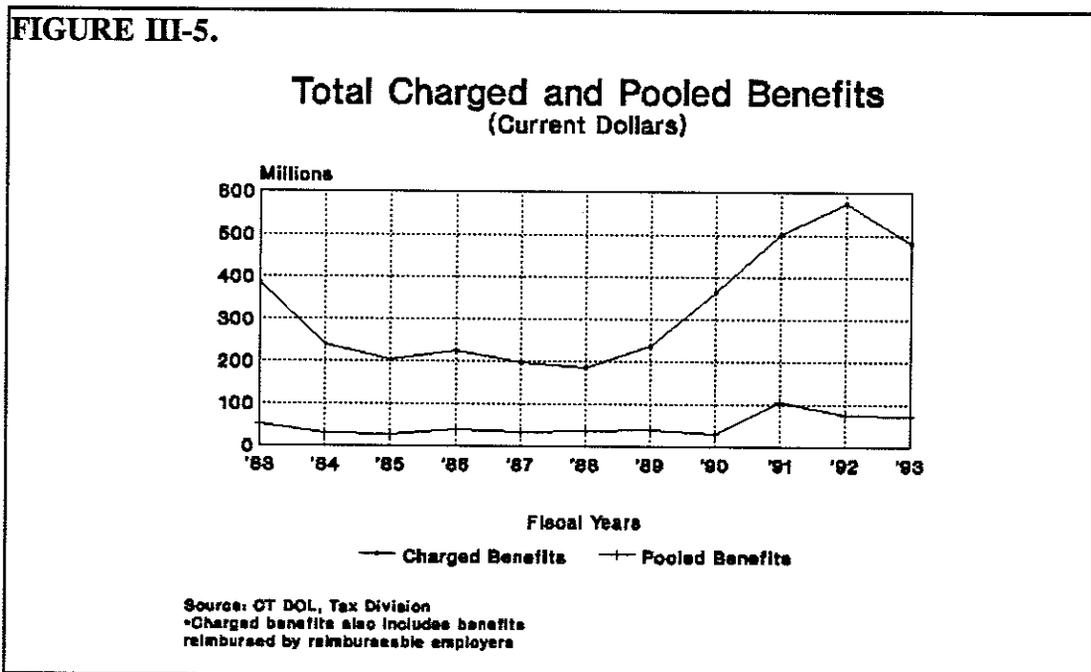
Not every state allows all of the above categories to be considered non-chargeable provisions. In fact, only Iowa permits pooling under all eight conditions, while another six states, including Connecticut, allow pooling under seven of the eight provisions. The other states permit fewer pooling provisions.

The non-charging provisions in Connecticut are covered in Section 31-225a(c)(1)(A) of the Connecticut General Statutes, and provisions have gradually been added over the years. In Connecticut, the "other" category includes the permitting of pooling for: dependency allowance; employers who paid the claimant less than \$500 in wages during the base period; unemployment

caused by natural disaster; unemployment awarded for claimants who must voluntarily leave employment to care for a seriously sick spouse, child, or parent; certain transportation problems; or a discharge resulting from a claimant failing a state and federally approved drug test.

Initially, only employers who were required to pay taxes were allowed to use the pool; but the law was expanded in 1985 (P.A. 85-25) to allow reimbursing employers -- those that only reimburse the fund for benefits paid -- to be eligible for pooling in very specific circumstances.

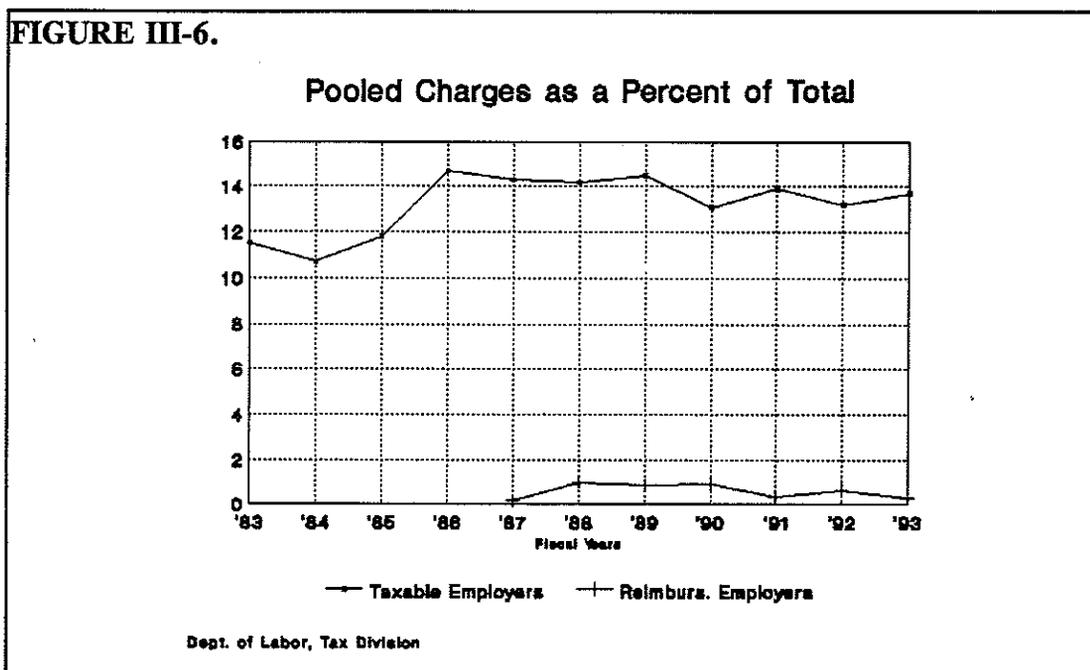
Financial aspects of pooling. While the pooling provisions in Connecticut appear broad, to date there has not been any great financial impact on the unemployment compensation fund. But the trend toward pooling is growing. Figure III-5 compares charged and pooled benefits paid from the fund in current dollars from FY 83 through FY 93. As the figure shows, by far the largest amount of benefits paid to claimants are charged to individual employers, while the amount pooled is much less.



The graph also shows that pooled benefits took a noticeable jump in FY 91 to more than \$100 million, and has not declined to previous levels since -- staying at \$71.9 million and \$72.6 million in FYs 92 and 93 respectively. This trend in pooling is of special concern considering that a drop in overall benefits occurred in FY 93. The committee attributed this growth largely to legislation passed in 1991 (P.A. 91-107) that allows pooling for benefits paid to a claimant approved and then later denied on appeal.

The trend in the percentages of pooled benefits for taxable employers and reimbursing employers is shown in Figure III-6. The figure shows the charges for reimburseable employers beginning in FY 87, because, as noted above, these employers could not pool charges prior to the 1985 legislation. The portion of the reimburseable employers' benefits that are pooled is not significant -- typically about 1 percent of all payouts incurred by reimburseable employers. However, while these amounts are at most \$1 million annually, they are paid from fund solvency taxes, which are paid only by taxable employers.

The graph depicts that the pooling for taxable employers has been below 15 percent of the benefits paid to employees of those employers. However, it also shows that prior to FY 86 the percentage of pooled benefits was in the 11 and 12 percent range; since FY 86 that percentage has hovered at about 14 percent. This means that \$1 of every \$7 or \$8 of benefits paid to claimants of taxable employers is pooled.



Connecticut's Unemployment Trust Fund

Trends in employer taxes collected. Connecticut's Unemployment Trust Fund, from which benefits are paid to unemployed workers, is funded entirely through employer taxes, as discussed earlier.

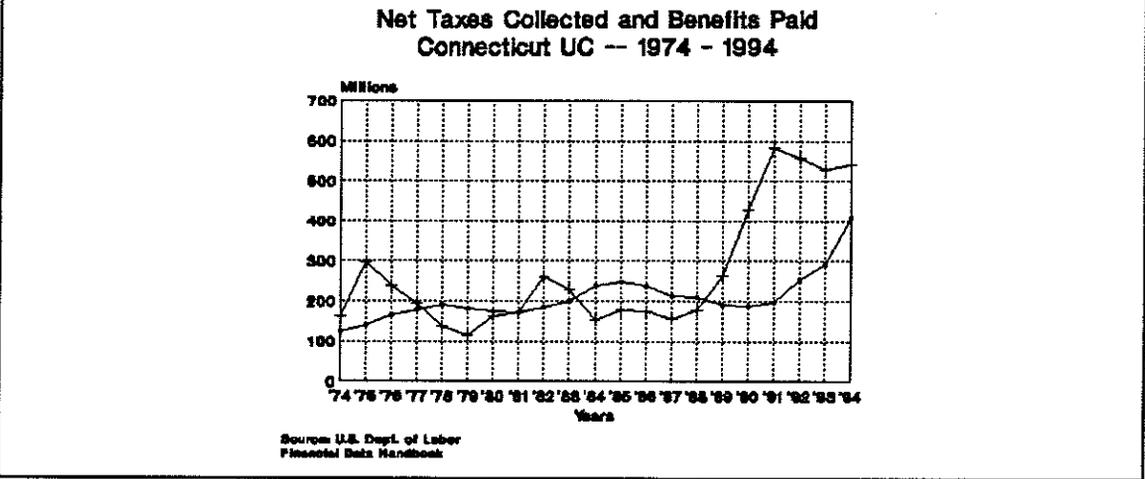
Table III-7 shows the actual tax dollars collected from employers and the benefit amounts paid to unemployed workers. Over the 11-year period from 1984 to 1994, much more went to

benefits than the taxes collected to pay them. The extent of the disparity is significant. In the 11-year period examined, the total taxes collected, (and reimbursements collected from governments and non-profits) amounted to approximately \$2.8 billion dollars, but the aggregate benefits paid were approximately \$3.7 billion, a deficit of about \$900 million.

| Table III-7. Comparison of Actual Taxes Collected and Benefits Paid FY 84 - FY 94 | | |
|--|------------------------------|----------------------------|
| Fiscal Year | Taxes Collected (in 000s) | Benefits Paid (in 000s) |
| 84 | \$237,060 | \$184,262 |
| 85 | \$255,698 | \$165,541 |
| 86 | \$248,227 | \$187,189 |
| 87 | \$228,163 | \$173,093 |
| 88 | \$218,215 | \$168,288 |
| 89 | \$206,613 | \$226,731 |
| 90 | \$198,643 | \$358,938 |
| 91 | \$209,993 | \$547,898 |
| 92 | \$262,479 | \$626,739 |
| 93 | \$316,785 | \$528,233 |
| 94 | \$433,663 | \$542,886 |
| Total | \$2,815,512 | \$3,709,798 |
| Source: CT. Dept. of Labor | | |

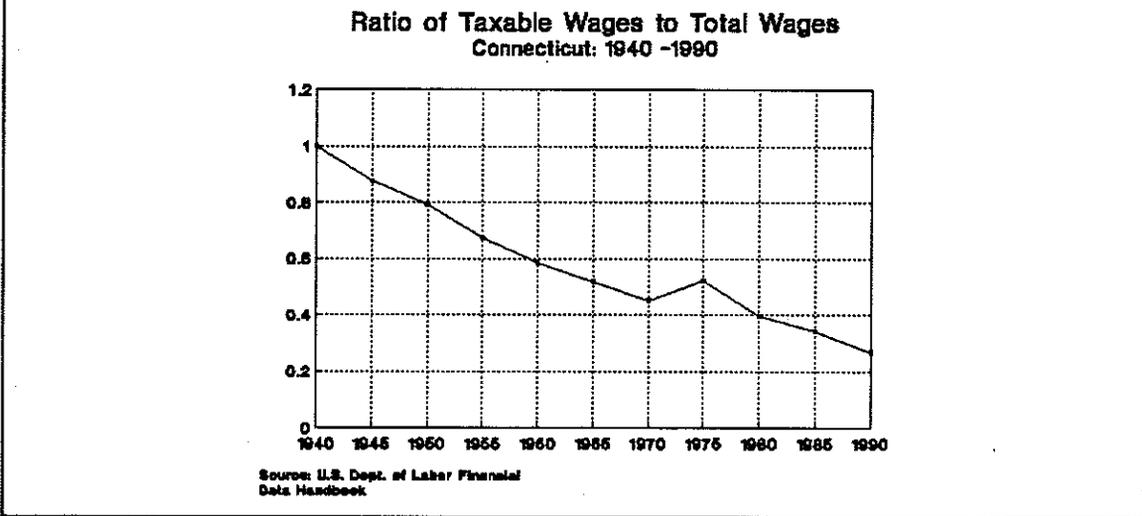
Figure III-8 depicts the trends in these two unemployment fund statistics over the last 20 years. The graph illustrates that the taxes collected in Connecticut when the economy was good did not provide enough reserves to pay for the severe drains on the fund during the recessions of the mid-1970s, the early 1980s, and the late 1980s into the 1990s. For example, in 1975 benefits of almost \$300 million were paid but only \$141 million were collected. Again, in 1982 about \$100 million more in benefits were paid than was collected. While the economy improved for most of the remainder of the decade, the taxes collected did not provide a sufficient buffer for the severe recession that began in 1989 and still lingers.

FIGURE III-8.



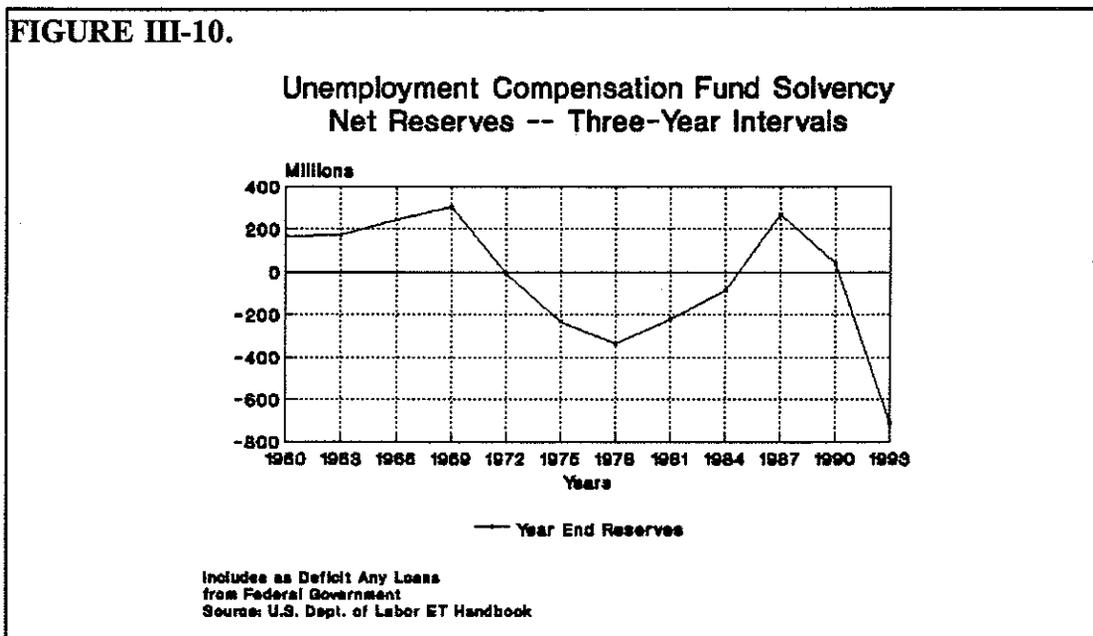
One of the factors that contributed to taxes not keeping pace with benefits paid was the taxable wage base did not increase to keep pace with wages. Until January 1994, Connecticut had not changed its \$7,100 taxable wage base since 1983 when the federal government mandated that all states have a taxable wage base of at least \$7,000. Most other states had adjusted their taxable wage bases during the 1980s to keep up with increasing payrolls. Twelve states and territories still maintain the minimum level of \$7,000 required by federal law, but 39 states had increased those levels, although Connecticut was one of the last states to do so. The effect of this has been a gradual but significant decline in the ratio of taxable wages to total wages. Figure III-9 shows this decline, measured in 5-year increments, to its all-time low in 1992 of .241. This means that, prior to the 1994 increase, less than \$.25 of every \$1.00 was subject to unemployment compensation payroll tax in Connecticut.

FIGURE III-9.



Such a low tax ratio on payroll would be alright if unemployment rates remained steadily low. But unemployment levels are not flat. Instead, there are surges in unemployment during economic downturns, and since benefits are paid on wages earned, taxing such a small portion of wages severely impacts the state's unemployment compensation trust fund during recessions.

Trust fund insolvency. The impact of the above trends in Connecticut was to render the fund insolvent. To keep the fund afloat, Connecticut borrowed from the federal government; by June of 1993 the state owed the federal government \$712 million. Figure III-10 shows the status of the year-end reserves of the fund for three-year intervals from 1960 through 1993. For the entire period, the trust fund experienced a deficit of about \$800 million dollars.



All states have experienced difficulties maintaining reserves during tough recessions, Connecticut's fund has fared worse than most. One of the measures to gauge the financial shape of state trust fund is the ratio of reserves to total wages (i.e. payroll) in that state. Table III-11 on page 39 shows how Connecticut's reserve ratio compares with other states.

Current status. To repay the debt and not jeopardize losing some of the federal tax credit, the Connecticut legislature passed P.A. 93-243, floating bonds to repay the debt and restore the fund to more solid financial footing. The results of that has been that as of June 30, 1994 Connecticut no longer has any federal government debt. However, as of the same date, the outstanding debt due to the bonds was \$879 million, but the state had built up a trust fund reserve of \$47.8 million. As of August 1, 1994, employers received their first bond assessment billings, as discussed previously. The payments for the assessments were due on August 31, 1994.

Table III-11. Nationwide Comparison of State Reserve Ratios -- 1992.

| State | Ratio | State | Ratio |
|----------------|-------|----------------------|-------|
| Puerto Rico | 9.05 | Tennessee | 1.50 |
| Virgin Islands | 7.33 | Kentucky | 1.49 |
| Oregon | 4.71 | Florida | 1.47 |
| Alaska | 4.47 | Nebraska | 1.46 |
| Vermont | 4.45 | Rhode Island | 1.41 |
| Washington | 4.18 | West Virginia | 1.38 |
| Wyoming | 3.71 | New Hampshire | 1.38 |
| Idaho | 3.67 | Arizona | 1.36 |
| Hawaii | 3.57 | South Dakota | 1.34 |
| Iowa | 3.16 | Colorado | 1.10 |
| Delaware | 3.04 | California | 0.98 |
| Wisconsin | 2.90 | Virginia | 0.96 |
| Kansas | 2.89 | Pennsylvania | 0.84 |
| Utah | 2.83 | Illinois | 0.74 |
| New Jersey | 2.83 | Ohio | 0.66 |
| New Mexico | 2.77 | Arkansas | 0.55 |
| Mississippi | 2.48 | Minnesota | 0.54 |
| North Carolina | 2.25 | Maine | 0.44 |
| Louisiana | 2.22 | Texas | 0.41 |
| Oklahoma | 2.10 | Maryland | 0.37 |
| Indiana | 1.99 | Michigan | 0.17 |
| Alabama | 1.96 | New York | 0.12 |
| Montana | 1.87 | Missouri | 0.01 |
| Nevada | 1.79 | Massachusetts | 0.00 |
| South Carolina | 1.73 | Connecticut | 0.00 |
| Georgia | 1.68 | District of Columbia | 0.00 |
| North Dakota | 1.51 | | |

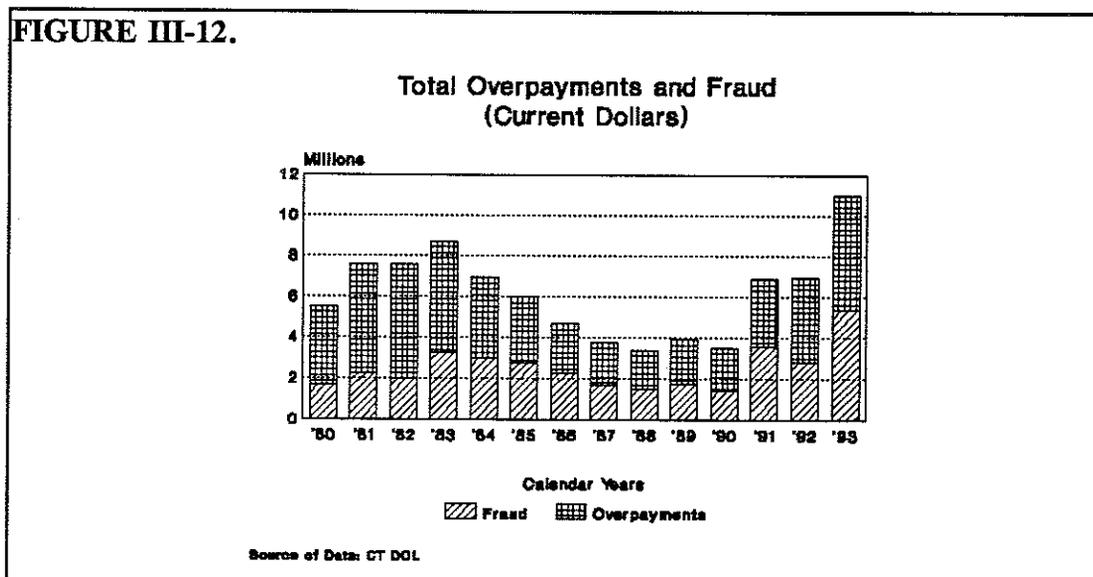
Source: US Department of Labor, Unemployment Insurance Statistics

BENEFIT OVERPAYMENTS AND RECOVERIES

As with any benefit program, overpayment and fraud are issues the Department of Labor must face in administering the compensation program.

Overpayment of unemployment benefits can occur in several ways: 1) payments made in error by the administrative agency, for example, a computational or clerical error; 2) errors made unintentionally by the claimant that results in an overpayment; 3) payments made to a claimant as a result of decision that is later reversed on appeal; or 4) intentional misrepresentation on the part of the claimant, hereafter referred to as fraud.

Trends in overpayments and fraud. All overpayments in unemployment compensation in Connecticut, including both fraud and non-fraud, from 1980 to 1993 are shown in Figure III-12 in current dollars. The bars show that total overpayments (including both fraud and non-fraud) have increased from a low of less than \$4 million in 1990, to more than \$10 million in 1993. The graph also illustrates the trend in fraud only, and shows that it mirrors overpayments in general.



The department indicates that some of the recent growth in overpayments is due to the federal Emergency Unemployment Compensation program that was authorized in November 1991, and reauthorized several times, until its termination in February 1994. According to DOL staff, each time the program was reauthorized the eligibility rules changed slightly, causing confusion about whether claimants qualified for the emergency program or regular unemployment benefits, and resulting in overpayments under the regular program.

The data reveal no clear trend in the relationship between overpayments (including fraud) and benefits paid from 1982 through 1992. But, it does appear that the higher the benefits paid for a given year, the lower the percentage of fraud detected. This may indicate that when there is less unemployment, there is a greater concentration on overpayments and fraud. Table III-13 shows all overpayments (fraud and non-fraud), the total benefits paid, and overpayments as a percent of total benefits paid from 1982 to 1992 (all of the numbers in actual dollars).

However, of even greater concern is the growth in the amount of dollars obtained fraudulently. As Figure III-14 indicates, adjusting for inflation, the amount of benefits collected fraudulently increased from less than \$2 million in 1990 to almost \$4 million in 1991. In 1993, the amount again grew to more than \$5 million. Fraud as a percent of total overpayments is considerable. Figure III-13 shows that the percent has ranged between 40 and 50 percent in 9 of the last 10 years, and exceeded 50 percent in 1991.

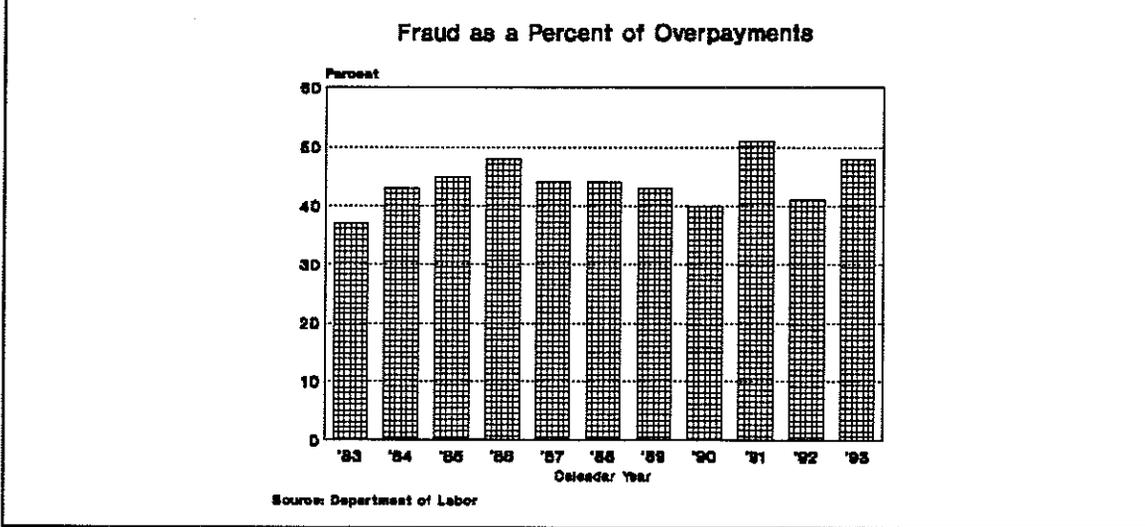
| TABLE III-13: Overpayments As A Percent Of Benefits Paid | | | |
|--|-----------------|--------------|---------------------|
| Year | Benefits Paid | Overpayments | OP as % of Benefits |
| 1982 | \$284,357,132 | \$4,813,237 | 1.7% |
| 1983 | \$287,920,186 | \$5,761,631 | 2.0% |
| 1984 | \$178,883,555 | \$4,751,531 | 2.7% |
| 1985 | \$187,628,801 | \$4,265,050 | 2.3% |
| 1986 | \$183,096,454 | \$3,414,270 | 1.9% |
| 1987 | \$163,286,383 | \$2,820,963 | 1.7% |
| 1988 | \$184,954,866 | \$2,639,883 | 1.4% |
| 1989 | \$273,313,163 | \$3,185,930 | 1.2% |
| 1990 | \$445,491,570 | \$2,987,270 | 0.7% |
| 1991 | \$646,401,363 | \$6,192,789 | 1.0% |
| 1992 | \$1,011,037,768 | \$6,381,862 | 0.6% |

Source of Data: CT. Department of Labor

EMPLOYER FRAUD

Of course, claimants are not the only ones who abuse the unemployment compensation system. Employers who misclassify persons as independent contractors when they are in fact employees, or employers who pay a person "under the table" without paying the payroll taxes are significantly undermining the unemployment compensation system.

Figure III-14.



It is difficult to know the extent of this problem. At the committee's public hearing in September of 1994, an economics professor from the University of Connecticut testified that he believes that Connecticut's unemployment compensation fund lost between \$12.5 million and \$17.2 million due solely to the issue of misclassifying employees as independent contractors. His estimations were based partially on a study conducted in Illinois. Data obtained from the Department of Labor's Tax Division indicate that the problem is likely significant. The data, contained in Table III-15 show that the amounts collected through its field audit units has doubled in the past five years.

| Federal Fiscal Year Ending: | Amount Collected |
|-----------------------------|------------------|
| September 30, 1990 | \$3,833,889 |
| September 30, 1991 | \$3,844,377 |
| September 30, 1992 | \$3,580,551 |
| September 30, 1993 | \$7,673,829 |
| September 30, 1994 | \$7,702,030 |

Source: CT Dept. of Labor, Tax Division

CHAPTER IV

OVERVIEW OF THE EMPLOYMENT SECURITY FUNCTION

This chapter discusses the major functions of the state's employment security program including: eligibility criteria; benefit structure; eligibility process; and employment services. Also included is a segment comparing Connecticut with other states on a series of benefit and tax measures.

ELIGIBILITY CRITERIA

Connecticut's criteria for determining eligibility for unemployment compensation benefits can be grouped into three categories: 1) monetary requirements; 2) job separation issues; and 3) availability for employment. A brief summary of each category follows.

Monetary eligibility requirements. Connecticut General Statutes specify that to be eligible for benefits a claimant must have earned at least 40 times the amount he or she will be paid in weekly unemployment benefits, within the first four of the five most recently completed calendar quarters prior to the quarter in which the claim is filed. The weekly rate is calculated by taking the average of a claimant's two highest earning quarters during the four quarter period and multiplying the average by 1/26.

Job separation issues. As a condition for receiving unemployment compensation benefits, a person must have become unemployed through no fault of their own or circumstances beyond their control. Thus, a person who voluntarily leaves a job is generally not eligible for unemployment benefits. There are exceptions including if the claimant left as a result of: a health problem; a change in working conditions caused by the employer which made the job unsuitable; the need to care for an ill spouse, child, or parent; or the loss of transportation other than a personally owned vehicle. Also, a person is not eligible if he or she was fired for any of the following reasons: repeated wilful misconduct; a single act of wilful misconduct which seriously endangers the life, safety, or property of the employer or fellow employees; larceny of property or services valued at \$25 or more; theft of currency of any value; felonious conduct; or participation in an illegal work stoppage. A disqualification resulting from a job separation issue is in effect until the person earns 10 times his or her benefit rate and is otherwise eligible.

Current availability for employment status. After establishing eligibility, the state requires the claimant to meet basic criteria during each week for which benefits are claimed. The criteria require the claimant to be: available for work; physically and mentally able to work; registered with DOL's job service; and making a reasonable effort to find suitable work, which is defined as work that the claimant is reasonably fitted for in terms of health, safety, morals issues, training, experience, skills, and previous wage level.

Disqualification for these issues are generally on a week to week basis until the condition which caused the disqualification has changed. In addition, all refusals to work raise an eligibility issue that must be adjudicated. Refusal of suitable work without sufficient cause results in a disqualification until the claimant returns to work and earns six times his or her weekly benefit rate.

BENEFIT ENTITLEMENTS

A claimant determined to be eligible for unemployment insurance benefits is entitled to a weekly benefit ranging between \$15 and \$335 depending on earnings while employed. The claimant is also entitled to \$10 for each qualified dependent up to a maximum of \$50. Thus, the overall maximum weekly benefit can be as high as \$385.

The \$15 minimum rate is set in statute (CGS Sec. 31-231a). The maximum rate is adjusted each October based on a formula outlined in state statute. The law requires the maximum rate to be 60 percent of the average wage of production and related workers employed in the state, provided the increase in any given year does not exceed \$18 (CGS Sec. 31-231a).

A qualified dependent includes a nonworking spouse (provided spouse is not also receiving unemployment compensation), and each child who is wholly or mainly supported by the claimant and under 18 years of age or under 21 and in school or mentally or physically handicapped. However, the total number of qualified dependents may not exceed 5 and the total dependency allowance can not exceed 50 percent of the benefit rate.

The weekly rate is 1/26 of the average of the all wages paid in the two highest calendar quarters during the claimants base period, which consists of the first four of the five most recently completed calendar quarters prior to the quarter in which the claim is initiated. The claimants weekly benefit rate (subject to the statutory minimum, maximum, and dependency constraints) is determined by the following formula:

$$\text{Weekly Benefit Rate} = \left(\frac{\text{Total of Two Highest Quarters} \cdot}{2} \right) \times \left(\frac{1}{26} \right)$$

• Highest two qtra. of the first four qtra. of five most recently completed qtra.

For example, if an individual files for unemployment compensation on May 15, 1994, his or her base period would be January 1, 1993, through March 31, 1994. If the individual had consecutive earnings during the five quarters commencing January 1993 of \$7,500, \$5,500,

\$8,000, \$7,000, and \$6,000, the person's weekly rate, excluding any allowance for dependents would be \$298, based on the following calculation.

$$\begin{aligned}\text{Weekly rate} &= [(\$8,000 + \$7,500) / (2)] * (1/26) \\ &= [\$15,500 / 2] * (1/26) \\ &= [\$7,750] * (1/26) \\ &= \$7,750 * .038 \\ &= \$298\end{aligned}$$

Under the state's regular unemployment insurance program, an eligible claimant's benefit entitlement period will be in effect for the 52 weeks commencing the week he or she files a valid claim. During that period the claimant may collect up to 26 times his or her weekly rate.

DETERMINATION OF ELIGIBILITY

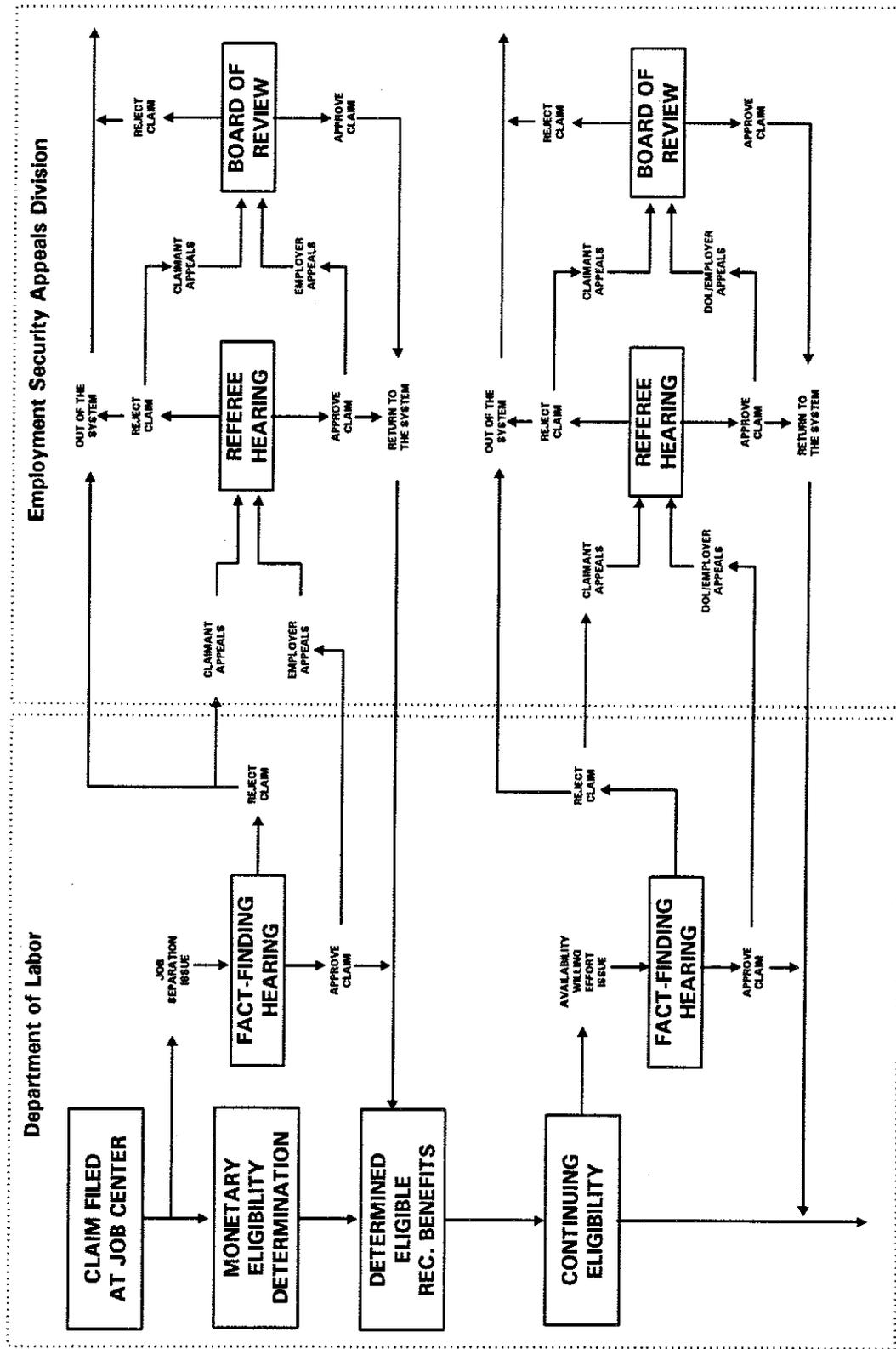
Figure IV-1 provides an overview of the basic process for determining a claimant's eligibility for unemployment compensation benefits. The steps shown in the graphic are specified in various state statutes, federal laws, and state and federal regulations. The procedures associated with each step have been shaped by federal mandates, court decisions, and budgetary considerations.

It is important to note that the steps illustrated in Figure IV-1 represent a simplified version of the process. If all the potential combinations and permutations were presented, several more steps would be needed to show how special circumstances are handled. However, Figure IV-1 is sufficient to explain the basic procedures used in processing the vast majority of unemployment benefit claims. For descriptive purposes the process has been categorized into five stages: initial filing of the claim; monetary eligibility; job separation eligibility; appeals; and continued claims.

Initial Filing

- 1a) The process begins with a claimant filing an application form (Form UC-62) usually at the DOL job center most accessible to the claimant's residence or place of last employment. A DOL interviewer reviews the completed application and the pink slip (Form UC-61) that the claimant obtained from his or her employer. The pink slip indicates the circumstances under which the claimant left work. The completed application form is sent to DOL central office in Wethersfield for use in calculating the claimant's benefit rate and determining if the monetary standards for eligibility have been met.
- 1b) If the pink slip does not indicate that any apparent job separation issues are involved in the claim, the job center representative schedules a meeting to explain the claimant's rights and responsibilities and to register the person with DOL's

FIGURE IV-1. BENEFIT DETERMINATION PROCESS



job service. In some centers the meeting may take place immediately, in others it is arranged for the following week.

- 1c) If the claimant does not have a pink slip and the separation cannot be verified as a lack of work or the slip indicates that he or she voluntarily left work or was fired, the interviewer automatically schedules a fact-finding hearing to take place usually within 10 days. A copy of the hearing notice (Form UC-840) is given to the claimant and another is mailed to the employer.

Monetary Eligibility

- 2a) Generally, the claimant's application (Form UC-62) arrives at the DOL's central office within 48 hours. The information is reviewed by the Claims Examination Unit, which determines whether the data are ready for entry into the department's computer system or need further investigation. If the claimant has worked for a private sector employer, the State of Connecticut, or any public sector employer except the federal government or the military, his or her base-year wages will be available through DOL's on line computer records. If the wage data appear incomplete or inaccurate, DOL undertakes a wage investigation directly with the employers listed by the claimant. If the claimant reported an out-of-state employer, DOL contacts the labor department in the appropriate state for the wage data. If the claimant worked for the federal government, wage data are requested directly from the specific federal agency. Military wage scales are used for ex-service members.
- 2b) Once the wage history has been obtained and verified, it is entered into DOL's computer system, which automatically calculates the benefit rate and determines whether the claimant meets the monetary eligibility criteria (i.e. claimant has earned 40 times his or her base rate). The claimant is mailed a form that shows the benefit rate and the wage data used to calculate the rate (Form UC-58). If there are no pending job separation issues, the employer is sent a notice indicating that charges will be recorded against the employer's experience account. The employer may file an appeal to its liability within 21 days.
- 2c) If the claim is approved for monetary purposes, but there are job separation issues pending, a hold is placed on issuing a check until the nonmonetary issues are resolved. In addition the employer is not issued a notice of liability unless and until the separation issue is resolved in the claimant's favor. If the issues are decided in favor of the claimant, a check is mailed that covers the weeks for which benefits are owed and the employer receives a notice (Form UC-58KC) indicating the charges will be recorded against the employer's experience account unless an appeal is filed within 21 days.

- 2d) If the claim is denied on monetary grounds, the claimant is notified by mail and given the reason for the denial (Form UC-64INV). If the claimant disputes the determination and can provide relevant information, such as the name of an employer not previously identified or additional wages paid, DOL will investigate and review its initial finding. The claimant has the right to appeal a monetary ineligibility determination.

Job Separation Eligibility

- 3a) The fact-finding hearing associated with an initial claim is an informal proceeding designed to obtain information related to job separation issues. At the hearing, which is scheduled to last up to 45 minutes, the DOL fact finder takes a statement from the claimant and the employer. A written statement detailing the reasons for the claimant's termination may be submitted by the employer in place of attending the hearing.

Generally, within a couple of days after completion of the hearing, the fact finder makes a formal written decision approving or denying the claim. The decision references relevant statutes, regulations, or previous Board of Review precedents. The fact finder's decision is final unless the claimant (Form UC-352) or one of his or her employers (Form UC-280) files an appeal within 21 calendar days after date the decision was mailed.

- 3b) If the fact finder's decision is in favor of the claimant, the hold payment order placed in DOL's automated system is removed and a check is mailed for each week of benefits claimed. A notice is mailed to the employer indicating the claim will be charged to the employer's experience account. The fact finder's report is available upon request.
- 3c) If the fact finder's decision is to disqualify the claimant, he or she receives a letter explaining the legal reason for the disqualification and a copy of the procedure for appealing the decision (Form UC-791). An informational notice of the decision is also mailed to the employer (Form UC-55).

Continuing Eligibility

- 4a) Typically, initial benefit information is given to the claimant at the follow-up meeting that takes place about a week after the initial claim filing. This meeting may be used to insure the claimant: 1) has reviewed and agrees with the benefit rate and the wage data used in calculating the rate; 2) has received an explanation of his or her rights and responsibilities under the law; and 3) has registered with DOL's job service program and been made aware of the services available. As

previously noted, at some job centers the claimant is advised of his or her rights and responsibilities and registered with the job service during the initial visit to the center.

- 4b) Once DOL determines the claimant is eligible for benefits, he or she must continue to file for a weekly benefit check by completing a form (Form UC-610) and returning it, either in person or by mail, to the job center where the claim was filed. The form, among other things, requires the claimant to affirm that during the week for which benefits are claimed he or she was: 1) available for work; 2) physically and mentally able to work; 3) making a reasonable effort to find suitable work, 4) has not refused any offer of employment.
- 4c) If the job center representative reviewing the written certifications is satisfied that the claimant has met the continuing eligibility requirements, a claim is entered into the automated payment system and a check is mailed to the claimant. If the certifications raise eligibility questions, the claimant may be asked to report to the job center for an in person interview.
- 4d) If claimant's written responses or those given during the interview indicate a problem, the job center representative can schedule a fact-finding hearing to determine the claimant's eligibility for the week in question. The fact-finding hearing, held within five working days, follows the same procedures previously outlined for determining initial eligibility on job separation issues.

From the fact-finding hearing forward to the court system, each decision can be appealed to the next level, with the most recent decision, whether by a fact finder, referee, or board of review, governing the actions DOL can take with respect to paying the claim. It should be noted that most decisions affect only the specific week(s) for which a hearing was sought and that a decision adverse to the claimant does not by itself disallow the claimant from seeking benefits for future weeks.

Appeals

- 5a) Any aggrieved party can appeal a fact finder's decision. Appeals are heard by referees of the Employment Security Appeals Division, which is an independent body housed within the DOL. Upon the filing of an appeal, a hearing is scheduled and a notice is sent to the claimant and employer (Form UC-346). The notice, which must be mailed to all parties at least 10 days prior to the hearing, identifies the issues to be covered and the procedures that will be followed. The hearing is de novo and not based on or influenced by the fact finder's decision. It is not governed by the statutory rules of evidence or procedure, but a complete record of the proceedings is maintained. The referee is empowered to affirm, reverse, or modify the fact finder's decision or remand the case.

While the referee is hearing the appeal, the fact finder's decision is in force. Thus, if the fact finder ruled the claimant eligible, he or she is receiving benefits, although such benefits are subject to repayment if the fact finder is reversed. Likewise, if the fact finder found the claimant ineligible, he or she is not receiving benefits, but will receive payments retroactively if the fact finder's decision is reversed by the referee and the claimant continued to file claims for each week of unemployment and has met all the requirements for continuing eligibility (e.g. able, willing, & making an effort).

- 5b) The referee usually issues a written decision within 10 days. The written decision includes: a case history; referee's findings of fact; the reasons for the referee's ultimate decision and its legal foundation. All parties receive copies of the decision and are notified of their appeal rights. Based on the decision, DOL must either remove the hold payment provision from its automated system and issue a benefit check, or initiate a benefit payment hold and begin seeking repayment from the claimant. Decisions of the referee are final unless an aggrieved party files an appeal within 21 days after the decision was mailed.
- 5c) Appeals of referee's decisions are heard by the Board of Review, which is the highest authority within the Employment Security Appeals Division. The three member board consists of a chairman, a business representative, and a labor representative. Decisions of the board are by a majority. Upon the filing of an appeal, the board mails a notice to each party (Form UC 351). The notice gives the parties 10 days to file written arguments in the case. The board is not bound by the statutory rules of evidence and procedure. The board generally decides the appeal on the record of the hearing before the referee, but has the authority to take additional testimony. Parties are not generally allowed to introduce evidence to the board which was not previously part of the record. It is empowered to affirm, reverse, modify, or remand the decision of the referee. Decisions are written and must state whether or not the decision was based on the record of the hearing before the referee. The board's ruling is final unless it is appealed within 30 days to the Superior Court or a motion to reopen, vacate, or set aside the decision has been made to the board.

While the board is hearing the appeal, the referee's decision is in force. Thus, if the fact finder ruled the claimant eligible, he or she is receiving benefits, although such benefits are subject to repayment if the fact finder is reversed. Likewise, if the referee found the claimant ineligible, he or she is not receiving benefits, but will receive payments retroactively if the referee's decision is reversed by the board and the claimant has filed continued claims for each week of unemployment and has met all the requirements for continuing eligibility (e.g. able, willing, & making an effort).

BENEFIT PROCESSING WORKLOAD MEASUREMENT

In 1993 the Department of Labor was responsible for processing approximately 280,000 initial claims for unemployment compensation and paid about 2.6 million weeks of benefits. An average of nearly 50,000 checks per week were distributed to claimants. During the same period an average of 110,000 members of the labor force were unemployed per week. Thus, about 45 percent of the Connecticut's unemployed workers received benefits under the state's unemployment insurance program compared to a national average of roughly 30 percent.

Table IV-2 contains the basic measurements referenced in the preceding paragraph for each calendar year from 1980 through 1993. As expected, changes in the workload measures shown in the table closely correspond to changes in the state's unemployment rate.

| Year | State unemployment rate | No. weeks claimed (in thousands) | Initial Claims (in thousands) | Average no. claimants per week (in thousands) |
|------|-------------------------|----------------------------------|-------------------------------|---|
| 1980 | 5.9 | 1,707.6 | 315.3 | 32.8 |
| 1981 | 6.2 | 1,683.1 | 309.5 | 32.4 |
| 1982 | 7.0 | 2,308.9 | 391.7 | 44.4 |
| 1983 | 6.0 | 1,936.0 | 292.5 | 37.2 |
| 1984 | 4.6 | 1,250.0 | 221.7 | 24.0 |
| 1985 | 4.8 | 1,313.9 | 240.0 | 25.3 |
| 1986 | 3.8 | 1,223.0 | 214.4 | 23.5 |
| 1987 | 3.3 | 1,020.5 | 174.0 | 19.6 |
| 1988 | 3.0 | 1,062.8 | 184.5 | 20.4 |
| 1989 | 3.7 | 1,468.2 | 226.6 | 28.2 |
| 1990 | 5.1 | 2,290.3 | 291.3 | 44.1 |
| 1991 | 6.7 | 3,098.1 | 356.2 | 59.6 |
| 1992 | 7.4 | 2,934.0 | 325.1 | 56.4 |
| 1993 | 7.0 | 2,566.6 | 279.8 | 49.5 |

Source of Data: CT DOL & LPR&IC staff estimates

MONETARY DETERMINATIONS

As previously noted, to meet the standard for monetary eligibility a claimant must have base period earnings equal to or greater than 40 times his or her weekly benefit rate. Table IV-3

shows the number of wage determinations performed by the department from 1980 through 1993, and the number and percent of claimants that were found to have insufficient wage credits. In general, the data tend to mirror changes in the unemployment rate. The sharp increase in 1992 is largely attributable to the federal Emergency Unemployment Compensation program, which restricted monetary eligibility under the regular unemployment insurance program but expanded eligibility under the emergency program.

| Table IV-3. Monetary Determinations | | | |
|-------------------------------------|----------------------|---------------------------------------|--|
| Year | Total Determinations | Number with Insufficient Wage Credits | Percent with Insufficient Wage Credits |
| 1980 | 201,217 | 31,535 | 15.7% |
| 1981 | 198,238 | 30,806 | 15.5% |
| 1982 | 232,950 | 33,654 | 14.5% |
| 1983 | 192,106 | 45,030 | 23.4% |
| 1984 | 155,398 | 28,112 | 18.1% |
| 1985 | 136,497 | 18,657 | 13.7% |
| 1986 | 122,442 | 16,012 | 13.1% |
| 1987 | 110,647 | 14,461 | 13.1% |
| 1988 | 131,788 | 15,170 | 11.5% |
| 1989 | 142,688 | 16,303 | 11.4% |
| 1990 | 173,461 | 20,211 | 11.7% |
| 1991 | 211,688 | 33,477 | 18.8% |
| 1992 | 252,092 | 94,817 | 37.6% |
| 1993 | 202,149 | 57,332 | 28.4% |

Source of Data: CT DOL

FACT-FINDING DETERMINATIONS

As noted in the description of the process, the Department of Labor may hold fact-finding hearings to determine a claimant's initial or continuing eligibility to receive benefits. Table IV-4

presents data related to the hearings conducted by DOL staff between 1980 and 1993. The first column on the left identifies the calendar year involved, the next column gives the total number of issues for which the department's fact finders reported decisions, and the remaining columns show the number of determinations made by the type of issue involved. The table distinguishes between job separation (i.e. voluntary leaving; discharged for misconduct; or other) and non-separation issues (i.e. able, available, making efforts, and not refusing an offer; disqualified and deductible income; or other). It is important to note that a fact-finding hearing can include multiple issues and thus, the number of issues does not equate to the number of hearings or claimants involved.

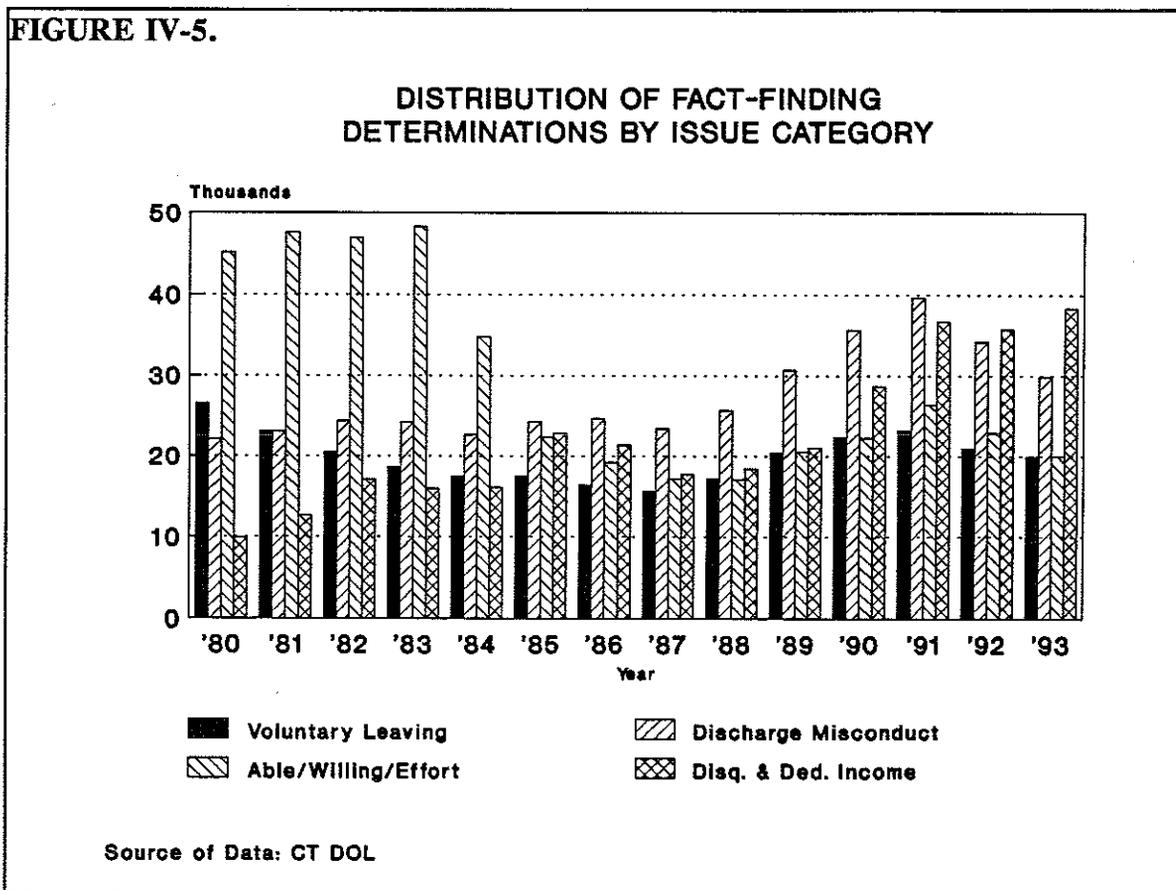
| TABLE IV-4. Fact-Finding Determinations | | | | | | | |
|---|---------|-----------------------|----------------------|-------|-----------------------|-----------------------|-------|
| | | Job Separation Issues | | | Non-separation Issues | | |
| Year | Issues* | Voluntary Leaving | Dismissed Misconduct | Other | Able & Willing | Disqual & Ded. Income | Other |
| 1980 | 122,402 | 26,577 | 22,051 | 672 | 45,152 | 9,852 | 8,569 |
| 1981 | 124,509 | 23,064 | 23,047 | 977 | 47,567 | 12,585 | 7,271 |
| 1982 | 125,810 | 20,435 | 24,369 | 920 | 46,938 | 17,078 | 8,929 |
| 1983 | 123,301 | 18,590 | 24,204 | 744 | 48,266 | 15,861 | 9,332 |
| 1984 | 97,503 | 17,464 | 22,587 | 625 | 34,830 | 16,076 | 5,948 |
| 1985 | 94,553 | 17,442 | 24,271 | 776 | 22,318 | 22,859 | 6,417 |
| 1986 | 87,909 | 16,365 | 24,671 | 663 | 19,214 | 21,345 | 5,651 |
| 1987 | 79,510 | 15,576 | 23,416 | 570 | 17,166 | 17,731 | 5,043 |
| 1988 | 83,167 | 17,164 | 25,677 | 353 | 17,058 | 18,391 | 4,524 |
| 1989 | 98,141 | 20,332 | 30,657 | 437 | 20,494 | 20,964 | 5,257 |
| 1990 | 115,439 | 22,312 | 35,718 | 498 | 22,256 | 28,663 | 5,992 |
| 1991 | 132,465 | 23,172 | 39,712 | 482 | 26,400 | 36,735 | 5,964 |
| 1992 | 119,492 | 20,898 | 34,200 | 531 | 22,838 | 35,733 | 5,292 |
| 1993 | 112,434 | 19,864 | 29,787 | 383 | 19,946 | 38,329 | 4,412 |

* The sum of the categories for 1980, 1981, 1982 and 1983 does not equal the number of issues due to data reporting differences prior to 1984
Source of Data: CT DOL

The number of the issues handled by DOL is large, exceeding 120,000 in 8 of the 14 years shown in the table. The number closely tracks the state's unemployment rate, starting the period at an elevated level, reaching a low point in the mid-1980s, then rising to a second peak the early 1990s. In 11 of the 14 years included in the table the total number of issues involving

non-separation matters exceeded the number of combined job separation matters. From 1985 through 1993, the proportion of issues accounted for by non-separation matters stayed with a narrow band that ranged between 46 and 56 percent of the total.

Figure IV-5 compares the number of issues involved in the four principal issue categories included in the table. It shows there is considerable variation within three of the categories. Specifically, there is a rising trend in the proportion of issues dealing with the categories labeled discharged for misconduct and disqualified and deductible income. There is a declining trend in the able, willing, and effort category. The voluntary leaving category remained fairly constant.



There are several speculative explanations for the results shown in the graph. For example, a possible factor contributing to the rise in the number of issues in the disqualified and deductible income category may be questions dealing with severance benefits paid to claimants by the increasing number of companies that have closed, moved, or downsized in recent years. The rise in the number of issues in the discharged for misconduct category may be a sign that

employers are less tolerant of employee's behavior in tough economic times or that employers may be aggressively seeking ways to minimize charges to their merit rating accounts by terminating employees in such a way that their access to unemployment benefits is eliminated. The decline in the able, willing, and effort category may be caused by a policy shift or workload constraints that restrict the ability of DOL to detect and thereby, enforce the criteria implicit in this category. Further analysis of fact-finding determinations is contained in Chapter V.

Figure IV-6 shows the outcome for each issue determined at a fact-finding hearing between 1980 and 1993. Decisions in support of the claimant's position are labeled approved, those against the claimant are labeled denied. The overall pattern of the decisions shows a relationship to the state's unemployment rate, with the approval rates falling as the unemployment rate declines and rising as it increases.

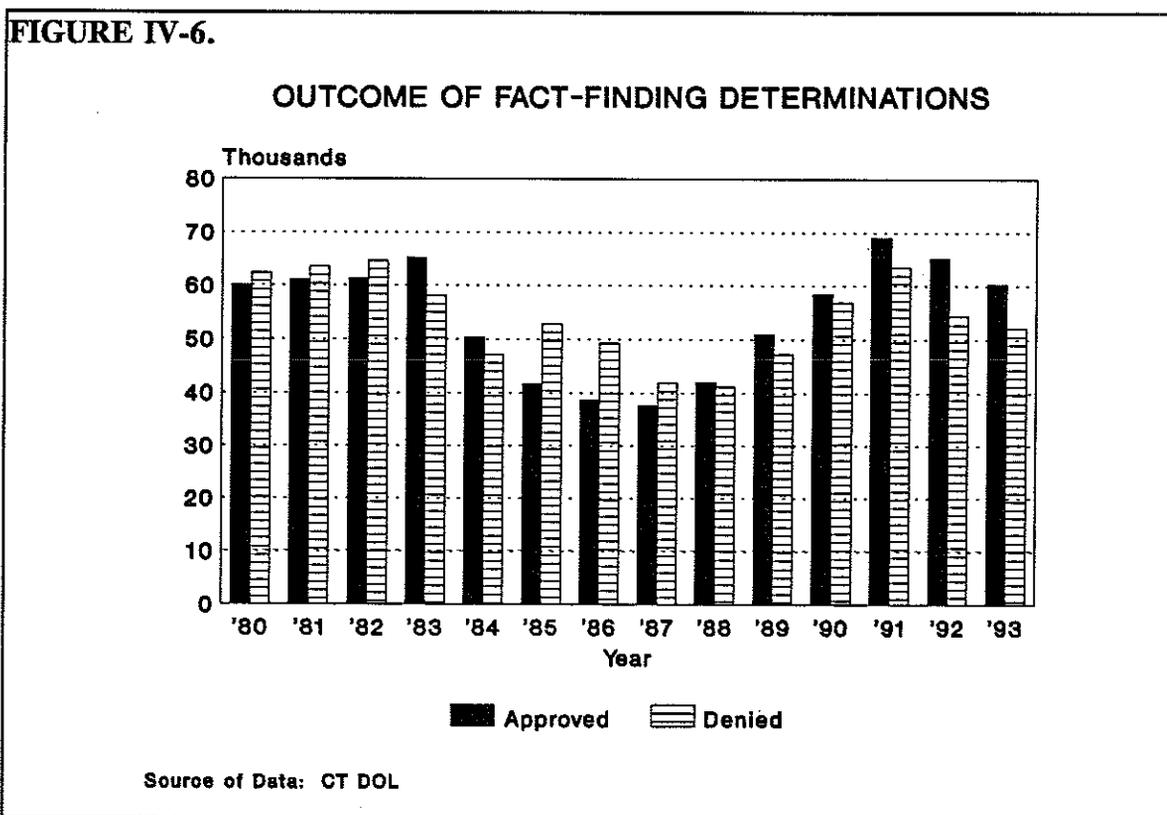


Table IV-7 shows the percentage of decisions upholding the claimant's position in each of the principal issue categories. A clear majority of the decisions support claimants in the category "discharged for misconduct" and go against the claimant in the "disqualified and

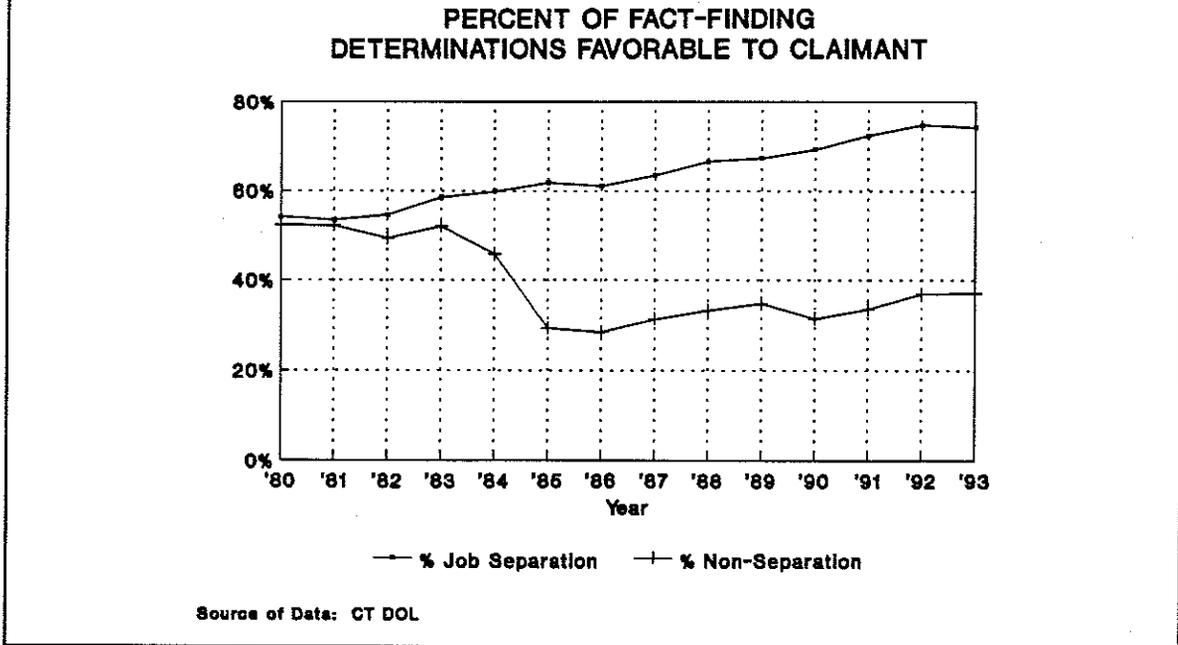
deducted income" classification. In the "voluntary leaving" category, a majority of the decisions go against claimants, but there is a noticeable trend toward decisions that support the claimant and the approval rate is nearing the 50 percent. The trend in the "able, willing, and effort" category, replicated the pattern found in the state's unemployment rate.

| TABLE IV-7. Percent Of Fact-Finding Determinations Favorable To The Claimant | | | | | | |
|--|-----------------------|----------------------|-------|-----------------------|-----------------------|-------|
| Year | Job Separation Issues | | | Non-separation Issues | | |
| | Voluntary Leaving | Dismissed Misconduct | Total | Able/Willing/ Effort | Disqual & Ded. Income | Total |
| 1980 | 28.9 | 78.6 | 51.4 | 64.3 | 9.0 | 52.3 |
| 1981 | 26.4 | 80.4 | 53.4 | 63.5 | 11.1 | 52.2 |
| 1982 | 25.5 | 78.9 | 54.5 | 65.2 | 9.5 | 49.3 |
| 1983 | 27.8 | 82.0 | 58.5 | 67.6 | 10.5 | 52.0 |
| 1984 | 29.6 | 84.2 | 59.8 | 62.9 | 8.9 | 45.8 |
| 1985 | 28.7 | 86.0 | 61.8 | 49.0 | 5.5 | 29.3 |
| 1986 | 21.4 | 88.3 | 61.1 | 46.1 | 7.9 | 28.4 |
| 1987 | 25.2 | 89.6 | 63.5 | 45.5 | 12.2 | 31.3 |
| 1988 | 31.4 | 90.2 | 66.5 | 49.4 | 14.4 | 33.2 |
| 1989 | 35.5 | 88.9 | 67.3 | 52.6 | 13.8 | 34.8 |
| 1990 | 38.4 | 89.8 | 69.3 | 52.6 | 11.5 | 31.4 |
| 1991 | 42.1 | 90.3 | 72.3 | 57.9 | 13.3 | 33.5 |
| 1992 | 46.4 | 92.1 | 74.7 | 65.2 | 16.7 | 36.9 |
| 1993 | 47.0 | 92.5 | 74.2 | 68.8 | 18.7 | 37.1 |

Source of Data: CT DOL

Figure IV-8 shows a steady increase in the percentage of decisions supporting claimants when all the job separation categories are combined. The pattern of fact-finder decisions favoring the claimant in non-separation categories is similar to the state's unemployment rate, although the current approval rate is well below that of the early 1980s.

FIGURE IV-8.



APPEALS

If either the claimant or the employer is dissatisfied with the fact-finding decision, the decision may be appealed. This section examines the appeals filed at the two administrative levels -- the referee level and the Board of Review.

In calendar year 1993, the referee level rendered 16,651 decisions and the Board of Review decided 2,780 cases. Tables IV-8 and IV-9 show the appeals statistics for the most recent five calendar years. Table IV-8 shows which party -- the claimant or the employer -- brought the appeal and at which level, and the total number of cases decided, and Table IV-9 indicates the results of those decisions.

Table IV-9 shows that the total number of appeals cases at both the referee and board level have been rising. At the referee level, the number of cases peaked at 23,116 in 1992, when the referees were dealing with a backlog of approximately 7,000 cases. The backlog was eliminated at that level, which is reflected in the decline in 1993 to 16,651 cases. The 1992 caseload reflected an increase of almost 10,000 appeals, and even in 1993, when the appeals declined substantially, the referee level decided 2,000 (13%) more cases than in 1989. At the board level the number has more than doubled over the five-year period. The board is now dealing with some of the backlog of cases that were appealed from the referee level, and the department estimates it will probably take one to two years to eliminate the backlog at the board level.

| Table IV-9. Unemployment Compensation Appeals Activity -- 1989 -1993 | | | | | | |
|--|------------|----------|---------------------|----------|----------------|----------------|
| Brought by Claimant | | | Brought by Employer | | Total* Decided | Total* Decided |
| Year | To Referee | To Board | To Referee | To Board | By Referee | By Board |
| 1989 | 6,013 | 752 | 8,725 | 553 | 14,738 | 1,337 |
| 1990 | 7,042 | 865 | 6,944 | 642 | 13,986 | 1,538 |
| 1991 | 8,625 | 1,127 | 13,260 | 631 | 21,885 | 1,778 |
| 1992 | 7,674 | 1,578 | 15,442 | 731 | 23,116 | 2,318 |
| 1993 | 6,080 | 1,388 | 10,571 | 1,382 | 16,651 | 2,780 |

Source of Data: CT DOL
 *Totals may not add to subtotals brought by claimants and employers because of a very small number brought by "other", which are reflected in the overall totals

Table IV-10 indicates the number of appeals decided in favor of the claimant at each level, and the number decided in favor of the employer. The total columns on the right show the numbers of decisions in favor of the appellants (either party), and the percentage those constitute of all decisions made at that appeal level.

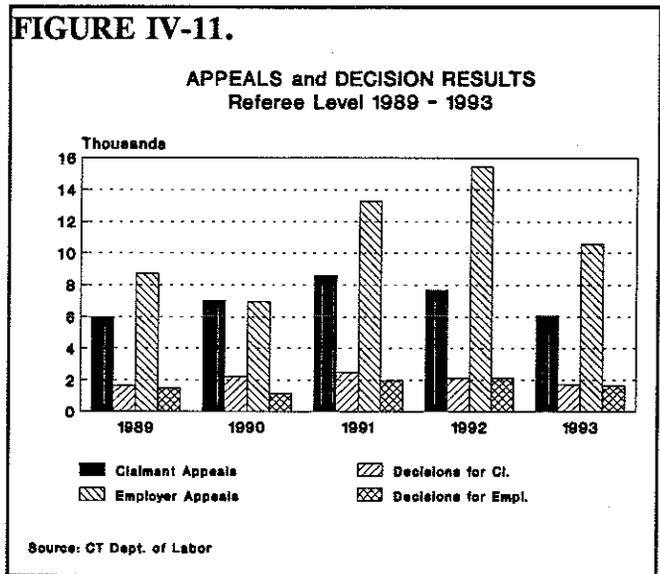
| Table IV-10. Appeal Decisions Rendered in Favor of the Appellant: 1989-1993 | | | | | | | | |
|---|------------------------------|----------|------------------------------|----------|-----------------------|------------------------|-----------------------|----------------------|
| Year | Decided in Favor of Claimant | | Decided in Favor of Employer | | Total # for Appellant | % Of All Referee Cases | Total # for Appellant | % of All Board Cases |
| | By Referee | By Board | By Referee | By Board | By Referee | | By Board | |
| 1989 | 1,660 | 150 | 1,503 | 59 | 3,163 | 21.4% | 209 | 15.6. % |
| 1990 | 2,218 | 116 | 1,145 | 40 | 3,363 | 24% | 156 | 10.1 |
| 1991 | 2,494 | 254 | 1,962 | 83 | 4,456 | 20.3% | 337 | 28.6 |
| 1992 | 2,194 | 403 | 2,146 | 80 | 4,340 | 18.7% | 483 | 20.8 |
| 1993 | 1,729 | 202 | 1,668 | 132 | 3,460 | 20.7% | 334 | 12 |

Source of Data : CT DOL

It is interesting to note that the number of appeals brought by the employer at the referee level is substantially greater than those brought by the claimant. In most years, employers accounted for at least 60 percent of the appeals to the referees. At the board level, this is almost reversed, with the claimant bringing between 50 to 68 percent of the board appeals annually. Further analysis of claimant and employer use of the appeals process as well as the results of those decisions, is contained in Chapter V.

Table IV-10 shows that neither the claimant nor the employer is likely to have the previous decision reversed when they appeal a case. On average the referees overturned previous decisions (in favor of either party) about 20 percent of the time over the past five years. The referee level reversal rate ranged from a low of 18.5 percent in 1995 to a high of 24 percent in 1990. The board's reversal rate was even lower, overturning an average of 17.5 percent of the cases during the same period, ranging from a low of 10 percent in 1990 to a high of 28.6 percent in 1991.

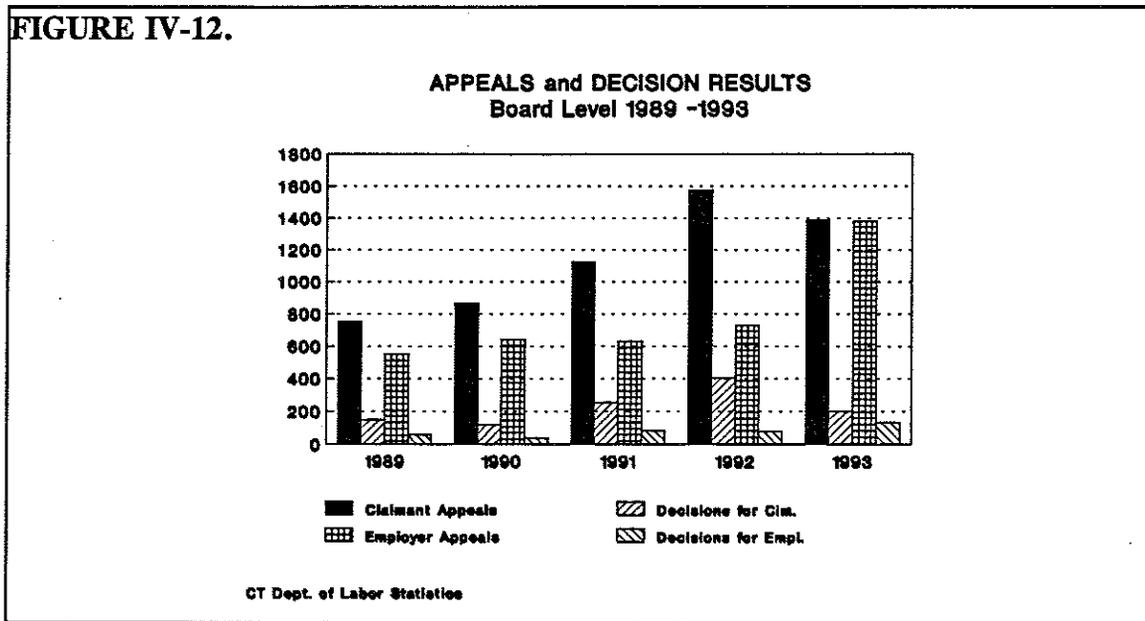
While neither appealing party is likely to have much success in having the previous decision overturned, the claimant succeeds more often than do employers. Figure IV-11 shows the numbers of cases brought by both claimants and employers at the referee level and the number of those decided in favor of that party for each of the five years. As the graph shows, while employer's bring a much larger share of the appeals at this level, the number decided in their favor is not great. Employers brought a total of 54,942 cases to the referee level, and had 8,424 cases decided in their favor. Claimants brought 35,434 cases during the period, and had 10,250 decisions support their claims.



On a percentage basis, claimants achieve favorable results in about 28 to 30 percent of the cases they bring, while employers are successful in getting a favorable decision in about 15 percent of the cases they appeal.

The results are also likely to favor the claimant at the board level as shown in Table IV-9 and Figure IV-12. Over the entire period examined, the board decided in the claimant's favor in 923 of the total 5,710 cases brought by the client, or about 19 percent of claimant's appeals. Of the 3,939 cases brought by employers in the five-year period, 394 cases, or about 10 percent of the cases were decided in their favor.

FIGURE IV-12.



JOB SERVICE

In 1933, Congress passed the Wagner-Peyser Act, establishing federally funded public employment services throughout the nation. In Connecticut, the state labor department is the designated state agency that receives federal funds to provide the services under the act. The employment or job services are part of each local Department of Labor (i.e. job center) office and are offered to anybody who wishes, although unemployment compensation claimants must register. The main focus of the job service is to match job orders obtained from employers with the job skills offered by individuals registered for employment. Matches are made using an automated system that stores both the job orders and the individuals' job histories. The automated system is available for all individual job seekers to use.

Other services offered in this area are: employment counseling and planning; certification for training; or intensive development of job search skills. A brief description of the services and the process for delivering them follows.

Job service process for a claimant. When an unemployed person files a benefits claim, an appointment is usually made for the following week to issue the compensation check and explain the claimant's rights and responsibilities. (In some job center offices, this interview is conducted at the initial claim filing.) Part of the follow-up interview is devoted to registering the claimant for the Job Service, a requirement for collecting unemployment benefits.

The interview is generally conducted by a DOL community services representative (CSR), who, in addition to explaining the requirements for collecting unemployment compensation, will take the claimant's job history. The history includes the claimant's most

recent jobs, the duties performed at those jobs, and the salary paid. While interviewing the client, the DOL service representative assesses the claimant's ability to look for a job on his or her own. If the DOL worker believes the claimant will need additional help, an appointment is made for the person to see a representative in DOL's Employment Planning Section.

Employment planning. Each local job center contains an Employment Planning Section. Each employment planner has a caseload of about 40 to 50 people. The planner helps individuals check the automated job system for potential jobs, helps them with resumes, and may call employers who may hire people with skills similar to the client's. If the system indicates there are jobs listed for which the client seems qualified, the staff person in employment planning writes a referral.

The job center is federally mandated to give priority for all its services, including job referrals, to veterans. Under a state program called STEP, initiated through 1992 legislation, clients receiving General Assistance, and deemed to be employable by the municipality providing the assistance, also receive priority for some of the services offered by DOL. Because of the large numbers of STEP clients, some offices have revised services to accommodate them. For example, in Bridgeport, each Friday the Employment Planning Section runs two workshops for STEP clients explaining the program, the services offered, and the responsibilities of the STEP client. The employment planning personnel meet very briefly with each STEP client following the workshop, and schedule an appointment for the following week.

The employment planning staff also evaluate whether the client needs more intense services like employment counseling, training, or job search skills and services. The counselors are part of the Employment Planning Section and assist those who have a problem keeping a job, want a career change, or who have special barriers to employment.

Job search skills. Training and the intensive job search skills and services are not directly provided by the job center. Instead, job center staff certify that a client meets the necessary eligibility criteria and refers the person to the appropriate service. For example, to be eligible for the intensive job search services, the client must be certified by DOL as a dislocated worker, a worker who is unlikely to be reemployed in the same occupational field. The job search services are provided through "transition centers", which receive funds through the federal Employment for Dislocated Workers Act (EDWA). The centers are staffed under the auspices of both Regional Force Development Boards,⁵ and by DOL. The transition centers, which currently may or may not be co-located with the Job Centers, provide outplacement services such as phones, newspapers, as well as resume printing, copying and mailing.

⁵ The Regional Work Force Development Boards are created in state statute, Sections 31-3j through 31-3l. Members are to be appointed by chief elected officials of towns in the region, but their composition is statutorily designated. The membership of the boards, and the duties and responsibilities performed, must satisfy the requirements of private industry councils under the federal Job Training Partnership Act (JTPA), so that the boards can receive federal funds under the act.

Job training. The Job Center also refers clients, including unemployment compensation claimants, for training funded under the Job Training Partnership Act. The training is administered through the Private Industry Councils in each of the state's development areas, which are the federally designated service areas that receive federal funds and provide services under federal mandates. If a client is accepted into a JTPA program, there is no cost to the client, but there are many more applicants for training than there are slots, so there is a lengthy waiting list. Training currently offered includes nurses aide, word processing, and secretarial. The job center staff may also suggest training available through community colleges or proprietary schools, although the client would likely have to pay for those.

Overall, during FY 94 more than 158,000 persons registered with the Connecticut Job Service. Table IV-13 on page 61 aggregates the activities statewide for the Job Service during that year. As the table shows, somewhat less than 15,000 persons secured employment, somewhat less than 10 percent of those who registered during FY 94. It is important to note that the categories are not all unique, but the same clients may receive more than one service.

| Table IV-13. Job Service Activities for FY 94. | |
|--|---------|
| Number of Persons Registered | 158,027 |
| Secured Employment | 14,813 |
| Employment Counseling Transactions | 9,194 |
| Testing Transactions | 2,780 |
| Referred to Training | 5,634 |
| Supportive Services (other than training) | 19,550 |
| Job Opportunities Received | 17,669 |
| Job Opportunities Filled | 16,330 |

Source: Department of Labor,
Job Service and Labor Exchange Reports, Program Year 1994

CHAPTER V

FINDINGS AND RECOMMENDATIONS

The focus of the committee's analysis was on the multi-level decision making process that determines whether or not a claimant is eligible for benefits. Attention was also given to the costs of the system and, to a limited degree, some of the nonfinancial services offered to employers and workers. The committee's recommendations and the supporting analysis follow a summary of the findings and conclusions of the study.

A SUMMARY OF THE MAJOR FINDINGS AND CONCLUSIONS

The most notable finding of the study is the high percentage of the eligibility decisions made favorable to claimants as opposed to employers. Connecticut's rate of decisions favoring claimants is much higher than the national average and most other states.

Several factors were analyzed in an attempt to identify the reason for the high rate. Although no factor could be singled out as the sole cause, the committee concluded that decisions by the Board of Review were a major contributor. An analysis of decisions of the board, which is the highest level of administrative appeal in the unemployment compensation system, found that they favored claimants by nearly a two-to-one margin.

The study also found very different decision outcomes among DOL's job centers and among the field offices of the Employment Security Appeals Division. There were also differences in decision outcomes depending on whether employers participated in the hearing process. Employers did much better in terms of having issues decided in their favor when they participated. Participation was a major problem at the appeals level where over one-third of the cases were dismissed because one or the other party did not appear.

Although the study outline adopted by the committee indicated that it would not analyze how the system was financed, a number of matters that related to costs were examined. In the area of overpayments and fraud the staff found that DOL's efforts to collect on benefits paid in error and outright fraud by employers and claimants could be improved. An analysis of the effects of pooling of charges found its use on the rise, but not a serious problem at present.

The study examined several proposals aimed at reducing the cost of the system. It concluded that neither the benefits provided to claimants nor the cost passed on to employers were excessive, when the state's wealth was factored into the analysis. The committee also looked at the concept of having employees contribute to financing the system but rejected the idea. However, the committee does believe employees should assume greater responsibility for their own employment futures, and some methods for beginning to study that question are put forth.

The study did not devote much attention to the nonfinancial services provided by DOL, because the state's employment services are currently being revamped. The department is in the final stages of a major reorganization begun two years ago that is designed to focus the department's efforts on its customers -- employers and workers. At the core of the restructuring is the concept of one-stop job centers to service the needs of all workers and employers. The committee believes that the department should be congratulated on its aggressive approach to reshape its mission, but it should also consult with the legislature on major policy and programmatic employment and training initiatives.

DETERMINATION OF ELIGIBILITY

The Department of Labor's processes for determining a claimant's eligibility for unemployment compensation benefits were described in Chapter IV. As noted in that chapter, the initial determination is comprised of two separate decisions, one dealing with the claimant's monetary eligibility and the other involving the reason the person was separated from his or her job.

The monetary determination is a simple mathematical calculation using eligibility standards that are specified in state statute. The job separation determination is more complex. If the claimant's unemployment is the result of any issue other than a lack of work the department's staff to make a judgement as to whether the claimant met the statutory standards for eligibility. The factors underlying this determination are the focus of this section of the report.

Key to the department's decision-making process is the fact-finding hearing, which is used to decide issues that may be disputed by either claimants or employers. The number of job separation issues decided through this mechanism averaged nearly 51,500 per year from 1980 through 1993. Just about all of the issues (99.2 percent over the 14 years) involved questions dealing with voluntary leaving (quits) or discharged for misconduct (fires).

Using data obtained from the U.S. Department of Labor, the staff compared the state's job separation approval rate to the rest of the nation (see Appendix B). The results contained in Table V-1 show that between 1990 and 1993 Connecticut's rate was never less than 13 percentage points higher than any other northeastern state, and ranged from 25 to 30 percentage points above the national average. Although Connecticut's job separation approval rates are out of step with the rest of the nation, determining what are acceptable rates is a matter of judgement.

Figure V-2, on page 66, tracks the percentage of fact-finding determinations favorable to claimants in the "voluntary leaving" and "discharged for misconduct" categories. Trend lines superimposed on the data show decisions supporting claimants increasing. In search of an explanation for the trends, the committee staff examined four factors: employer participation;

number of hearing decisions; legislative changes; and precedents established by the Employment Security Board of Review.

| Table V-1. Percent Of Nonmonetary Separation Issues Decided In Favor Of Claimants | | | | |
|---|------|------|------|------|
| STATE | 1990 | 1991 | 1992 | 1993 |
| Connecticut | 69.6 | 72.4 | 74.8 | 73.2 |
| Massachusetts | 54.4 | 55.6 | 47.4 | 43.0 |
| Maine | 55.0 | 55.2 | 58.2 | 60.0 |
| New Hampshire | 44.0 | 36.2 | 49.2 | 51.4 |
| Rhode Island | 48.6 | 53.0 | 55.6 | 53.7 |
| Vermont | 29.1 | 28.3 | 29.0 | 25.3 |
| New York | 55.3 | 54.5 | 53.5 | 53.6 |
| New Jersey | 30.4 | 30.7 | 31.5 | 33.1 |
| Pennsylvania | 43.0 | 45.0 | 46.7 | 50.6 |
| NATIONAL AVERAGE | 44.7 | 43.7 | 43.8 | 44.0 |

Source of Data: U.S. Department of Labor

Employer participation. The Department of Labor staff indicated that the high percentage of decisions decided against employers was due in part to their low participation rate at fact-finding hearings. There is some support for this assertion. A review of the data for calendar year 1993 found that determinations favorable to employers in the "discharged for misconduct" category rose from 3 to 11 percent when employers participated in the process, either in person or through the submission of written documentation. Similarly, the rate of decisions favorable to employers increased from 49 to 64 percent when they participated in determinations involving voluntary leaving issues.

Although the law allows employers to participate through the submission of written documentation, the data do not distinguish between instances where employers actually attend hearings and where they merely submit a written statement. Faced with this restriction, the committee staff gathered information on the effects of employer participation through informal discussions with DOL staff and observations of a limited number of hearings. Based on the information obtained from these sources, the committee believes that if more employers presented their cases in person and challenged the assertions made by some claimants, then more determinations would be made in favor of employers.

Of course, for employer participation to be causing the trends shown in Figure V-2, the rate and direction of employer participation (increasing or decreasing) would have to change in precisely the same manner as the rate and direction of decisions in favor of employers changed.

Unfortunately, insufficient time series data were available to test this theory. The committee staff settled on accepting the assumption that, at least since 1991, employer participation has been rising as a result of Public Act 91-107. This act provided an incentive for employers to participate in fact-finding hearings by holding them liable for benefits paid to claimants later found ineligible on appeal. Thus, with employer participation assumed to be rising and decisions favorable to employers known to be falling, the committee accepted the staff conclusion that employer participation was not a factor influencing the trends shown in Figure V-2.

Number of hearing decisions. Another avenue explored in search of an explanation for the increase in the rate of decisions favorable to claimants was the relationship between the number of determinations made at fact-finding hearings and the outcome of the decisions. The committee staff theorized that if employers took a hard line on employee conduct, as might occur during an economic recession when there is a surplus of replacement workers, the result would be an increase in the number of employees seeking unemployment compensation benefits who had been discharged for misconduct. Many of the additional "discharged for misconduct" cases in the system that would be generated by the change in employers' conduct standards would likely be at the margin of the acceptable standards for disqualifying a claimant. Therefore, it is likely that determinations on these marginal cases would, in overwhelming numbers, be decided against employers, resulting in a rise in the percentage of decisions favorable to claimants.

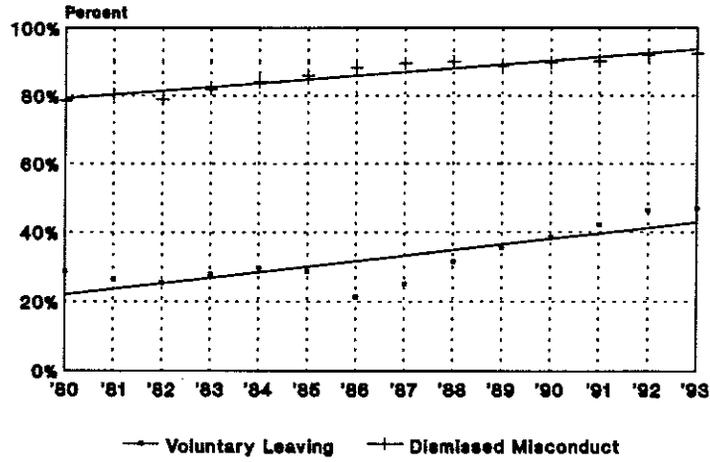
Using the same logic, the reverse should occur during periods when employers loosened their conduct standards knowing it would be difficult to find replacement workers. Under this scenario there would be a decrease in the number of cases decided that were at the margin of what is an acceptable standard for disqualifying a claimant, which would result in a greater percentage of the determinations going in favor of employers and the rate of decisions favoring claimants would decline.

With respect to voluntary leaving, the staff theorized that in recession workers seldom quit their jobs without good cause, because they know new employment is difficult to obtain. This results in a reduction of the number of claimants seeking benefits, who have marginal justification for voluntarily leaving their job. As the number of determinations involving weak cases declines relative to the number of claimants with strong justification, the percentage of decisions favoring claimants increases. The opposite would be expected to occur as more workers quit and the number of claimants with weak cases to be decided grows.

The first step in testing these theories was to compare changes in the percent of decisions favorable to claimants in the "discharged for misconduct" and "voluntary leaving" categories (see Figure V-2), with changes in the number of determinations made by fact finders. Figure V-2, with the aid of a trend line superimposed on the data, shows there is an upward movement in the number of decisions in the "discharged for misconduct" category and a slight downward drift in the number of "voluntary leaving" decisions.

FIGURE V-2.

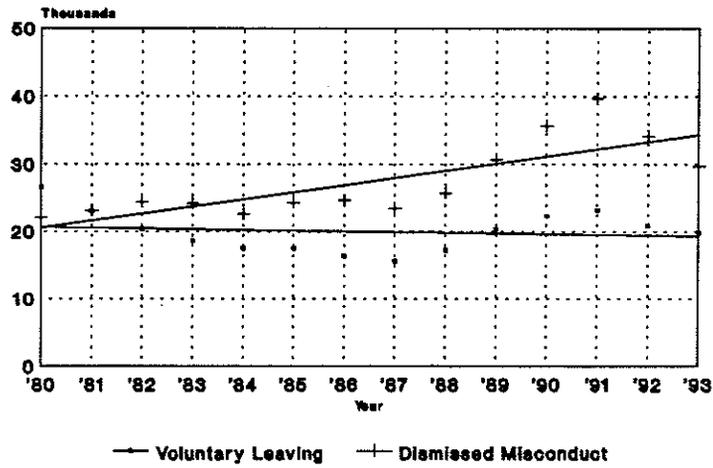
PERCENT OF FACT-FINDING DETERMINATIONS FAVORABLE TO CLAIMANTS



Source of Data: CT DOL

FIGURE V-3.

NUMBER OF FACT-FINDING DETERMINATIONS BY ISSUE TYPE



Source of Data: CT DOL

A visual comparison of the corresponding trend lines shown in Figures V-2 and V-3 indicates support for the theories. The rising trend in the percent of decisions favoring claimants, shown in Figure V-2 corresponds to the upward trend in the number of "discharged for misconduct" decisions shown in Figure V-3. Likewise, the increase in the percent of decisions favorable to claimants coincides with the downward trend in the number of "voluntary leaving" issues decided by fact-finders.

However, a closer examination reveals there is considerable variation in the actual data points plotted in the two graphs. The statistical correlation between the number of issues and the percentage of decisions favoring claimants found the relationship was weak in the "dismissed for misconduct" category (.42) and virtually nonexistent in the "voluntary leaving" group (.11). This means there is little statistical evidence to believe there is a real relationship between the number of issues decided and the outcome of the hearing decision. Thus, the staff concluded that changes in the number of issues decided cannot be a satisfactory explanation for the shift in the rate of determinations in favor of the claimant.

Legislation. In addition to analyzing influences external to the fact-finding process for an explanation of the observed trends, the committee staff also examined the effect of state statutes. Using the Summary of Public Acts prepared annually by the Office of Legislative Research, the staff screened all unemployment compensation legislation enacted between 1979 and 1993 to identify provisions affecting the decision-making responsibilities of fact finders and referees. A total of 24 acts met the screening criteria. (see Appendix C.)

The 1979 through 1993 time frame was selected because it matched the period covered by most of the data obtained from the Department of Labor. One consequence of using this time period was the exclusion of P.A. 77-319 from the analysis. This act, through two key provisions, significantly expanded the decision-making responsibilities of fact finders and referees. First, the act replaced the requirement that a person who quit or was fired must only wait four weeks to begin collecting benefits with a requirement that the person must return to work and earn 10 times his or her weekly benefit rate before becoming eligible for compensation. This severely limited eligibility of those who quit or were fired under the law and increased the number of eligibility determinations that would have to be made by a fact finder. Second, the legislature abolished the waiting period for claimants terminated for wilful misconduct and instead made a claimant separated for that reason ineligible until he or she worked again. However, the legislature at the same time tightened the "wilful misconduct" standard to conduct that was of a "repeated" nature, making it more difficult for employers to prove that a claimant was terminated because of problematic conduct.

In reviewing the legislation enacted between 1979 and 1993, the staff focused on 13 acts that dealt with job separation issues. The staff found that a majority of the provisions were aimed at clarifying the eligibility criteria used by fact finders and referees. A few acts contained stipulations that expanded the criteria, such as allowing persons to voluntarily leave to care for a sick relative or because of certain transportation problems (P.A. 85-258), or prohibiting an

otherwise eligible claimant from being disqualified for separating from a part-time job for a disqualifying reason (P.A. 86-55). However, most provisions restricted eligibility. Some did it by adding new disqualifying criteria such as committing a single act of wilful misconduct that endangers the life, safety, or property of the claimant's employer, other employees, or the general public (P.A. 85-500). Others restricted eligibility by redefining the existing criteria such as lowering the disqualifying threshold for larceny from \$50 to \$25 (P.A. 93-243).

Overall, the review identified a total of 15 provisions that clarified or restricted eligibility and only 3 that expanded it. Of course, the magnitude of this ratio is not the sole determinant of whether legislation is the key factor responsible for the increase in fact-finding decisions favorable to claimants. For example, it is possible that a single expansionary provision, such as extending eligibility to individuals that leave work to care for an ill dependent, had a greater impact than all of the restrictive provisions. However, based on its analysis of the public acts the staff concluded that the net effect of the legislation enacted during the period cannot be viewed as the driving force behind the increase in the percentage of decisions favorable to claimants.

Board precedent. As indicated in the briefing document, one of the most important ways that policy is established is through the Board of Review's precedent-setting authority. The decisions are statutorily binding on all subsequent proceedings involving similar questions. While the board's decisions are the result of interpreting established unemployment law and regulations, its judicial impact is considerable.

In assessing whether the board's rulings may be a factor in the increasing percent of decisions in favor of the claimant, the staff analyzed cases decided since 1984. This year was selected as the starting point because legislation adopted in 1983 (P.A. 83-570) significantly changed the board by making its membership full time, adding staff, and requiring the board to develop a guide to its precedents.

The committee staff used a training manual developed by Department of Labor staff to identify key case rulings of the board (three of the cases are actually court decisions). An analysis of the cases reviewed is contained in Appendix D. It categorizes the cases by major eligibility issues -- e.g., able and available, discharge, and voluntary leaving, -- summarizes the facts and the decision, and indicates whether the outcome favored claimant or the employer.

Table V-4 shows the outcome of the 67 board cases the staff reviewed. The decisions are cross tabulated according to which party was favored (e.g. claimant or employer) and the issue category involved (e.g. voluntary leaving; discharged for misconduct; and other -- refusal of suitable work, availability for work) Overall, the decisions favored claimants (40 to 27), but were evenly split (16 apiece) in the "discharged for misconduct" category, which was the largest grouping.

| Table V-4. Analysis Of Selected Key Cases Of The Board Of Review | | | |
|--|-----------------------|-----------------------|-----------|
| Category | Favoring the Claimant | Favoring the Employer | Row Total |
| Voluntary Leaving | 14 | 7 | 21 |
| Dismissed for Misconduct | 16 | 16 | 32 |
| Other | 10 | 4 | 14 |
| Column Total | 40 | 27 | 67 |

Source of Information: LPR&IC Staff Analysis of Key Cases Contained in a DOL Training Manual

It is important to note that the numbers in the Table V-4 do not necessarily reflect the importance of the board's ruling in other cases. In fact, the committee staff found it difficult to classify what is actually precedent-setting, since circumstances in each case can vary and thereby significantly impact the applicability of the decision to other cases. However, of those cases that the staff identified as precedent-setting, it conclude they favor the claimant. For example, such cases have:

- established that once a claimant has completed a temporary assignment, he is unemployed even if there may be other temporary work available;
- established that if the claimant finds the work is unsuitable for health reasons, once the claimant has notified the employer of this, the onus is on the employer to find the claimant other work or the claimant is eligible for unemployment compensation upon leaving;
- established a trial period doctrine whereby claimants collecting unemployment benefits are presumed to have a working test period to determine whether a new job is suitable;
- established that the endangerment to health and safety under the "just cause" provisions must be real and not just theoretical;
- established that if a claimant relocates while collecting unemployment compensation, and is recalled, the distance from employment at the time of recall or job offer is considered, and distance is a justifiable reason for refusal;
- established that a claimant cannot be discharged for repeated wilful misconduct or just cause if the claimant is determined to be an alcoholic

(however, this deals with the separation issue only, the claimant must then show he/she has alcoholism sufficiently under control to meet the "able and available" for work requirement); and

- established that a person who owns a business is eligible for unemployment compensation in a variety of circumstances.

As was pointed out in its legislative review, the quantity of decisions is not the sole determinant of the impact a factor has on the outcome of eligibility decisions. Clearly, some precedents are more far reaching than others and thereby affect a greater number of subsequent cases. Also, board decisions are not made in a vacuum unaffected by the state's laws and regulations. Indeed, the board's rulings are interpretations of these legal edicts. However, based on the review of the key board decisions identified by the DOL, the committee accepted the staff conclusion that, viewed in global terms, the board's rulings are a major contributor to the increase in fact finder and referee decisions favorable to claimants.

Options. Two options for dealing with Connecticut's high job separation approval rates were reviewed by the committee's staff. Both addressed the implications of the staff's conclusion that precedents established by the Employment Security Board of Review have been a major contributor to job separation approval rates that are very favorable to claimants.

One option was to subject the board's precedents to a sunset review. This would require the legislature to review all of the precedent rulings with only those approved by the General Assembly and signed into law by the governor remaining in force. However, in the opinion of the staff such an action would set a bad precedent with respect to other quasi-judicial administrative review mechanisms. Also, the General Assembly already has the ability, which it has exercised on several occasions, to change the law if a decision of the board creates an interpretation that the legislature finds unacceptable.

The second option involved giving elected officials greater influence over the operation of the board. Currently, the board is composed of three full-time voting members. All three positions are gubernatorial appointments not subject to confirmation by the General Assembly. The chair, after his or her initial appointment, becomes a permanent member of the state's classified service and is not subject to a term limit or reappointment procedure. The other two members, one representing labor and the other business, serve coterminously with the governor.

As previously noted, the board exercises significant power over the eligibility determination process through its precedent-making authority. The chair maintains a strong influence over the board by virtue of his or her ability to align with either the business or labor representative to produce the minimum two votes needed to decide an issue. The chair also exerts power as head of the Employment Security Appeals Division and director of the division's permanent staff, including those responsible for developing background information for board members and presenting cases to the board.

It was the opinion of the committee staff that appointees who are able to exercise the degree of influence in establishing and interpreting labor laws that members of the board can, particularly the chair, should be subject to a legislative confirmation process. This would allow the General Assembly to review the credentials and philosophy of nominees, and evaluate whether they are consistent with the legislature's expectations.

Further, the staff believed that the position of board chair should not be part of the state's civil service system. Currently, there are only three states, including Connecticut, where civil servants serve as board members. It was the staff's belief that the accountability of the board would be enhanced if its members faced the prospect of having to be reappointed and confirmed on a regular basis.

The option was put into the form of a recommendation and presented to the committee. The proposal would have eliminated the civil service designation of the chairman of the board and made all three board members subject to appointment by the governor and confirmed by the General Assembly to staggered, four-year terms. After careful consideration and debate the committee voted not to accept the recommendation.

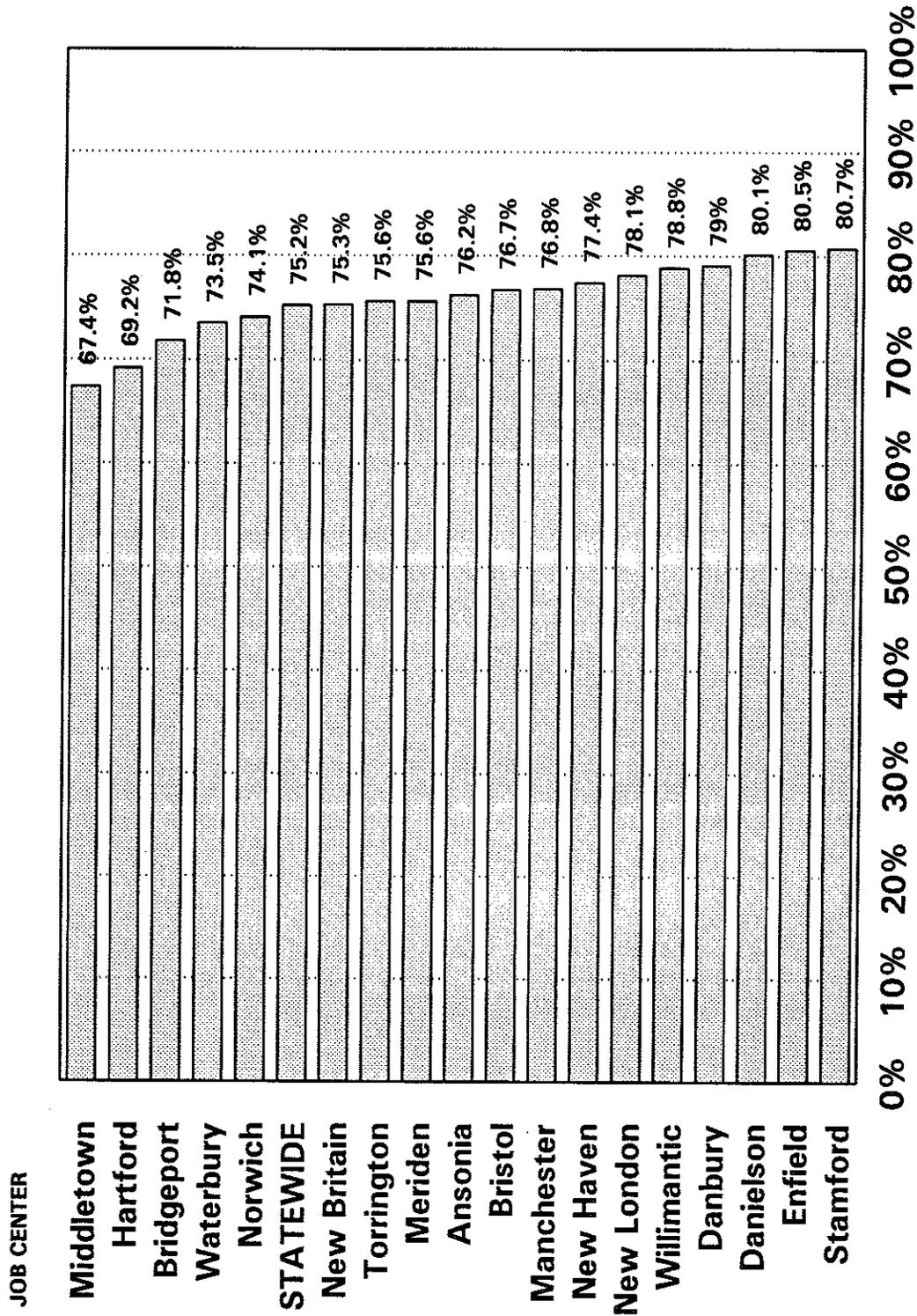
Comparisons among job centers and appeals offices. In addition to examining aggregate data on eligibility determinations, the committee staff analyzed decision outcomes produced by each of the Department of Labor's 18 job centers and the 5 field offices of the Employment Security Appeals Division. The intent was to investigate the consistency of decision making among the various job centers and appeals offices. The measures employed were restricted to the data available from the department and the appeals division.

A single indicator, the percentage of combined job separation decisions that were favorable to claimants (i.e., voluntary leaving + discharged for misconduct + other separation issues), was used to compare job centers. Each center's rate was calculated from data covering the period from 1989 through 1993. A five-year average was used to eliminate the effects on a center's rate of an unusual year.

The averages obtained for each center are shown in Figure V-5. The rates for job separation decisions favorable to claimants ranged from a low of 67.4 percent in Middletown to a high of 80.7 percent in Stamford, and averaged 75.3 percent statewide. A statistical test was applied to the data to determine if the differences among the centers were meaningful. The results indicated that the variation was significant.⁶

⁶ The Kruskal-Wallis one-factor analysis of variance indicated that the differences among the centers ($K=37.6$) was significant at the .01 level.

FIG. V-5 Rate of Fact-Finding Decisions Favoring Claimants by Job Center



Source of Data: CT DOL

Four separate measures were used to compare the five appeals offices. Two of the indicators involved the percent of claimant and employer appeals approved, and two dealt with the rate of reversals in the "voluntary leaving" and "discharged for misconduct" categories. Rates for the four measures were calculated using monthly data from 1990 through the first nine months of 1994, exclusive of 1991, which had been deleted from DOL's automated records. The same statistical test applied to the job center data was used to determine if the differences among the appeals offices were real or merely the product of chance variation. The results indicated that the differences in the: percent of claimant-initiated appeals approved; percent of employer-initiated appeals approved; and rate of reversals of the "dismissed for misconduct" cases were significant. The variation among the offices with respect to the rate of reversals for cases involving voluntary leaving issues did not appear to be statistically meaningful.⁷

Figure V-6 shows the performance of each appeals office on the three measures found to be significantly different. It is important to note the measures dealing with the reversal rates (percent of quits and discharge decisions reversed) do not indicate whether the reversal favored the claimant or the employer, only that the original fact finder's decision was reversed. Thus, the data shown for these two measures cannot be used as an indicator of whether a particular office has a bias for or against employers or claimants.

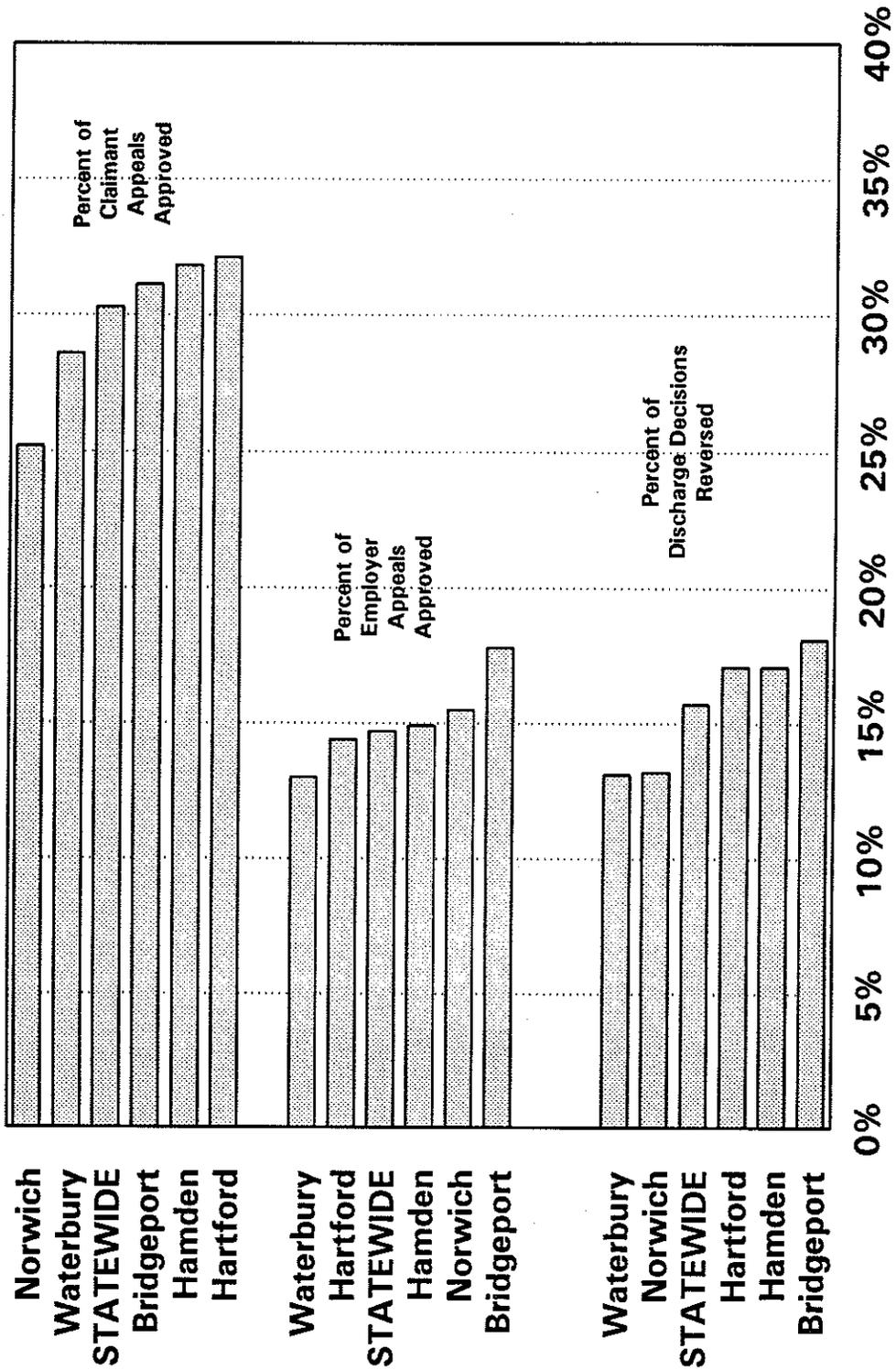
The variation in decision outcomes among the centers and offices poses a potential problem. If it is the result of underlying differences on such matters as the type of labor market within a geographic region (e.g., manufacturing, retail, professional, etc.) then the variation might be reasonable and acceptable. However, if citizens are receiving different treatment based on the location where their issue is being decided, then the system has serious equity problems.

The committee believes public attention needs to be focused on the differences in decision outcomes among the centers and offices. It is the committee's view this will encourage the department's professional staff and special interest parties to seek explanations and develop remedies if warranted. Therefore, the Legislative Program Review and Investigations Committee recommends:

The Department of Labor shall annually compile and present to the Unemployment Compensation Advisory Board data on the outcome of eligibility determinations made in job centers and appeals offices operated by the department and the Employment Security Appeals Division.

⁷The Kruskal-Wallis one-factor analysis of variance indicated that the: percent of claimant appeals approved (K=9.7); percent of employer appeals approved (K=9.7); and percent of dismissed for misconduct reversals K=10.4) were all significant at the .05 level. The results for reversals of voluntary leaving issues were not significant (K=6.5)

FIGURE V-6. Decision Rates for Selected Issues Among Appeals Offices



Source of Data: Employment Security Appeals Division

The Department of Labor, in cooperation with the Unemployment Compensation Advisory Board, shall analyze differences in the eligibility determination outcomes among job centers and appeals offices and if necessary develop policies, procedures, and legislative proposals to remedy any problems.

EMPLOYER PARTICIPATION

During interviews with the staff and through testimony at the committee's public hearing, employers expressed a concern that the determination process is biased against their interests. Employers pointed to the high percentage of decisions favorable to claimants as evidence supporting their position. Department of Labor staff countered that argument by insisting the results are due in large part to the low participation rate of employers at fact-finding and appeal hearings.

A review of data for calendar year 1993 indicated that employers participated in 61 percent of the fact-finding hearings involving job separation issues. Committee staff determined that the overall rate of decisions favorable to employers was 33 percent when they participated and 5 percent when they did not. Statistics on participation rates in hearings at the referee level were not available. However, an analysis of monthly case disposal data at the referee level for 1993, found that lack of participation by employers was the reason given for 20 percent of the cases dismissed.

As already noted in the eligibility determination section, the committee believes that greater employer participation would increase the percentage of decisions favorable to employers. The committee's overriding concern is not that the rate of decisions favorable to employers should be increased, rather it is the belief that employers must participate to insure the efficacy of the eligibility determination process. Also, when claimants who should be disqualified are awarded benefits because of the employers lack of participation, the integrity of the system suffers leading to an erosion of the public support necessary to provide the benefits the system was designed to deliver.

The committee believes that employers need to be encouraged to participate in the eligibility determination process any time they have good reason to believe that a claimant is not entitled to compensation. This is especially true at the fact-finding level, given that only about 20 percent of all appeals cases are reversed. Further, the committee believes barriers to participation, such as the cost associated with appearing at hearings and producing witnesses, could be reduced through increased use of modern communications methods. To address these concerns the Legislative Program Review and Investigations Committee recommends:

The Department of Labor and business interest groups should use such means as newsletters, brochures, and forums to actively promote employer participation in the eligibility determination process.

The Department of Labor, in concert with the Unemployment Compensation Advisory Board, develop a legislative proposal to allow employers to participate in fact-finding and referee level hearings through means including, but not limited to, telecommunications.

While encouraging employers to participate at the fact-finding level, the committee takes a more cautious view toward the employers use of the appeals system. In 1993, approximately 3,500 appeals were dismissed because employers failed to appear, and another 2,000 were withdrawn at the request of employers. In total, employer initiated dismissals and withdrawals represented over 25 percent of the cases disposed at the referee level in 1993. If dismissals and withdrawals attributable to claimants are added, the result rises to 35 percent.

The fact that more than one-third of all appeals are scheduled but never heard is an indicator that the system is not functioning well. The result is more than an inconvenience; it causes the Employment Security Appeals Division to maintain staff levels sufficient to process each filed appeal even though more than one-third of the cases are disposed without a hearing. In contrast, the cost to an employer or employee of filing an appeal is virtually nothing. The committee believes some disincentives are needed to discourage employers and employees from filing appeals and then not showing up at scheduled hearings. Therefore, the Legislative Program Review and Investigations Committee recommends:

A fee equal to one quarter of the claimant's projected weekly benefit rate or \$25, whichever is greater, shall be imposed on any employer or employee who files an appeal with the Employment Security Appeals Division. The fee shall be refunded upon the filing party's participation in the appeals hearing.

BENEFIT OVERPAYMENTS AND RECOVERIES

As discussed in Chapter III, the unemployment compensation system, like any benefit program confronts the problem of benefit overpayment to claimants as well as claimants who fraudulently collect benefits. While total overpayments in Connecticut have always been less than three percent of all benefits paid, the total grew to more than \$10 million in 1993. Of particular concern is the fact that between 40 to 50 percent of overpayments are due to fraud.

The department has detection and recovery strategies to discover fraud and non-fraud overpayments, which are specifically outlined in Department of Labor regulations Sections 31-273-1 through 31-273-8.

When an overpayment is uncovered, or when overpayment has resulted because a decision favorable to the claimant has been reversed, the claimant is notified and given an opportunity for a hearing. Once the hearing has determined that overpayment has occurred, but for reasons other than fraud, the overpayments are recouped from unemployment benefits subsequently payable to the individual in an amount equal to 50 percent of his/her weekly benefit

entitlement. If the claimant is no longer eligible for benefits, the individual may enter into an agreement with the department to repay the overpayment according to an agreed-upon schedule. Finally, the department may waive the repayment requirements if the claimant meets specific circumstances provided for in regulations.

The department also has statutory and regulatory authority to deal with fraud. Fraud is usually uncovered through a computerized match of the quarterly file of benefits paid with the same quarter's wage file. The top 2,000 names with both earnings and claims are considered questionable, and are then targeted for further investigation. Once DOL has reason to believe a person collected benefits fraudulently, or through wilful misrepresentation or nondisclosure, the department must give the claimant the opportunity for a hearing.

If, after the hearing, the claimant is determined to have collected benefits fraudulently, the individual is liable for repayment of that amount to the department. If the repayment is not immediately collected, DOL can offset 100 percent of each future weekly benefit check for which the claimant may be entitled. In addition to the repayment requirement, DOL is also authorized to charge administrative penalties, whereby a number of legitimate weeks of benefits are forfeited, depending on the amount of fraud detected. Department staff point out, however, that this is often meaningless, since most individuals just stop filing, so the administrative penalties are not collected.

In addition to the administrative remedies, unemployment compensation fraud can also be prosecuted, although it seldom is because the individual amounts involved are not that large. Thus, the committee concluded that, given the meager tools at the department's disposal, DOL's record on fraud collection is inadequate. During the 10-year period from 1982 through 1992 (the last year for which all data are available), the department's data indicate that 57 percent of the benefits collected fraudulently were recovered. In comparison with other states recovery of fraud in 1993, Connecticut ranked 34 out of 51 states and territories, recovering 52 percent, just under the federally set standard of 55 percent.

The program review committee found that the department's efforts in recovering non-fraud overpayments have been even less successful. The aggregate overpayments for the 10-year period between 1982 and 1992 were \$27,372,527. Of that amount, \$11,112,887, or 40.6 percent was collected during the same period. Further, 1993 nationwide data, comparing the records of 51 states and territories in recovering non-fraud payments, show that Connecticut ranks 49. This state recovered only 29 percent of non-fraud overpayments, far less than the 55 percent standard set by the federal government.

The committee believes the department has made serious efforts at detection and recovery of fraud and non-fraud overpayments, but the agency could do better if it were given a greater array of tools. The committee found the heavy reliance on offsetting is too limiting, especially in the non-fraud cases, and concluded that repayment schedules should not be optional to overpaid claimants. Thus, to more effectively deal with fraud and overpayment the Legislative Program Review Committee recommends the following:

- where offsetting of benefits cannot fully recoup the amount of money overpaid the claimant, the claimant must be statutorily required to enter a repayment schedule that the Department of Labor believes the claimant can reasonably be expected to meet; and
- where the claimant fails to repay according to the schedule, the Department of Labor shall track the wage file and other means to determine when the former claimant returns to work. The department shall be given the statutory authority to pursue garnishment of wage proceedings to recover overpayments in full.

In addition to bolstering efforts to collect on overpayments and fraud, the committee also believes that greater punitive measures should be taken in instances where fraud is proven and therefore recommends:

- the statutes be changed to require that any person who is convicted under Section 31-273(d) (1) or (2) of fraudulently obtaining unemployment compensation benefits permanently forfeits his/her rights to any future unemployment benefits.

Employer fraud. The committee also acknowledged that employer fraud occurs in the unemployment compensation system, generally through misclassifying employees as independent contractors or by paying employees off the books to avoid paying payroll taxes. The department has strengthened its efforts to pursue employers who circumvent or abuse the system. In fact in the federal fiscal year ending September 30, 1994 DOL, through its field audit units, collected more than \$7.7 million that otherwise may not have been taxed to fund the unemployment compensation system.

However, the committee believes the increased collections also indicate that the problem of non-payment has grown. Therefore, to deal with the issue, the Legislative Program Review and Investigations Committee makes the following two recommendations:

- 1) the Department of Labor should initiate a statewide educational campaign to educate both employers and employees about their responsibilities under the unemployment compensation law.
- 2) C.G.S. Section 31-273(c) should be changed to require that any person, firm or corporation who knowingly employs any person and pays that person without declaring such payment in the normal payroll records shall make unemployment compensation tax contributions at the maximum rate provided in Section 31-225a for the period of one year

following a hearing and determination by the Department of Labor of such non-declaration.

The committee believes an educational campaign is necessary to inform employers and workers that, even in the face of a very competitive economy, payment of unemployment taxes is the law. The campaign should remind businesses and employers that circumvention of the system's requirements undermines the integrity of all governmental institutions.

Employees also need to be informed that when they work "under the table" they are hurting themselves in the long run. Employers who don't pay the unemployment taxes (and other taxes and insurance premiums that the law requires) will negatively impact those employers who legitimately cover their workers, thus jeopardizing the benefits of all workers. Finally, the campaign should encourage reporting of suspected abuse through a telephone hot-line.

In addition to the education campaign, tougher sanctions need to be imposed when this type of activity is discovered. Currently, only when the department finds an employer is employing someone who is currently collecting unemployment and paying that person off the books, can the employer be found guilty of a class A misdemeanor and made to pay unemployment contributions at the maximum rate. However, DOL staff state that no employer has been assessed the maximum rate for this reason because it is difficult to impose, since it involves prosecution and the court system. The committee concludes that the recommendation to make the assessment of the maximum contribution penalty administratively based, following the due process of the Uniform Administrative Procedure Act, will certainly improve these efforts.

Prosecution could certainly still be employed under the statute. In fact, the program review committee hopes that more publicized efforts at prosecuting unemployment compensation fraud-- similar to those taken in workers' compensation fraud -- would serve as a strong deterrent.

POOLING OR NON-CHARGING BENEFITS

As discussed in Chapter III, every state, including Connecticut, allows charges for some unemployment insurance benefits awarded to claimants to be pooled among all employers, rather than charging those benefits to the individual employer. These "noncharging" provisions have been enacted generally because it seemed unfair and unreasonable to have certain charges assigned to an individual employer.

However, the committee concluded that there are also negative aspects to pooling. It may foster a false sense that since no one employer is paying the benefits, that nobody is paying. During the study, some DOL staff on occasion referred to pooling as a "win/win" situation. The misconception that nobody pays may contribute to both less stringent interpretation of who should be disqualified and fewer challenges from employers about claimant eligibility.

In some other areas where pooling arrangements are allowed -- for example, the Second Injury Fund for workers' compensation -- benefits paid by the pool have grown dramatically, and led to financial crisis. The committee examined the pooling arrangement for unemployment benefits to determine if the practice posed any similar financial threat.

The financial data discussed in Chapter III show that the trend in pooling appears to be increasing; currently about 14 percent of all benefits are pooled. This means that \$1 of every \$7 or \$8 of benefits paid to claimants of taxable employers is pooled. The growth in pooling is of special concern, considering that a drop in overall benefits occurred in FY 93. The committee believes this is largely due to legislation passed in 1991 (P.A. 91-107) that allows pooling for benefits paid to a claimant approved and then later denied on appeal.

The committee found that pooling does not pose any great or immediate financial risk to the unemployment compensation trust fund. While the amount of pooled benefits are considerable -- an average of more than \$80 million in each of the last three years -- the pooled benefits as a percentage of all benefits does not seem to be experiencing any rapid growth such as that encountered in the workers' compensation second injury fund. At the same time, however, the trend in pooling -- both in actual dollars paid, and in percentage of all benefits paid -- is growing. Therefore, to ensure that pooling remains limited in scope and that new non-charging provisions are not added, the Legislative Program Review and Investigations Committee recommends that:

the Department of Labor, in combination with the Unemployment Compensation Advisory Board, annually examine the experience in pooling benefits and, if necessary, take measures, including proposing legislation, to restrict non-charging provisions.

EMPLOYER COSTS

Connecticut's unemployment compensation system is financed entirely through taxes on employers. Currently, three different state taxes are levied: the charged rate tax; the fund balance tax; and the bond assessment tax. In FY 94 over \$433 million was collected through the charged rate and fund balance taxes; the bond assessment tax did not go into effect until July 1, 1994.

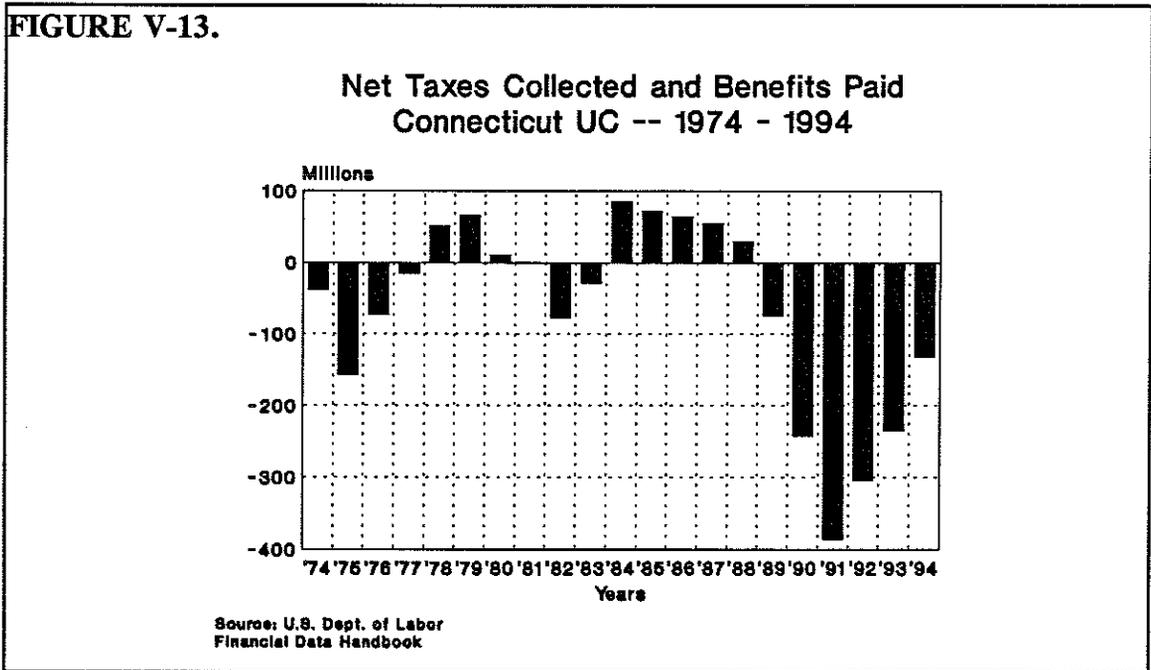
Figure V-13 shows the net flow of revenues and expenditures from the state's unemployment compensation trust fund over the last 20 years. The graph illustrates that the taxes collected in Connecticut when the economy was good did not provide enough reserves to pay for the severe drains on the fund during the recessions of the mid-1970s, the early 1980s, and the late 1980s into the 1990s. For example, in 1975 benefits of almost \$300 million were paid, but only \$141 million was collected. Again, in 1982 about \$100 million more in benefits were paid than was collected. While the economy improved for most of the remainder of the

decade, the taxes collected did not provide a sufficient buffer for the severe recession that began in 1989.

During the periods when the unemployment compensation trust fund was insolvent or near insolvent, Connecticut met its benefit obligations by borrowing from the federal government. However, by June of 1993 the trust fund was \$712 million in debt, and the state's financing practices were jeopardizing the federal unemployment tax credit received by the state's employers. In response, Connecticut adopted P.A. 93-243, which authorized issuance of state bonds to pay off its federal debt. The bond assessment tax referenced above was designed to generate the revenue needed to meet the bond obligations. This strategy is expected to save employers \$112 million over the seven years that it will take to pay off the bonds.

The sharp rise in unemployment taxes in the 1990s caused many employers to call for measures that would reduce their unemployment compensation costs. Some of the proposals focused on DOL's management of the system, such as its handling of the eligibility determination process, while other recommendations dealt directly with reducing employer costs.

FIGURE V-13.



In addressing the cost issue the committee staff focused on three options: eliminating the cap on the charged tax rate; reducing benefit payouts; and instituting a waiting period for benefits. A brief discussion of each option follows.

Eliminating the cap on the charged tax rate. The charged rate, also known as merit or experience rate, represents the ratio between the benefits paid to an employer's unemployed workers during a specified period of time and the total amount of taxable wages paid by the employer during the same period. The charged rate is multiplied by the employer's taxable wages to calculate one part of the unemployment compensation taxes an employer owes the state. There is a minimum and a maximum charged rate that employers can incur -- 0.5 percent minimum and 5.4 percent maximum.

Approximately 25 percent of the state's roughly 90,000 covered employers are at the maximum rate and about 45 percent are at the minimum. If the 5.4 percent ceiling and 0.5 percent floor were eliminated there would be a major shift in the tax burden among employers. Many of those at the cap would be saddled with significant tax increases while most of group at the minimum rate would see their taxes fall. The effect would be to eliminate the subsidy currently enjoyed by employers whose charged rate is prohibited from going above the 5.4 percent level. Employers at the minimum rate would experience substantial tax relief. If the increase in revenue from eliminating the cap more than offset the loss from dropping the minimum tax requirement, the fund balance tax, which is tied to the solvency of the trust fund, could be lowered benefiting employers whose charged tax rates were between the constraints.

However, eliminating the upper and lower limits on the charged rate tax would not directly change the overall financial requirements of the trust fund. In addition, it would add uncertainty to the tax planning ability of many employers, particularly those in cyclical industries. Both of these points were factors in the staff's decision not to recommend adoption of this option. Another, more important reason, for the staff rejecting this option was a concern that the 5.4 percent cap functions as a safety valve that prevents employers caught in a deep recession from facing a huge tax increase that could hurt their chances of recovering or even surviving.

Reducing benefits paid to claimants. The committee viewed benefit costs as a function of four components: qualifying requirements, weekly benefit rate, dependents' allowances, and duration of benefits. Qualifying requirements were dealt with in the Determination of Eligibility section of Chapter 4. The analysis of the duration of benefits was limited to instituting a waiting period, and is dealt with as separate option. The weekly benefit rate and dependency allowance issues is addressed next.

The simplest method to reduce employers costs would be to lower the weekly benefits paid to claimants. This could be accomplished in three ways: 1) changing the formula used to calculate a claimant's weekly benefits, 2) changing the ceiling on the maximum weekly benefits, or 3) reducing or changing the dependency allowance.

Actually, the formula for calculating a claimant's weekly benefit rate was changed effective with the start of FY 95 (P.A. 93-243). Under the new method the weekly benefit rate is 1/26th of the average of a claimant's earnings in his or her two highest-earning quarters. The weekly benefit rate under the previous approach was 1/26th of the claimant's earnings in the

quarter with the highest wages. The new formula will reduce the weekly benefits for all claimants except those whose total wages were exactly the same in their two highest earning quarters.

Of course, steeper benefit reductions could be achieved by changing the formula in other ways. For example, instead of basing a claimant's weekly benefit rate on the two highest quarters, an average weekly wage could be calculated from a claimant's annual earnings and multiplied by a fixed percentage to determine the weekly benefit. This approach would produce the lowest possible base wage and the fixed percentage multiplier could be changed to produce various results.

Benefit payments could also be reduced by lowering the statutorily set maximum benefit rate. The rate is indexed to changes in the average wage of production workers and is currently \$335. The reduction in the rate would increase the number of claimants whose calculated weekly benefit wage would be capped resulting in a decrease in benefit payments. Another approach to saving money would be to freeze the maximum rate at its current level. The long-term effect of this method would reduce benefits in real terms as inflation lowered the value of the benefits paid.

Estimates of the savings under either approach would depend on the distribution of claimants among various weekly benefit rate groupings and the duration for which benefits are usually paid. The committee staff was unable to develop the information needed to generate a cost saving estimate on this option.

The final direct benefit cost reduction considered concerned the dependency allowance. Connecticut is one of only 14 states that provide additional payments for dependents. A claimant is entitled to \$10 per dependent up to a maximum of \$50 per week or 50 percent of the weekly benefit whichever is lower. The dependency allowance added \$11.5 million to the benefit payments charged to taxable employers in FY 94.

In deciding whether to recommend any of these changes to the committee the staff took into account two basic principles of the unemployment compensation program: 1) weekly benefits should be related to a claimant's usual wage; and 2) benefits should replace about 50 percent of the claimants usual wage. The staff also considered the value of the benefits provided to claimants under Connecticut's unemployment compensation system compared to other states (see Appendix E).

Table V-14 shows how Connecticut ranks compared to other states on selected benefit measures. The table reveals the state's maximum weekly benefit of \$317 in 1993 was 7th from the top and jumps to the 3rd highest when allowances for dependents are included. The state's average weekly benefit of \$220 ranks 5th highest. However, the rankings are distorted by the state's wealth. For example, when Connecticut's average weekly benefit is expressed as a percentage of the average wage, the state's 35 percent wage replacement rate is 15 points below the 50 percent standard that has been one of the principals of the unemployment compensation

program since its inception. Also, on this key measure the state ranked 30th among all states in 1993. Based on these findings, the staff chose not to recommend adoption of any of the benefit reduction options explored above and the committee took no action.

| Table V-14. Connecticut's Profile On Selected Benefit Measures In 1993 | | | | | | |
|--|----------------------------|-------------------------|------------------------|--------------------------|-----------------------------|------------------------------|
| | Maximum without Dependents | Maximum with Dependents | Average Weekly Benefit | Average of Wages Covered | Avg. Ben. as % of Avg. Wage | % Unempl. Receiving Benefits |
| CT Value | \$317 | \$367 | \$220 | \$625 | 35% | 43% |
| CT Rank | 7 | 3 | 5 | 2 | 30 | 4 |
| Median | \$211 | \$220 | \$157 | \$131 | 36% | 25% |

Source of Data: AFL-CIO 1994 Publication -- Unemployment Insurance under State Laws

One-week waiting period. Connecticut is one of 11 states that does not require an otherwise eligible claimant to wait a period of time, usually one week, before benefits become payable. In recent years the state has entertained several proposals to institute a one-week waiting period. An analysis by the Office of Legislative Research (February 1993) found the proposals vary in terms of when a claimant would be eligible to receive the benefits foregone in the waiting week. One proposal would have allowed the benefits not paid in the first week to be recovered during a claimant's fourth week of unemployment. Claimants re-employed prior to the fourth week would not receive the first week of benefits. Another proposal would have limited the recovery of the first week's benefits to the 27th week of unemployment.

The Department of Labor estimated that, based on 1991 claim data, the proposal involving the four-week delay in the recovery of benefits would affect 55,500 claimants (26 percent) and result in a saving to the trust fund of approximately \$5.6 million (about 1 percent of the outflow). The department estimated that delaying the recovery of benefits until the claimant's 27th week of unemployment would affect about 133,000 recipients (62 percent) and save around \$18.6 million per year.

The staff considered the waiting week option far less punitive to employees than the others reviewed in this section. Only employees of businesses that routinely shut down operations and furlough their workers for a week were systematically disadvantaged under either version of the waiting period proposal outlined above. The fact that a majority of other states have waiting week requirements and the estimated savings to the trust fund made this an attractive option. However, the staff chose not to recommend the proposal to the committee. The primary reason was the staff's understanding that the waiting week proposal was rejected as part of a compromise between business and labor to restructure the financing of the trust fund (P.A. 93-243).

Employer tax burden. The staff compared the tax burden on Connecticut employers with other states. Table 15 contains three measures of employer costs. The average employer tax rate as a percentage of their taxable payroll is 3.4 percent and ranks 9th overall among the states. The state's taxable wage base ranks 24th, although this may change as the base increases annually until it reaches \$15,000 in 1999. When the tax rate is expressed as a percentage of total payroll Connecticut's rank falls to 23rd. Overall, the data shown in the table led the staff to conclude that the tax burden on the state's employers is not out of line with the other states when the wages are factored in the comparison.

| Table V-15. State Comparisons On Tax Measures In 1993 | | | |
|---|--|--|-------------------|
| | Average Employer Tax as % of Taxable Wages | Average Employer Tax as % of Total Wages | Taxable Wage Base |
| CT Value | 3.4% | 0.9% | \$9,000 |
| CT Rank | 9 | 23 | 24 |
| Median | 1.6% | 0.7% | \$8,000 |

Source of Data: AFL-CIO 1994 Publication -- Unemployment Insurance Under State Laws

TAXING EMPLOYEES

The staff indicated in its briefing to the committee that four states impose a tax on employees as well as employers. In fact only three still do. The committee requested that the staff conduct further research on this issue including: how the tax is imposed; what it is used for; and whether the tax on employees impacts the use or the perception of the unemployment compensation program. The results are shown in Table V-16 on page 86.

The table reveals that only in Alaska are employees taxed on an ongoing basis to support the unemployment compensation trust fund. In Pennsylvania, contributions are made only to keep the fund solvent. West Virginia also used contributions for this purpose, but the requirement was eliminated in 1991. In New Jersey, while employees are taxed, currently none of the revenue goes to finance the general unemployment compensation trust fund, rather the money supports specific funds that provide worker training, worker disability insurance, and subsidize health care.

| Table V-16. State Provisions Taxing Employees | | | |
|---|--|---|---|
| State | Taxing Provisions | Purpose | Status |
| Alaska | All private employees (employees of reimbursing employers are not charged) are taxed not less than .5% of wages. Wage base is 75% of Alaska's average annual wage. | Unemployment Compensation Trust Fund | On-going |
| West Virginia | All employees are taxed. Tax rate is .35% of their gross wages | Repayment of bonds which were issued to repay federal gov't on fund debt | Tax imposed from 1987 to 1991. In Oct. 1991, when debt was repaid, stopped charging employees |
| New Jersey | All employees are taxed 1.125% on wage base of \$17,200 | 0.6% to Health Care Subsidy Fund; 0.025% to Workforce Development Fund; and .5% to Disability Insurance | Triggered by 1991 legislation. Ongoing |
| Pennsylvania | All employees are taxed -- from .03% to .15% on all gross wages; Tax is imposed only when fund goes below 125% of all gross wages paid in PA. | To ensure fund solvency | Triggers on and off depending on fund solvency |
| Source: Information Received from Individual States | | | |

The staff also asked unemployment compensation administrators in the above states whether the tax on employees causes a change in the way employees view or use the system, or in the way eligibility for benefits is determined. The consensus was that the tax may promote the perception by workers that they are more deserving or entitled to benefits since they contribute. But, all four states indicated that the tax does not change the way eligibility is determined.

The committee concluded that imposing a tax on employees is not an option to be considered at this time. First, two of the four states that imposed such a tax did so to alleviate fund solvency crises. In Connecticut, when a solution to the state's fund crisis was being sought, lawmakers chose an option agreeable to both business and labor, which added an assessment on employers to repay state bonds issued to refinance the state's debt to the federal government. Therefore, charging employees to finance the debt in the unemployment compensation fund is not necessary at this time.

Only Alaska has a permanent requirement that mandates all employees contribute to the fund, regardless of the fund's solvency. The purpose of the employee tax in New Jersey appears to be innovative, particularly the funds for disability insurance and health care subsidies. However, such programs stretch traditional unemployment compensation objectives and need further study before being recommended in Connecticut. The workforce development fund appears to be a better target for employee-based funding, but the committee decided that such a recommendation in Connecticut would be premature at this time for three reasons:

- the focus of employment and reemployment services is changing at all levels;
- Connecticut's labor department is currently reorganizing, with a greater emphasis on employment services, and has received a federal grant to develop a consolidated approach to employment services;
- the provision of training and its location, the types of training provided, whether duplication and overlap exists, and the success of existing training and employment services programs is not well documented.

Until employment and training services comes into clearer focus in Connecticut and nationally, the program review committee concluded a proposal to require employee funding would not worthy of serious consideration.

In general, the committee believes that workers must take more individual responsibility for ensuring their employment future by furthering their education and training before they become unemployed. Employees also need to plan financially for the possibility they may become unemployed. Just as people plan for the possibility that they might become disabled, and ensure against it, or invest to supplement the amount they will receive from Social Security for retirement, employees also need to take steps to lessen the impact of unemployment, should that occur.

Historically, employers through unemployment compensation taxes have shouldered the financial burden of the system and been resistant to additional demands on the trust fund. However, there is a general consensus in the literature⁸ that the unemployment compensation system may no longer be serving workers the way it was designed to, and it may be time to look at alternative ways of meeting or supplementing workers' needs.

⁸ For example, a study by the Congressional Budget Office found that even one to three years after being dislocated, half of the workers who had lost their jobs either were still not working, or had jobs that pay less than 80 percent of what their old jobs paid. In addition, a 1993 GAO report indicates that the unemployment compensation system's ability to meet its long-standing objectives -- economic security of the worker and put money into a recessionary economy -- is now jeopardized.

The committee believes that both state and federal governments must play a major role in bringing about such change. Governments at all levels can use the tax systems to encourage employees to take greater responsibility for their well-being in such areas as:

- training and education;
- establishing rainy day or "set-aside" funds that allow workers to save for an occurrence of unemployment; and
- health insurance.

Options that might be considered include allowing the individual to pay for such programs in pre-tax dollars, or allowing some type of tax credit on an individual's income tax, much as dependent care or deferred compensation programs operate now. These might function either like a savings account, where only the funds that an individual puts into an account could be used if the worker became unemployed, or private insurers might offer unemployment insurance to supplement the regular unemployment compensation program.

Any of the programs suggested that foster government support for greater individual responsibility require further exploration and partnership among different levels of government. The program review committee regards the Advisory Committee on Unemployment Compensation as a good vehicle to start the state taking a view of the unemployment compensation system beyond paying benefits and the traditional registration for the job service. Therefore, the Legislative Program Review and Investigations Committee recommends that:

the Connecticut Department of Labor and the Unemployment Compensation Advisory Board explore ways of supplementing the current unemployment compensation system to serve those whose needs are not fully met by the current program.

The legislature last year began developing incentives for businesses who respond to their customers and employees in innovative ways. The "High Performance Work Organizations" legislation, as it is known, gives priority in awarding economic development and job training assistance to employers that exhibit high performance characteristics regarding its work environment and structure, its labor management structure, its customer relations and production system. The committee believes that similar creative actions should be taken to spur workers to taking responsibility for their future employment situations.

EMPLOYMENT SERVICES

Employment Services are offered at all 18 of the Department of Labor's Job Centers, and are available to all individuals whether or not they are unemployed. The services include: a data bank that matches job orders taken from employers with the job skills offered by individuals who

register for employment; employment counseling and planning; certification for training; and intensive development of job search skills.

The department's ultimate goal is for the job centers to serve as one-stop customer services centers for all persons seeking work. To meet this objective, DOL began reorganizing its staff and functions two years ago, and is now in the final stages of that restructuring. As part of that reorganization, the previously separate unemployment compensation and job services areas were merged. Each of the 18 job centers are now viewed as comprehensive customer service centers, with integrated management of the two functions and cross-trained staff available to perform both unemployment compensation and job service functions.

In September 1994, DOL submitted a grant application to the federal Department of Labor to help finance further development and implementation of the one-stop career centers. In late October, Connecticut, based on steps it had already taken to consolidate employment operations, was one of six states awarded an initial \$3 million to implement these centers. Additional money will be allocated to states to establish computerized labor market information systems.

In addition to receiving the federal grant, Connecticut was also recognized by the National Alliance for Business as the "Distinguished State of the Year" for the state's progress in designing and implementing a comprehensive education, training and employment system. The key elements of the new system will be:

- a comprehensive, collaborative state government structure that offers statewide guidance through the Connecticut Employment and Training Commission;
- comprehensive one-stop centers located at 19 sites;
- multiple forms of access to information and services, including enhanced information on training programs, jobs, and the labor market via voice-based phone, computer modem link-up, and self-service kiosks;
- universal, customer-oriented service at all sites;
- staff development and professional growth efforts that promote a customer-oriented, high performance organization committed to continuous improvement;
- a strong performance measurement program that will be based on outcome-driven accountability; and

- a management committee comprised of the DOL's regional Job Center director and the executive director of the Regional Workforce Development Board/Private Industry Council that will oversee the development and operations of each of the centers.

Legislative notification and updates. The program review committee believes the Department of Labor should be congratulated for its innovation, collaboration, and initiative at developing one-stop centers and being awarded the grant that funds them. However, there are several issues concerning the new centers that need to be addressed. First, the one-stop centers are a major departure from past operations. Policymakers in the legislative branch should be apprised of the commitments made to the federal government in order to implement the program, and given ongoing updates as to its funding and its implementation. Other state and federal partnership programs the committee and its staff have examined in the past have sometimes committed the state to financial or regulatory responsibilities that down the road have become burdensome, but that the state was then obligated or expected to provide. The intermediate care facilities for the mentally retarded and social security supplemental programs are but two examples.

While the committee has no reason to conclude that the one-stop centers obligate the state to anything beyond the grant award commitments, employment and training services and how they are offered is a matter of state public policy, even if largely subsidized with federal money. For example, policy issues such as what program components are or might be privatized should be debated by more than key decisionmakers within the executive branch.

Therefore, the Legislative Program Review and Investigations Committee staff recommends that:

the Department of Labor periodically update committees of the legislature that have cognizance over employment and training, including the labor, commerce, and education committees, regarding how one-stop centers will be implemented and funded, and any potential policy or finance obligations the state might incur.

Evaluations. Secondly, the staff believes the evaluation component of the one-stop program is an extremely important one. The department certainly has addressed the evaluation issue in its grant application stating that "a strong performance measurement program . . . will be a key element" of the department's implementation.

As noted in Chapter IV, DOL's record at helping persons become employed through the Job Service is currently inadequate. Less than 10 percent of those who registered at the Job Service during 1993 secured employment through the department's efforts, according to DOL data.

Given that the ultimate goal is to get the client employed or reemployed, the committee staff believes that the department and the other service providers must be evaluated on that outcome. Thus, the Legislative Program Review and Investigations Committee recommends:

the outcomes measured in any evaluation of the one-stop centers must include the number of persons finding employment or reemployment and the duration of that employment.

The department indicates it will use the results of evaluations to determine the impact of the new design, integration of service, and the need to improve the system. The staff believes that the evaluations should be submitted to legislative committees of cognizance so the committees can assess whether the job centers are working, and give input for changes or adjustments. Therefore, the committee recommends that:

the results of any evaluations of the one-stop centers shall be distributed to the labor, commerce, education, and human services committees of the General Assembly.

PRECEDENT MANUAL

As noted previously in this report, precedents established by the Unemployment Compensation Board of Review are probably the primary method for interpreting and establishing policy on which determinations for unemployment compensation eligibility are made. At the committee's public hearing, held on September 29, 1994, the business community complained not only about what it believes are bad precedents in unemployment compensation law, but also the availability and utility of the precedent manual itself.

The Unemployment Compensation manual is indeed voluminous -- 13 different volumes (each volume is devoted to an unemployment category such as discharge, voluntary leaving, etc.) and thousands of cases. But, as recently as the early 1980s there was no manual, or any other guide to board precedent. In 1983, the legislature passed a recommendation of the Legislative Program Review and Investigations Committee mandating the board to publish an index of all cases decided. Committee staff concludes that the Board of Review has made significant progress in informing the public about the basis for its decisions through the development of its precedent manuals.

The manuals are available in most law libraries, the Connecticut State Library, and are also available to the public at each of the local Job Centers and the central office of the Department of Labor. The manuals contain:

- all major Board of Review decisions;

- appeals decisions by referees that the board considers to be of persuasive authority;
- all officially reported decisions of Connecticut courts on the subject of unemployment compensation, which are published in Connecticut Reports, Connecticut Appellate Reports, or the Connecticut Supplement;
- all previously unreported Connecticut court decisions the board considers to represent significant authority on various unemployment compensation issues;
- Connecticut statutes on unemployment compensation; and
- all official opinions of the attorney general concerning unemployment compensation.

The committee concluded that the precedent manual is organized to facilitate ease of use. Each volume is organized into categories and subcategories that assist in researching a particular type of case. In addition, the main principles and issues germane to a particular case or set of cases are identified in coded boxes above the case(s). Exceptions to those principles are also noted in coded boxes.

Further, staff to the Board of Review indicate they offer, within reason, assistance for appellants or others interested in researching board cases. The Board of Review and the department are currently participating in a computerized demonstration project, whereby the cases are available on-line to department staff. Depending on the success of the project, and the availability of other computer software, the department is planning to offer computerized access to unemployment compensation cases to the public. However, full implementation is a longer-range goal.

While it may signify the litigiousness of today's society that unemployment compensation law in Connecticut demands 13 volumes, and that may well concern employers and employees alike, the precedent manual itself should not be blamed for the body of case law that has developed. Rather, the committee believes the Department of Labor and the Board of Review have made a great contribution in guiding parties on how to navigate that body of law, through the development of the manuals.

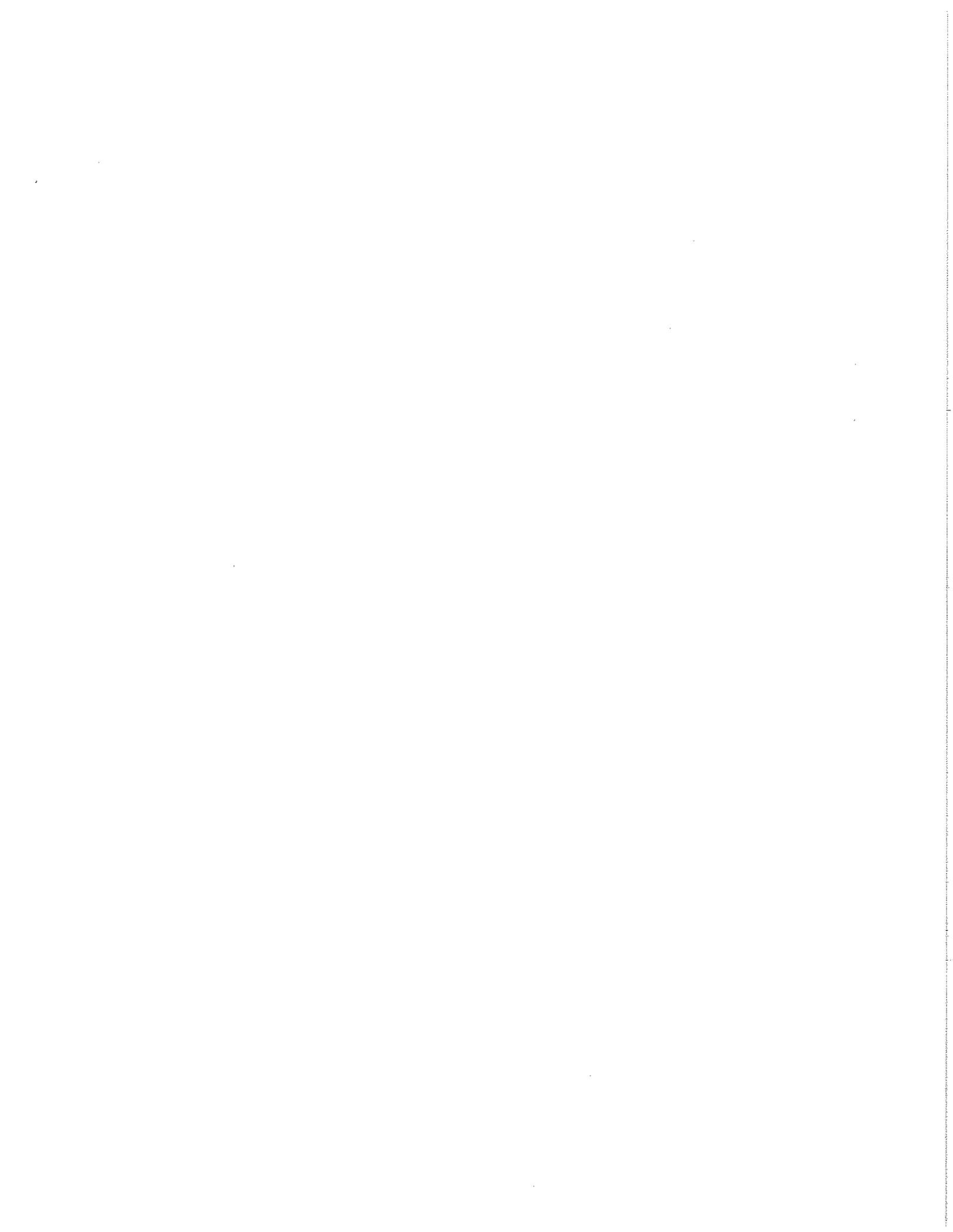
Substantial progress has been made to offer greater access and to simplify the use of the manual. But still needed is a very elementary guide on new precedential cases decided and the core cases that establish the framework on which unemployment case law is built. Therefore, the Legislative Program Review and Investigations Committee recommends that:

the Department of Labor publish, as part of the guides to unemployment compensation, booklets that include:

- new precedential board decisions;
- the core precedential cases;
- brief instructions on how to use the precedent manual to research and prepare an appeals case; and
- the locations where the precedent manuals may be accessed.

Examples of similar publications include the Employer's Guide to Unemployment Compensation and the Employer's Guide to the Appeals Process. The department might even consider including the above material regarding precedents and using the manual in these booklets. This recommendation, coupled with the department's plan to give the public computerized access to Board of Review cases, should generally inform a wide audience of the basic unemployment case law, as well as provide guidance of where and how to access the more detailed precedent manual.

APPENDICES





STATE OF CONNECTICUT
DEPARTMENT OF LABOR

Ronald F. Petronella
COMMISSIONER

January 3, 1995

Mr. Michael L. Nauer
Director, Legislative Program Review
and Investigations Committee
State Capitol - Room 506
Hartford, Ct. 06106

Dear Mr. Nauer:

I am writing to provide the formal response of the Department of Labor to the Committee's Final Report on Unemployment Compensation in Connecticut (December, 1994).

First, I would like to speak generally to the Committee's major finding that Connecticut's rate of decisions favoring claimants is much higher than the national average. At the Department of Labor, we understand that many employers think administration of unemployment benefits is biased against them. What they may not know is how hard the Department has worked over the past three years to change the perception that it is anti-business. We have established nine employer services units around the state, whose sole mission is to help employers meet their workforce needs. We have involved employers in the process of reinventing our employment security system, an effort that has resulted in Connecticut being selected as one of only six states in the country to receive millions of federal dollars to build its one-stop career centers. And the Department's leadership in designing a system of regional workforce development boards has been cited by the National Alliance of Business, which named Connecticut its State of the Year "as a national leader in building a quality workforce for America's future."

Still, in the area of unemployment compensation, many employers feel they are not getting a fair shake and the statistics offer support to this view. Although I believe that the Department has applied the law in an even-handed manner, we want to be part of a constructive effort to improve the system and to ensure that all of our customers, employers and workers, feel they have been treated fairly. Yet, we also agree with the Committee's opening statement in its original findings and recommendations that "overall. . . the system is not in need of radical reform." The first part of this document, therefore, includes recommendations on how to achieve greater equity within the system. The second part then provides an individual Department response to each of the sixteen specific recommendations contained in the Report.

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ELIGIBILITY DECISIONS
FAVORING CLAIMANTS

The Committee Report indicated that its most notable finding is the high percentage of eligibility decisions made favorable to claimants as opposed to employers. Specifically, the Committee found that in 1993, Connecticut decided 73.2 percent of all nonmonetary separation issues in favor of claimants as opposed to the national average of 44.0 percent.

What accounts for Connecticut's high rate of claimant-favorable decisions? During the past several months, this Department has worked with Committee staff to try to identify the reasons for the high percentage of first level decisions in favor of the claimant. We believe that there are a number of contributing factors. The Committee has focused on one factor - precedential decisions of the Employment Security Board of Review - and has considered and rejected solutions relating to the operation and composition of the Board. Yet, it is the Department's position that there are multiple causes for the current adjudicative trends and there are a number of avenues available to both the legislative and executive branches to correct perceived inequities in administration of the system.

As a starting point, let me say that DOL accepts the findings that Connecticut's percentage of separation decisions favorable to claimants is too high and that certain Board of Review decisions in the past ten years have contributed to the expansion of eligibility. But it is also clear that a major part of the problem is the lack of meaningful employer participation in the system. The data outlined below shows that 40 percent of employers don't participate at all. Nearly all the remaining 60 percent provide only basic answers to written questions, frequently with insufficient detail to counter claimants providing in-person testimony. And when there are conflicting statements, state law prevents the Department from securing the best evidence by telephone.

The problem of employer participation is a real one. I have certainly heard the complaints of employers who say - "why bother to participate if I will lose anyway?" I cannot guarantee that an employer who participates will prevail in defeating a claim for benefits. But I can tell that employer that he or she is over six times more likely to prevail just by mailing back the current questionnaire. And I believe employer success rates will increase more dramatically by making employer access to the adjudicative process easier and less costly. In my view, restoring balance to the fact-finding hearing process itself is the key to adjusting disparities in claimant-employer results. Here is the Department's analysis:

- (1) First, as the Department testified in September, there is a fundamental weakness in the data relied upon by the Committee because it takes into account many determinations which are not really contested cases at all. Specifically, in Table IV-7, the category labelled "Dismissed Misconduct" is misleading because it includes many cases which are not truly misconduct-related. When a worker files for

benefits, he is expected to provide a separation notice or "pink slip" provided by his employer, which states the reason for unemployment. When the reason is "laid off for lack of work" or "position eliminated" or "plant closing" or any similar economic reason, no fact-finding hearing is held. However, there are thousands of cases in which either the claimant does not have a pink slip (and his reason for unemployment cannot be phone-verified) or the claimant has been discharged for some other non-economic reason. In these cases, the reason for the discharge is adjudicated in a fact-finding hearing; all of these cases are included under the heading "Dismissed Misconduct." But, in reality, a high percentage of these cases do not even involve an allegation of misconduct.

Department data shows that of all discharge fact-finding hearings held in 1993, approximately 43% involved no employer participation whatsoever. That is, the employer neither appeared in person nor sent a written response to the hearing notice (A written response entails answering a few basic questions regarding the separation on a pre-printed questionnaire and mailing it back to the Job Center.) Thus, over 4 out of 10 discharge cases reported are essentially uncontested.

The Report itself found that when employers participate, even by simply completing and returning the questionnaire, they prevail in 33 percent of all separation cases, as opposed to 5 percent when they don't participate. Relying on this data, DOL believes it is entirely reasonable to conclude that if truly uncontested separations were screened out from the total number of decisions adjudicated, the actual percentage of disputed separation issues adjudicated in favor of the claimant would be approximately 6 percentage points lower than the data currently reveals. The Department will begin immediately working with the Regional office of the U.S. Department of Labor to develop acceptable administrative processes for screening truly uncontested cases out of its adjudicative workload.

- (2) The quality of employer participation is a second major factor in the current rates of benefit approval. Most employers do not participate in person at predetermination fact-finding hearings. Of the 60 percent of employers who do participate, the vast majority respond in writing by answering questions on the questionnaire provided on the hearing notice. Many responses simply do not set forth allegations of disqualifying misconduct; many employers assume that because they are justified in discharging a worker who is not competent or productive enough, the worker will be denied benefits. However, the law generally requires wilful misconduct (either repeated, serious or criminal) before a discharge may be found to be disqualifying. Failure to make allegations of wilful misconduct is a significant factor in many awards of benefits. The Department believes that intensifying its current efforts to educate employers about the Unemployment Compensation Act would make a big difference in this area. A concerted employer education campaign is consistent with the Committee's Recommendations #3, #9 and #16.

- (3) A third factor contributing to the high approval rate relates closely to the second. The current statutory limitation on use of the telephone in the fact-finding process is a major impediment to effective adjudicating. In cases where the adjudicator is confronted with a claimant providing in-person testimony and a written statement from an employer, the adjudicator is required to consider the two statements, and make a determination as to whether the separation occurred under disqualifying conditions. Generally, the adjudicator will not telephone the employer to obtain more detailed information. This is because since 1974, Section 31-241 has required that determinations of eligibility be "based upon evidence presented in person or in writing at a hearing called for such purpose." The legislative history of this provision demonstrates a clear intent to prohibit the fact-finding examiner from picking up a telephone and soliciting statements (including disqualifying information) from employers who would not otherwise participate. This limitation on use of the telephone has been identified as an obstacle to obtaining the best evidence in many first level adjudications.

Many employers simply cannot leave their businesses to appear in person at informal fact-finding hearings, yet would have valuable information to provide a fact-finder who is trying to reconcile differences in testimony and trying to obtain the best evidence and most accurate account of the events leading to a discharge or quit. The severe limitations on using the telephone in adjudication have served to undermine the quality of Agency decision making. Making the telephone a viable tool in adjudicating would, in the Department's view, have an immediate substantial impact on the current approval rate by enabling employers to participate in a meaningful way in the fact-finding process.

By legislatively authorizing phone usage and working with the Employment Security Advisory Board to institute other administrative initiatives designed to improve the capacity of employers to participate in a meaningful way in fact-finding hearings, a much greater level of fairness will be afforded employers in the initial adjudication.

- (4) Precedential decisions of the Employment Security Board of Review have been correctly identified as a major factor affecting the claimant approval rate. However, based on the data contained in the report, Board precedent appears to account for, at most, about 12 percent of the 22 percent increase in claimant-favorable decisions since 1980. This conclusion is based on two facts. First, prior to 1986, Board precedent was not indexed and not widely known or disseminated either to the public or to Agency fact-finding examiners. The regulations establishing criteria for determining unemployment compensation eligibility, which were adopted in 1986, were based largely on judicial case law and long-standing policy which pre-dated the Board's existence. It was only in 1986 and thereafter that the Department began to rely on Board precedent decisions, made

more accessible by statutorily-mandated indexing, as a tool in training of first-level fact-finding examiners. The second fact supporting this conclusion is the data itself, which show that as of 1986, the percentage of separation decisions favorable to claimants already stood at 61.1 percent, an increase of 10% from 1980. The rate of approvals began increasing before Board precedents had a major impact on fact-finding decisions and continued to increase after Board decisions became more accessible. In fact, U.S. Department of Labor data shows that Connecticut's approval rate exceeded the national average by about 10% throughout the period from 1980-1986. Thus, it is clear that some other factors not yet fully understood have also been at work over the last 15 years.

The Committee has also correctly identified the Employment Security Board of Review as a major driver in shaping interpretation of the Unemployment Compensation Act. The General Assembly gave the Board that role through its statutory authority to issue decisions which are binding and precedential in subsequent proceedings involving similar questions, and then requiring the Board to publish those precedent decisions in a way that provides a helpful, accessible reference to claimants, employers and the Department itself. Conn. Gen. Stat. Section 31-249f. The Committee was also correct in rejecting the staff recommendation to remove the statutory position of Board chairperson from the civil service. The Board of Review, unlike many other quasi-judicial bodies, is subject to major production demands, deciding over two thousand cases each year. Politicizing administration of the Board would not only undermine consistency in development of the law, but would also destabilize the productivity and efficiency of the decision making process itself. In light of the fact that the two other Board members are subject to gubernatorial appointment, there is already of high degree of direct Board accountability to the legislative and executive branches. Moreover, the unemployment compensation statutes contain a unique system of checks and balances, which can be relied upon to insure that policy making is fully accountable to the Governor and the General Assembly.

Under Conn. Gen. Stat. Section 31-249c, the Labor Commissioner as Administrator of the Unemployment Compensation Act is a party to any proceedings before a referee, the board or any reviewing court. Thus, the executive branch can, through the Labor Commissioner, advocate for more restrictive statutory interpretation in proceedings before the Board, and if it does not prevail, can appeal the Board's decision to Superior Court. Not only does this insure judicial scrutiny of the Board's legal analysis, but it also postpones any precedential value of the Board's decision until after court review.

In addition, Conn. Gen. Stat. Section 31-236e gives the Labor Commissioner authority to adopt regulations which establish "all necessary criteria for the determination of a claimant's eligibility for unemployment compensation benefits." As the Report correctly notes, it is these regulations which the Board interprets. Thus, the executive branch, in the person of the Labor Commissioner, actually has the power through formal rulemaking to adopt constructions of the

statutes which are more restrictive than those adopted by the Board through decision-making. The regulatory process also insures legislative oversight, since any new regulation would require formal approval by the Legislative Regulations Review Committee.

Finally, the Employment Security Advisory Board, established by Public Act 93-243, is a forum for employers and workers, the system's primary constituents, to shape policy through consultation in rulemaking and legislative recommendations. That Board is currently completing its initial educational phase and is preparing its work plan for the coming year. The Report itself suggests a number of key issues on which the Advisory Board should focus. The fact is that most of the eligibility issues which are the subject of Board precedent decisions have not undergone serious scrutiny in any other forum. The Advisory Board is the ideal forum for considering critical issues regarding eligibility and for recommending to the Labor Commissioner the most appropriate response.

The development of policy under the Unemployment Compensation Act is a sensitive balance of all aspects of administrative law: the case-by-case adjudication of law to facts, taking into account the law set forth by the General Assembly in statute, the formal rules promulgated by the Labor Commissioner which interpret the statutes, the precedential decisions of an expert administrative panel providing guidance on how the statutes and regulations should be applied in various fact patterns, and judicial case law which is the final arbiter of whether all this law is being interpreted and applied correctly. Add to this structure the newly created Advisory Board which informs administration of the system and rule-making at the front end with the perspectives of the employers and workers it serves, and you have the essential components for policy-making which is responsive to the public.

I offer all this because I fear that the attention being focused on the current approval rates will prompt far-reaching legislative proposals which could seriously undermine the necessary protections currently afforded by the system. As this Department testified to the Committee in September, it is important to examine this problem in context and to remain aware that the entire increase in separation decisions favoring claimants since 1980 represents approximately 5 percent of total benefits paid out in 1993. As the Committee itself has recognized, the Connecticut unemployment insurance system taken as a whole, is not out of synch with the rest of the nation. It is not the public policy of the state to further reduce coverage or the wage replacement rate. Therefore, solutions should be carefully crafted. The existing body of unemployment compensation law is massive and complex, and regulations and precedential Board decisions often address very limited types of circumstances. While a legislative fix may cure one perceived abuse, it may unintentionally sweep so broadly as to disqualify truly deserving workers from benefits.

My main problem with the Committee's report is that it focuses on only one part of the picture - - a trend toward claimant-favorable decisions at the Board of Review - - and then, without assessing whether those decisions interpret and apply the law correctly, invites legislative action. In doing so, the Committee has ignored the rest of the system. It has ignored the Labor Commissioner's regulatory powers to promulgate and amend the rules which the Board must interpret and, in the process, has discouraged thoughtful analysis and reassessment of the Board's precedent decisions. On the eve of a new administration, I would have preferred that this Report at least acknowledge the ability of the executive branch to craft administrative and regulatory solutions to the problem it has identified.

RECOMMENDATIONS AND RESPONSES

- #1 The Department of Labor shall annually compile and present to the Unemployment Compensation Advisory Board data on the outcome of eligibility determinations made in job centers and appeals offices operated by the department and the Employment Security Appeals Division.
- #2 The Department of Labor in cooperation with the Unemployment Compensation Advisory Board shall analyze differences in the eligibility determination outcomes among job centers and appeals offices and if necessary develop policies, procedures, and legislative proposals to remedy any problems.

DOL agrees that significant deviations between offices would be a problem and that data should be compiled and presented annually to the Advisory Board. However, the data provided in the Committee's report does not, in DOL's view, demonstrate any statistically significant variation in adjudicative trends between job centers. The data certainly does not support any conclusion that "serious equity problems" exist at this time. In general, all Job Center and Appeals Division offices have eligibility and disqualification percentages within 5 percent of the statewide mean. However, DOL agrees that the Department and Advisory Board should focus more attention on deviations between offices and analysis of the reasons for such differences.

- #3 The Department of Labor and business interest groups should use such means as newsletters, brochures, and forums to actively promote employer participation in the eligibility determination process.

DOL agrees with the Committee's finding that lack of employer participation is one of the major causes for claimants prevailing at first-level separation hearings and supports an educational campaign directed at employers.

- #4 The Department of Labor, in concert with the Unemployment Compensation Advisory Committee, develop a legislative proposal to allow employers to participate in fact-finding and referee level hearings through means including, but not limited to, telecommunications.

As set forth more fully above, DOL believes that the current prohibition on telephone use in first-level adjudication is a major factor in the current high success rate for claimants and strongly supports the Committee's recommendation to eliminate the prohibition. At the first level, this problem should be cured now by amending one sentence in Conn. Gen. Stat. Section 31-241 accordingly:

The determination of eligibility by the administrator or an examiner shall be based upon evidence OR TESTIMONY presented IN SUCH MANNER AS THE ADMINISTRATOR SHALL PRESCRIBE, INCLUDING in person, in writing, BY TELEPHONE OR BY OTHER ELECTRONIC MEANS at a hearing called for such purpose.

The Department would favor corresponding statutory authority to prescribe, by regulation, guidelines for use of telephones in first-level adjudication. The Advisory Board already has a statutory role in DOL's regulatory process.

With respect to Referee hearings, the Employment Security Appeals Division believes that it already has statutory authority to take testimony by telephone. There is judicial case law which recognizes the validity of this practice and it is permitted by regulation, although in-person testimony is the preferred method. Expansion of telephone use can be implemented either administratively or by regulation after assessment and consultation with the Employment Security Advisory Board.

- #5 A fee equal to one quarter of the claimant's projected weekly benefit rate or \$25, whichever is greater, shall be imposed on an employer or employee who files an appeal with the Employment Security Appeals Division. The fee shall be refunded upon the filing party's participation in the appeals hearing.

The Committee found that the failure of employers to appear at hearings on their own appeals has undermined the integrity of the appeals system. Dismissals and withdrawals due to employer non-participation represented over 25 percent of the cases disposed of at the referee level in 1993. (Discounting these cases results in a much higher actual success rate for employer appeals.) The Committee recommends a refundable appeal filing fee of one-quarter of the claimant's weekly benefit rate or \$25, whichever is greater. DOL opposes this recommendation because federal law (Section 303(a)(3) of the Social Security Act) requires that a

state law provide for "opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." The U.S. Department of Labor has indicated that an appeal filing fee, at least with respect to claimants, would put Connecticut out of compliance with the Social Security Act and would jeopardize federal grants to administer the system. Accordingly, DOL cannot support this proposal.

Apparently, a filing fee imposed on employers only would not pose a federal conformity problem. DOL believes a filing fee on employers only should be studied by the Advisory Board to assess whether its incentive value would justify its administrative cost.

- #6 **Where offsetting of benefits cannot fully recoup the amount of money overpaid the claimant, the claimant must be statutorily required to enter a repayment schedule that the Department of Labor believes the claimant can reasonably be expected to meet;**

As set forth more fully below, the Department welcomes additional tools for collection of overpayments and for deterring fraud. However, we think the Committee's analysis is flawed. The only meaningful measure of overpayments must be connected to total benefits paid; that is, the more checks issued, the greater the opportunity for someone - employer, claimant, or the Department - to make an error that results in overpayment. Statistics clearly show that while the dollar amount of overpayments has increased in recession years, the percentage of total benefits overpaid has not. There is no basis for the Committee's assertion that more overpayments go undetected during such periods. Moreover, audit results from the federally-regulated Quality Control program (a process of comprehensive review and validation of a scientifically selected sample of benefit payments) show Connecticut ranks in the top quarter of the country in making correct payments.

DOL supports a mandatory repayment schedule where there has been a determination that offsetting of benefits cannot fully recoup the amount of money overpaid the claimant. However, DOL would seek maximum flexibility in administrative design of such a system. Administrative latitude is critical in this area since identification of overpayments frequently occurs while claimants are still unemployed and have just been found ineligible for benefits. In these cases, the ability to establish or adjust the repayment schedule at a time when there is greater financial capacity to repay is important. Specifically, DOL believes that a statutory change should include an explicit requirement that the Labor Commissioner adopt regulations prescribing criteria to be applied in establishing repayment schedules.

- #7 **Where the claimant fails to repay according to the schedule, the Department of Labor shall track the wage file and other means to determine when the former claimant returns to work. The department shall be given the statutory authority to pursue garnishment of wage proceedings to recover overpayments in full;**

DOL supports this recommendation so long as the Agency is afforded latitude in making cost-benefit decisions as to whether the size of the overpayment justifies the resources to be invested in wage-tracking. DOL must preserve its capacity to establish priorities in its collection efforts. That is, DOL must be free to prioritize those cases with the greatest prospects for recovering the most dollars. This may mean prioritizing larger overpayments, cases where the claimant has become reemployed and cases of fraud. The Department understands the proposed wage garnishment authority to already allow for such administrative cost decisions in its application.

- #8 The statutes be changed that any claimant who is convicted under Section 31-273(d)(1) or (2) of fraudulently obtaining unemployment compensation benefits permanently forfeits his/her rights to any future unemployment benefits**

There are cases in which permanent forfeiture of rights to benefits would severely undermine DOL's recovery efforts. Even with proposed mandatory repayment schedules and wage garnishments, recouping overpaid benefits by a full offset from future benefits will still be a major recovery tool. Claimants who are permanently deprived of the right to file for benefits will never establish entitlements which can be recouped on a one hundred percent basis or be subject to administrative penalty. While this proposal may well have a major deterrent effect as a threatened penalty, DOL would only support amending Section 31-273(d)(2) to give a court discretion to impose such a penalty where there has been conviction of a Class D felony. Such discretion would enable the court and the State's Attorney to properly balance the deterrent effect of such a penalty against the Agency's need to recover the overpaid benefits.

- #9 The Department of Labor should initiate a statewide educational campaign to educate both employers and employees about their responsibilities under the unemployment compensation law.**

DOL supports this recommendation.

- #10 C.G.S. Section 31-273(c) should be changed to require that any person, firm or corporation who knowingly employs any person and pays that person without declaring such payment in the normal payroll records shall make unemployment compensation tax contributions at the maximum rate provided in Section 31-225a for the period of one year following a hearing and determination by the Department of Labor of such non-declaration.**

The Report prescribes an administrative penalty on employers who knowingly employ any person without declaring such payment in payroll records; the penalty - - currently imposed only through criminal proceedings - - is a requirement to pay unemployment

compensation tax contributions at the maximum statutory rate for one year. While the Department agrees that employer fraud and misclassification of workers are a serious problem, the administrative penalty prescribed may not be particularly effective. The maximum rate would be no penalty at all in the construction industry, where most employers are always taxed at the maximum rate due to seasonal unemployment. The penalty, in turn, would be extremely severe for an employer who has maintained a minimal tax rate. The Department endorses the concept of an administrative penalty, but would like the opportunity to research this issue further, seek input from the Employment Security Advisory Board and propose a different penalty that would be a more consistently effective deterrent.

- #11 **The Department of Labor in combination with the Advisory Committee on Unemployment Compensation, annually examine the experience in pooling benefits, and if necessary take measures, including proposing legislation, to restrict non-charging provisions.**

DOL supports this recommendation. However, it is important to also note that federal data demonstrate that a significant portion of employer cost-pooling is attributable to the heavy utilization of the system by employers charged at the maximum statutory tax rate, not by statutory non-charging provisions.

- #12 **The Connecticut Department of Labor and the Advisory Committee on Unemployment Compensation explore ways of supplementing the current unemployment compensation system to serve those whose needs are not fully met by the current program.**

DOL supports this recommendation.

- #13 **The Department of Labor periodically update committees of the legislature that have cognizance over employment and training, including the labor, commerce, and education committees, regarding how one-stop centers will be implemented and funded, and any potential policy or finance obligations the state might incur.**

DOL supports this recommendation, but wishes to point out that the Agency's current one-stop career center initiative was expressly mandated by the General Assembly pursuant to Public Act 94-116 (An Act Concerning Incentives and Training for High Performance Work Organizations and The School-to-Work Career Certificate Program.). The Department has always worked closely with legislative committees of cognizance and will continue to do so.

- #14 **The outcomes measured in any evaluation of the one-stop centers must include the number of persons finding employment or reemployment and the duration of that employment.**

DOL supports this recommendation. The General Assembly should also be aware that there are currently ongoing efforts at the Connecticut Employment and Training Commission (CEIC) to develop a standardized set of performance measures for all employment and training programs. The One-Stop Career Center system will pilot these measures under the guidance of the CEIC. The CEIC initiative incorporates a wide range of input from the various entities which participate in employment and training systems in Connecticut including employers, workers, regional workforce boards, training providers, government agencies and community-based organizations. The precise formulation of the performance measures will be determined in conjunction with the CEIC based on input from all of the stakeholders.

- #15 The results of any evaluations of the one-stop centers shall be distributed to the labor, commerce, education, and human services committees of the General Assembly.**

DOL supports this recommendation.

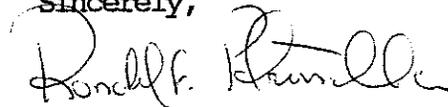
- #16 The Department of Labor publish, as part of the guides to unemployment compensation, booklets that include:**

- * new precedential board decisions;**
- * the core precedential cases;**
- * brief instructions on how to use the precedent manual to research and prepare an appeals case; and**
- * the locations where the precedent manuals may be accessed.**

DOL supports this recommendation.

Finally, I want to express my appreciation to the Committee for this opportunity to respond to its Report.

Sincerely,



Ronald F. Petronella
Labor Commissioner

cc: Representative James A. O'Rourke III, Co-Chairman, Labor & Public Employees Committee
Senator Tony Guglielmo, Co-Chairman, Labor & Public Employees Committee

APPENDIX B

STATE COMPARISON OF SEPARATION DECISIONS

| PERCENT OF NONMONETARY SEPARATION ISSUES DECIDED IN FAVOR OF CLAIMANTS | | | | |
|--|------|------|------|------|
| STATE | 1990 | 1991 | 1992 | 1993 |
| Alabama | 13.7 | 17.7 | 19.7 | 21.7 |
| Alaska | 36.7 | 29.4 | 27.4 | 21.2 |
| Arizona | 45.7 | 48.2 | 47.7 | 43.0 |
| Arkansas | 32.6 | 32.3 | 28.3 | 26.0 |
| California | 47.6 | 47.6 | 49.5 | 50.7 |
| Colorado | 31.3 | 26.1 | 26.1 | 28.5 |
| Connecticut | 69.6 | 72.4 | 74.8 | 73.2 |
| Delaware | 25.9 | 27.2 | 25.9 | 25.0 |
| D. C. | 44.2 | 41.5 | 43.1 | 36.6 |
| Florida | 39.2 | 36.1 | 34.9 | 37.5 |
| Georgia | 43.2 | 37.5 | 37.9 | 36.7 |
| Hawaii | 55.2 | 54.8 | 52.7 | 50.1 |
| Idaho | 39.2 | 40.3 | 38.7 | 38.5 |
| Illinois | 46.0 | 44.4 | 42.4 | 42.8 |
| Indiana | 44.1 | 41.9 | 40.6 | 42.2 |
| Iowa | 50.8 | 51.0 | 48.5 | 46.0 |
| Kansas | 60.1 | 58.4 | 61.6 | 62.8 |
| Kentucky | 36.6 | 37.5 | 33.2 | 35.9 |
| Louisiana | 42.6 | N/A | N/A | N/A |
| Maine | 55.0 | 55.2 | 58.2 | 60.0 |
| Maryland | 27.9 | 25.2 | 25.3 | 29.5 |
| Massachusetts | 54.4 | 55.6 | 47.4 | 43.0 |
| Michigan | 38.8 | 39.3 | 39.5 | 38.8 |
| Minnesota | 53.0 | 53.6 | 55.3 | 55.1 |
| Mississippi | 31.1 | 27.6 | 25.2 | 23.1 |
| Missouri | 40.9 | 40.9 | 39.9 | 39.5 |

| PERCENT OF NONMONETARY SEPARATION ISSUES DECIDED IN FAVOR OF CLAIMANTS | | | | |
|--|------|------|------|------|
| STATE | 1990 | 1991 | 1992 | 1993 |
| Montana | 44.1 | 42.3 | 40.4 | 39.4 |
| Nebraska | 19.1 | 17.4 | 17.7 | 17.7 |
| Nevada | 43.6 | 43.0 | 45.3 | 45.0 |
| New Hampshire | 44.0 | 46.2 | 49.2 | 51.4 |
| New Jersey | 30.4 | 30.7 | 31.5 | 33.1 |
| New Mexico | 38.9 | 39.1 | 35.3 | 36.1 |
| New York | 55.3 | 54.5 | N/A | N/A |
| North Carolina | 32.4 | 35.9 | 35.2 | 36.3 |
| North Dakota | 52.1 | 49.9 | 50.3 | 52.4 |
| Ohio | 37.7 | 38.5 | 37.6 | 38.2 |
| Oklahoma | 39.3 | 38.5 | 37.1 | 36.7 |
| Oregon | 65.6 | 64.8 | 63.5 | 59.7 |
| Pennsylvania | 43.0 | 45.0 | 46.7 | 50.6 |
| Rhode Island | 48.6 | 53 | 55.6 | 54.7 |
| South Carolina | 23.0 | 23.0 | 29.7 | 21.0 |
| South Dakota | N/A | N/A | N/A | N/A |
| Tennessee | N/A | N/A | N/A | 29.8 |
| Texas | 51.6 | 49.3 | 49.0 | 49.0 |
| Utah | 58.6 | 57.5 | 57.1 | 58.3 |
| Vermont | 29.1 | 28.3 | 29.0 | 25.3 |
| Virginia | 42.9 | 43.8 | 46.2 | 47.3 |
| Washington | 45.9 | 44.9 | 42.9 | 50.4 |
| West Virginia | 42.4 | 43.3 | 43.5 | 39.0 |
| Wisconsin | 53.9 | 51.1 | 53.4 | 53.6 |
| Wyoming | 56.2 | 63.8 | 64.5 | 65.3 |
| U.S. | 44.7 | 43.7 | 43.8 | 44.0 |

Source of Data: U.S. Department of Labor

APPENDIX C

CLASSIFICATION OF SELECTED LEGISLATIVE CHANGES 1979-1993

Job Separation Issues

- PA 80-78 Restricts eligibility by increasing the length of disqualification for refusing suitable work from the week claimed plus 4 weeks, to the duration of the current unemployment; to be eligible in the future the claimant is required to earn 6 times his or her benefit rate when reemployed.
- PA 80-260 Restricts eligibility by revising the method for reducing benefits-based pension income to meet federal requirements.
- PA 81-318 Restricts eligibility by adding larceny in the 3rd degree to the reasons a claimant can be found ineligible for benefits. The disqualification remains in effect until the person returns to work and earns 10 times his or her benefit rate.
- Expands eligibility by limiting the pension income disqualification to money received from base period employers.
- Restricts eligibility by expanding the definition of "suitable work" as it is applied to the extended benefits program.
- PA 82-262 Restricts eligibility by adding being dismissed for participating in an illegal strike (as determined by the DOL commissioner) as a reason a claimant can be found ineligible for benefits.
- PA 82-361 Restricts eligibility for the extended benefits program by increasing the thresholds for implementing triggers (economic indicators) and broadening the definition of suitable work to reduce the reasons a claimant may refuse a job and remain eligible for benefits.
- PA 83-1¹ Restricts eligibility by adding to the reasons for disqualifying a claimant, separation from an educational institution during established holidays and

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customary vacations provided the claimant has a reasonable assurance his or her employment will continue.

PA 85-17 Restricts eligibility by adding to reasons for disqualifying claimants, persons 22 and older who are employed full-time in academic work experience programs operated by nonprofit or public educational institutions.

PA 85-26 Restricts eligibility by lowering the larceny value from \$1,000 to \$50 for disqualifying a claimant.

PA 85-258 Expands eligibility by adding to the reasons a claimant can leave work (and later be eligible for benefits) the discontinuance of public transportation and the need to care for a dependent.

Clarifies the disqualification for repeated wilful misconduct by defining the term "repeated" to mean two or more acts that occur within a 12 month period.

PA 85-500 Restricts eligibility by adding "just cause" and defining it as a single act of wilful misconduct that seriously endangers an employer, other employees, or the general public.

PA 86-55 Expands eligibility by prohibiting an otherwise eligible claimant from being disqualified for separating from a part-time job for a disqualifying reason.

PA 86-60 Restricts eligibility by adding to the reasons for disqualifying a claimant, the discharge of a claimant while he or she is in prison for a sentence of 30 days or more. Subsequently, a claimant must become employed and earn 10 times his or her weekly benefit rate to qualify.

PA 93-243 Restricts eligibility by lowering the threshold for disqualifying a claimant on larceny grounds from \$50 to \$25 and adds the taking of any amount of cash as a disqualifier.

Restricts eligibility by broadening the wilful misconduct definition to include any act that is a violation of a duty or obligation that is reasonably owed to an employer as a condition of employment.

Restricts eligibility by including as disqualifying income any severance benefits that are not conditioned on a claimant waiving a statutory or common law right. (Prior DOL actions limited disqualifying income to severance benefits that were linked to the claimant performing services under an original employment agreement or forfeiting a right under that agreement.)

Availability Issues

- PA 82-361 Expands eligibility by prohibiting an otherwise eligible claimant from being disqualified from participating in a training program approved under the FTA.
- PA 83-184 Expands eligibility by prohibiting the use of a claimant's record of reasonable unemployment as an eligibility criterion.
- PA 83-470 Expands eligibility by prohibiting a claimant from being disqualified solely on the grounds that he or she is a student, provided the claimant is making an effort to obtain work that does not conflict with school and the claimant's last job separation was not to attend school.

Monetary Issues

- PA 79-40 Restricts eligibility by eliminating a technical deficiency that under unusual circumstances allowed a claimant to use the same base period income to qualify more than once for benefits.
- PA 83-421 Expands eligibility by allowing for a change in the base period for claimants who were on sick or disability leave.
- PA 88-88 Expands eligibility by including wages from part-time jobs in calculating monetary eligibility.
- PA 90-314 Restricts eligibility by disqualifying wages earned while a claimant was an illegal alien.

PA 93-243 Expands eligibility by changing the method for calculating a claimants base rate, which has the effect of lowering the rate and thereby reducing the number of claimants that will be disqualified on monetary grounds.

Procedures

PA 85-176 Required DOL to use the state's regulation-making process instead of policy letters to define eligibility criteria.

PA 87-364 Allows appeals and motions after the deadline if for good cause.

Allows post mark to serve as the filing date and extends the deadline if it falls when DOL closed.

Gives referees authority to remand cases to fact-finders.

PA 92-250 Allows employers to be represented by an agent or attorney at all stages of the process.

PA 92-210 Limits the authority of the DOL commissioner to review a claim to instances where the Board of Review or a referee have not been involved.

APPENDIX D

ANALYSIS OF BOARD PRECEDENTS

VOLUNTARY LEAVING

4/22/85 Eldridge vs. Heublein The fact that the labor-management contract in question provided that an employee's absence from work without notice for three consecutive days is deemed to be a voluntary termination of employment by the employee does not per se give the separation the character and identity of a voluntary quit. Terms of separation (for unemployment compensation purposes) are not to be determined by employer and employee. **Favors claimant**

11/10/88 Sinnamon vs. Mental Health Commission A claimant is generally required to exhaust reasonable alternatives prior to leaving the employment. The major exception is when a claimant leaves his employment due to health reasons. The claimant will satisfy the burden of proof of exploring alternatives by informing the employer of the health problem and the need to leave the employment. The burden then shifts to the employer to suggest suitable alternatives in light of the claimant's health condition. Held in other cases that the claimant does not fulfill the notification requirement by informing an Employee Assistance counselor, or a staff psychologist. **Favors claimant**

1/24/90 Whitman vs. Caldor. If a claimant accepts unsuitable conditions for a substantial period of time, the claimant may be held to have waived the unsuitability of the job. **Favors employer**

11/7/90 Valentino v. Administrator, Superior Court, Hartford/New Britain With a few statutory exceptions, a claimant's reasons for leaving must be job-connected. Leaving for a better job or because of compelling reasons, such as to relocate with a spouse, is generally disqualifying. **Favors employer**

VOLUNTARY LEAVING DUE TO THE DISCONTINUANCE OF A PERSONALLY OWNED BUSINESS

2/23/88 Sheldon vs. Administrator Non-economic conditions of employment outside of the claimant's control which would prevent a reasonably prudent individual under similar circumstances from continuing self-employment may provide sufficient job-connected cause for terminating the self-employment. **Favors claimant**

3/15/88 Fortuna vs. Grandma's Old Fashioned Bakery, Inc. Compelling financial necessity to discontinue a business may provide sufficient cause for leaving. **Favors claimant**

11/15/90 Deans vs. Administrator If seeking work in same field as the claimant is engaged in self-employment must establish an attachment to the labor market by demonstrating that the claimant is primarily looking for work as an employee. **Favors employer**

5/17/91 Previti vs. Administrator A self-employed claimant may be eligible for benefits if he or she is unemployed due to a lack of work due to seasonal variations and an economic downturn. **Favors claimant**

9/30/88 Vasilakos vs. Ann Fields Country Pie Restaurant of South Windsor, Inc. Included as self-employed individuals are sole proprietors, partners, officers of closely held corporations and family businesses and minority shareholders of closely held corporations. **Favors claimant**

VOLUNTARY LEAVING: "QUIT TO CARE"

9/11/87 Loveless vs. CHR Industries Where relocation to a different climate is the prescribed medical treatment for a seriously ill spouse, the claimant is required to demonstrate that he or she is providing some minimal degree of continuing daily care to the spouse at the new location. Relocating to preserve the family unit is no longer, by itself, an approvable reason to award benefits. **Favors employer**

6/7/94 Bennett vs. Administrator The statute allows an employee to voluntarily leave employment to care for a sick child, spouse or parent, and not be ineligible for unemployment compensation because of the separation from employment. But this "quit to care" provision applies only to the separation qualification, and does not relieve the claimant of the responsibility of being able and available for work. The "quit to care" provision only gives a justifiable cause for leaving. Superior Court (on appeal) **Favors employer**

VOLUNTARY LEAVING: TRIAL PERIOD DOCTRINE

Trial period doctrine actually was adopted through case law in 1977, and held that a worker should not be disqualified from unemployment benefits for leaving a job which he could have refused (while on unemployment compensation) initially on the grounds of unsuitability, merely because he tried the job long enough to find out that it was, in fact, unsuitable. The test

of suitability during a trial period is often subjective, and the doctrine permits claimants to take a chance on a job which they might otherwise reject. There is no definition of the time limits on the trial period doctrine. **Favors claimant 11/7/77**

Cases that have been decided between 1984 and 1994 that use the trial period doctrine:

10/10/86 Seadale vs. Taylor Business Systems, Inc., Claimant was employed for two months as a salesman. He had no prior experience in sales, and after 2 months had only earned \$86. in commissions. Claimant quit after two months because he felt he was not well suited to a job in sales. Board held that the claimant left his job with sufficient job-connected cause. **Favors claimant**

12/16/86 Gagnon vs. Bloomfield Machine Co. Claimant was involved in strike with regular employer and accepted a part-time job even though claimant had reservations about the low rate of pay. After accepting the job, he learned that the employer was paying his full time workers a substantially higher wage. The claimant quit. Board held the claimant had sufficient cause to leave during the trial period. **Favors claimant**

2/9/87 Scaglione vs. Stamford Neighborhood Housing
Claimant quit after five weeks on the job when job did not match claimant's expectations. Sufficient cause standard in trial period is generally less stringent than the sufficient cause standard applied in ordinary voluntary leaving cases. **Favors claimant**

2/18/88 Cleary vs. A. Lagani and Sons. Claimant, an experienced union painter took a job with another painter, to paint the side of a bridge from a scaffold. After a week, the claimant's partner quit because of unacceptable risk to safety. Then claimant also quit. Board held that claimant left work for sufficient job-connected reasons during the trial period, even though the claimant knows the conditions of employment in advance but is nonetheless willing to give the work a trial. **Favors claimant**

11/15/88 Parker vs. Stop and Shop Claimant left her part-time job after 60 days, when she learned it was necessary to pay a union initiation fee of \$75. This amounted to 1 1/2 weeks pay. Board held that claimant, who had not been informed of the initiation fee, had sufficient cause for leaving when she discovered that the payment would have significant adverse impact. **Favors claimant**

3/11/87 Hamilton vs. Zeller Tire Co., Inc. Claimant was hired as a mechanic at a lower rate of pay than his last employment. The claimant worked 2 weeks and was asked to change a tire.

Claimant objected on the grounds he was hired as a mechanic, not a tire changer. Employer insisted that he retained the right to assign the claimant to change tires as needed. Claimant quit. Board held that claimant had sufficient cause for leaving employment because the two-week trial period had revealed that such employment would be under the terms and conditions which the claimant was not aware at the time of hire. **Favors claimant**

8/12/88 Ross vs. Chad's Rainbow If the job is inherently unsuitable, the claimant may have sufficient cause for leaving during a trial period even if the unsuitability is not the reason for the claimant's decision to leave. Claimant had a job as a marketing professional. Took a temporary job as a sales clerk; employer knew she was taking the job temporarily while son was completing kindergarten, at which time she would search for full-time employment. When claimant left, there was still temporary work available. Board held that claimant left employment with sufficient job-connected cause. The fact that the claimant's reason for reason may not have been attributable to the employment was immaterial since the employment was inherently unsuitable for the claimant and she left it during the trial period. **Favors claimant**

11/22/88 Abraitis vs. Manchester Publishing Co. Claimant, faced with a change in job duties early after accepting the job, resigned 18 months later when it appeared that no additional help was forthcoming. 18 months far exceeds the bounds of a trial period. **Favors employer**

6/2/89 Thomasen vs. Abercrombie, McKiernan & Co. Ins., Inc. Unsuitability became apparent to claimant within a few days of accepting the position, she did not quit until 6 months later. Board held that the claimant did not have sufficient cause for leaving employment -- only under extraordinary circumstances would a trial period extend for 6 months. **Favors employer**

DISCHARGE: FELONY

1985 Federal Aviation Authority vs. Administrator Superior Court held that the term "felonious conduct" as used in the statute is unambiguous, and not subject to interpretation. The court disagreed with the board's conclusions that the statute only applied to conduct that would be a felony under CT. law as opposed to federal law. The court reversed the Board's award of benefits to the FAA based on conduct which constituted a felony under federal law. **Favors employer**

6/11/87 Lynch vs. U.S. Postal Service Claimant who was arrested on felony charges concerning a sexual assault. The employer discharged the claimant because of the negative publicity. The

Board held that the claimant was not charged with felonious conduct in the course of employment. **Favors employer**

12/29/89 Austin vs. City of Ansonia The claimant was employed as a police officer for the City of Ansonia. The claimant became addicted to cocaine, crack, and alcohol, and in order to purchase drugs, he misappropriated funds from the police union. The Board applied the provisions of Ct. General Statutes Section 21a-279 regarding possession of a narcotic substance. Since this statute does make an exception for individuals who are addicted, evidence of claimant's felonious conduct. **Favors employer**

2/22/90 Rado vs. Town of Naugatuck A claimant was discharged for eavesdropping on coworkers' telephone conversations. Although the claimant was criminally charged with three felony counts, the charges were subsequently dismissed. The Board held that it is not precluded from making its own independent determination whether the weight of the evidence before it supports a finding of a commission of felonious conduct pursuant to the Unemployment Compensation Act. **Favors employer**

DISCHARGE FOR LARCENY

12/8/86 Andersen v. J&S Metals, Inc. The larceny must occur in the course of the employment. **Favors claimant**

7/8/88 Flythe vs. Connecticut Mutual Life Insurance Co. Claimant experienced financial difficulties and embezzled money from her employers. Board held that a person who embezzles property, even if they intend to repay it is generally believed not to have a good defense. **Favors employer**

4/21/89 Miller vs. Lynch Toyota Pontiac Claimant sold a toolbox he knew belonged to a former coworker. Claimant was discharged. Board held that this was larceny on the job even though it was not the employer's property. **Favors employer**

9/11/90 Smith vs. Leon's Bakery, Inc. Falsely reporting hours in order to obtain wages to which the claimant is not entitled constitutes a wrongful taking of the employer's property. **Favors employer**

DISCHARGE FOR JUST CAUSE

5/9/89 Dimeglia vs. Hicks and Otis Printing Threat without endangerment is not just cause. **Favors claimant**

3/13/86 Rodriguez vs. Sheraton Stamford Hotel and Towers Claimant was a night supervisor at the hotel, and reported to work one night in an intoxicated state, although he was aware of the rule about drinking at work. The employer discharged him, stating that he put the hotel guests at risk. The Board held that this was not "just cause". "The hotel's concern regarding the public safety in the event of fire in the hotel is understandable and commendable. However, there was no immediate danger present to which the claimant had to respond . . . the danger was of a theoretical nature." **Favors claimant**

3/17/86 Smith vs. Acme United Corp Physical stature of the perpetrator or the general health of the recipient of an assault is not dispositive to the question of serious endangerment. **Favors claimant**

11/10/86 Colon vs. General Dynamics The claimant alerted his supervisor that he was taking prescribed medication that made him drowsy. He was then assigned, as a safety measure, to watch over co-workers who were working in a ballast tank. Previously, workers had been killed or seriously injured when overcome by fumes in similar tanks. Due to the medication and the hot weather, the claimant fell asleep. He was discharged because of the incident. There was no prior misconduct. The Board held that the act was not wilful, since the claimant did not have full control over his ability to perform his assignment properly. **Favors claimant**

3/26/87 Gonzalez vs. Administrator Board held that there was a high probability of serious harm arising from the safety hazard created by the claimant's act of squirting oil on the production floor, and that the claimant was discharged for "just cause". **Favors employer**

9/20/89 Montgomery vs. STM Limited Partnership The claimant was a manager at a McDonald's fast food store. Two weeks prior to discharge he read and signed a memo specifically advising him that a store had been robbed through entrance through its back door, and that company policy forbade the opening of the back door after dark. The claimant ordered a subordinate to take out the trash after dark, using the back doors. The store was held up and robbed of \$3,000. The Board held that the employee's act was a deliberate act and one that led to the theft of the employer's property, and thus constituted just cause. **Favors employer**

12/18/86 Anderson vs J&S Metals The staging of an accident to obtain workers' compensation was not an act constituting discharge for just cause, would be more appropriate for determination under the larceny provision. **Favors claimant**

11/6/86 Cone vs. Duncaster Theft of property is not "just cause". It is instead covered under the larceny statute. The serious endangerment envisioned by just cause means more than the claimant's theft of the employers' property. **Favors claimant**

2/5/88 Kraynak vs. First National Supermarkets Destruction of property may be considered just cause but it must be more than minimal loss. **Favors claimant**

8/16/89 Richards vs. Eastern Conn. Operating, Inc. The claimant was an interstate truck driver who reported to work approximately one hour after consuming an unspecified amount of alcohol. Both DOT regulations and the employer's rule prohibit this practice. The claimant was aware of the prohibition. The Board held that reporting to work after consuming alcohol in violation of a known rule and federal law and while in an unfit condition constitute an act of wilful misconduct which amounts to "just cause". **Favors employer**

9/25/90 Archer vs. Nuclear Support Services The claimant tested positive for marijuana pursuant to random drug test authorized by federal law. The Board held that the positive result alone does not constitute just cause that there is no evidence of impairment on the job and therefore no real and immediate danger to life or property. **Favors claimant**

11/15/89 Lundquist vs. Miles Inc. Yelling obscenities and derogatory ethnic remarks without attempt to assault a counselor or have physical contact with a co-worker does not equate to serious endangerment, and is not just cause. **Favors claimant**

9/23/90 Franklin vs. Fotomat Claimant was a driver who transported large quantities of processed film for same day delivery distribution to customers in accordance with the employer's delivery guarantee. Claimant started delivery route but did not complete it due to inclement weather and hazardous driving. He did not notify his employer he was not completing his route. Employer estimated a loss of \$10,000 for not meeting delivery guarantees. The case was remanded for further proceedings. The Board held that although the "just cause" provision may not circumvent other requirements of disqualifications, such as larceny of more than \$50 or repeated wilful misconduct, there are certain extraordinary losses of an economic nature which are so foreseeable that an employer may establish and make known to its employees exceptional precautions to prevent these losses. The case was remanded to determine if this single act constituted "just cause". **Favors claimant**

7/29/88 DeCapua vs. Kenney Travel and Tour Co. "Just cause" may be found in cases of extraordinary losses which are foreseeable and where the employer has made it known that there are reasonable precautions and procedures in place to prevent the losses. One wilful violation of those can be found to be just cause. In this case claimant was a shareholder, former director, and vice president of the corporation. He knew the corporation was in precarious financial shape, and was the only person who could prepare certain reports needed for a settlement in a contract dispute. No reports meant a breach of contract and the employer's bank accounts could be seized, causing the employer to go out of business. Claimant wilfully refused to do the reports. Board ruled that the economic loss was intangible, but the results were catastrophic, and just cause for dismissal. **Favors employer**

2/17/94 Eisenlohr vs. Town of Avon In this case a police officer was found sleeping in his police car, which was under surveillance. The police officer was suspended. Board holds that there is a stricter standard of the "just cause" provision for certain employees. Because these employees have a higher duty of care for the public's health and safety, their misconduct will have a more serious potential for harm, and therefore they may be discharged more easily under the "just cause" provision. The Board therefore holds that the standard held and set by the Rodriguez case -- that the serious endangerment must be real and not just theoretical -- does not apply in this case, and that police officers who are hired to protect the public safety must be held to a higher standard. The Board held that the employer had just cause for suspension. **Favors employer**

DISCHARGE FOR INCARCERATION

6/15/87 Crespo vs. City of Hartford The claimant was serving a 90-day jail term following conviction and sentencing. The claimant was discharged due to absence while he was actually serving his sentence. The claimant was properly discharged due to imprisonment pursuant to Conn. Gen. Statutes Sec. 31-236(a)(13) **Favors employer**

5/22/89 Wheeler vs. Merit Metal Finishing The claimant was incarcerated for approximately 49 days before his case went to trial. The claimant was convicted, tried and sentenced to jail time served. Since the claimant was not discharged while serving time following his sentence, the Board held that the statute did not apply. **Favors claimant**

DISCHARGE FOR REPEATED WILFUL MISCONDUCT

1/6/86 Nelson vs. Boyer Agency A claimant did not show up at a particular location even though she had been told if she did not, it would automatically result in unemployment. The

Board held that this was not a relinquishment of employment by the claimant, and the fact that she was discharged may well have been deserved, but cannot alter the fact that the legislature has mandated that only persons discharged for repeated wilful misconduct can be disqualified for unemployment compensation benefits. **Favors claimant**

6/19/87 Subrain vs. Hartford Courant An employer rule which attempts to regulate off-duty conduct will not be found reasonable (unless employee would be covered under public trust doctrine or off-duty misconduct is accomplished by the claimant's exploitation of the claimant's relationship). An employer cannot circumvent the disqualification provisions by prescribing through the adoption of a rule conduct which it may not reach directly. **Favors claimant**

10/11/84 Posavetz vs. Multi-Layer Products A company rule requiring notice of absence from work . . . must be deemed a reasonable one, and its violation without good cause constitutes wilful misconduct in the course of employment. **Favors employer**

2/10/88 Stevenson vs. Treasure Chest Advertising Company Claimant had a long history of alcohol abuse, beginning when he was 10 years old. Claimant was institutionalized after an incident of acute intoxication where he damaged property and developed seizures. Claimant left the treatment program before he completed treatment because of serious illness in the family. The claimant returned to work. He was asked to assume duties in addition to the core responsibilities of his position. The claimant refused to assume the additional responsibilities because he feared the additional responsibilities would drive him back to drinking. Since he felt that he had no effective choice but to accept the added duties or be terminated, the claimant quit. The Board held that the claimant left his employment with sufficient job-connected cause. **Favors claimant**

4/6/87 Passander vs. Administrator Claimant was granted a 30-day medical leave to attend an alcoholism rehab program. Claimant was advised to avoid places where alcoholism was consumed. Claimant did not return to work after rehab. Instead, he told the employer he was quitting to obtain training in welding. The claimant did not inform the employer that he was really leaving because of his concern about the unapproved use of alcohol by employees at the work place. Board held he voluntarily left employment without sufficient job-connected cause since he failed to explore reasonable alternatives by allowing the employer to address the reason for his leaving. **Favors employer**

3/21/88 Picard vs. Treasure Chest Misconduct attributable to alcoholism is not wilful, and therefore cannot be disqualifying, provided credible evidence exists that the claimant is an alcoholic, that the misconduct in question is attributable to alcoholism. However, this relates only to the separation issue. The claimant must then prove to the satisfaction of the

administrator that the claimant has his or her alcoholism sufficiently under control so that he/she is able and available for work during the claim period. DOL will look for independent verification of the claimant's efforts for a reliable source -- such as an Alcoholics Anonymous sponsor -- or some other objective corroboration of the claimant's rehabilitative efforts. **Favors claimant**

6/7/90 Reed vs. Northford Sheetmetal Claimant was found by the administrator to have been discharged for repeated wilful misconduct because his acts of misconduct were due to his alcoholism. The Board found that the reason for separation --alcoholism -- necessarily puts in question the claimant's ability to work, availability for work, and efforts to find work, and therefore requires heightened scrutiny of the claimant's efforts to find work. The Board held that the efforts made in this case did not satisfy the law's requirements and denied benefits. **Favors employer**

TRANSPORTATION

***Prior to 1985 Board cases had held that transportation is the responsibility of the employee, 8/13/83 McCormack vs. Administrator but the legislature modified the law to allow a claimant who had tried all reasonable steps to provide himself with alternative transportation and where the loss of transportation is beyond his control to be eligible for unemployment compensation.

8/12/86 Lorenzo vs. Prototype and Plastic Mold Co. If an employee exhausts all reasonable alternative means of transportation, then the individual's excessive tardiness or absence due to transportation difficulties is not wilful misconduct. **Favors claimant**

REFUSAL OF SUITABLE WORK

9/16/86 Heard vs. Labor Force of America Referee ruled claimant was disqualified for benefits because he left suitable work without sufficient cause. Referee's decision was based on claimant's failure to seek additional temporary assignments from a temporary labor service constituted a voluntary quit. Board disagreed. Board has repeatedly upheld that once a claimant has completed his last temporary assignment, the employer-employee relationship has been terminated. "A claimant who is not guaranteed continuing work and who is paid only when he works on temporary assignments is not at the beck and call of an employer who has no ongoing obligation to him. Such an employee obviously cannot quit his employment, because, following the completion of his last assignment, he no longer has employment." **Favors claimant**

12/31/87 Poste vs. Administrator The administrator's regulations identify 5 elements to be considered when determining whether a claimant is available for work under the meaning of the law: 1) availability of public transportation; 2) personal means of transportation available to the individual; 3) common commuting patterns for individuals similarly situated; 4) the individual's physical condition; and 5) the location of job opportunities. The claimant need not be available for work which is an "unreasonable distance" from the claimant's residence. **Favors claimant**

5/6/91 Keough vs. Countryside Manor When a claimant has had a full-time work and has not yet had a reasonable opportunity to find full-time work, part-time employment may not be suitable. **Favors claimant**

4/18/90 Perrone vs. Ryder Student Transportation Services A reasonable commuting distance is measured from the time of the offer. If a claimant relocated while on a layoff, the work may no longer be suitable because of distance. **Favors claimant**

6/17/87 Cheverie Vs. Administrator Claimant limited her job search to hospice nursing which is not a recognized specialty within the nursing field. The claimant was, by way of those limitations, rendering herself unavailable for work. New London Superior Court at Norwich. **Favors employer**

3/11/92 Mc Alpine vs. Glastonbury Board of Education Claimant was school bus driver for 10 years. He was laid off in June 1991 at the end of the school year due to lack of work. The employer indicated that the claimant could return to work in September, when school reopened. Claimant relocated to California during the summer. Board held that the claimant did not quit, because that presupposes the existence of continuing work which the employee refuses for one reason or another. The Board, in this case, held that the claimant was laid off, but that the Board concluded that the claimant refused an offer of rehire, but that he had sufficient cause because of the distance. **Favors claimant**

ABLE AND AVAILABLE FOR WORK

10/31/86 Hanna vs. Hospital of St. Raphael In availability to work issue, there is a presumption that the person is ready, and able to work. However, that may be rebutted by sufficient countervailing evidence. The employer must allege in sufficient detail, facts, which if proven, would cast serious doubt on the claimant's continued eligibility for benefits. Generalized statements that the "claimant does not want to work" or "is not looking for work" does not

satisfy this burden of proof. Neither can the employer meet this burden through cross-examination, nor draw a negative inference if the claimant fails to show up.

The employer should not be allowed an opportunity to contest the claimant's eligibility for benefits where it has no first-hand knowledge regarding the claimant's availability for work or his/her efforts to find work and has no basis for questioning the claimant's credibility on these issues. **Favors claimant**

8/5/88 Baz vs. Plasmed, Inc. Claimant laid off for lack of work in August of 1987. In October 1986, claimant had undergone back surgery, which resulted in a permanent lifting restriction. Employer called in October 1987 with specific job offer. Claimant refuses because she knows that particular job requires heavy lifting. Claimant does not tell employer refusal is because of lifting restrictions. Nor does employer offer other work. Board concluded that the job offered was unsuitable because it endangered the claimant's health, and that the claimant had sufficient cause for refusing the offer because she reasonably believed that she was being offered only work which she was physically unable to perform and that the employer was aware of her condition. **Favors claimant**

3/29/89 Tisdale vs. Medical Personnel Pool Board has previously found sufficient cause for refusing an offer of temporary work when a claimant can establish that the temporary assignment will hamper the claimant's ability to find permanent work. (cited DeGennaro vs. United Employment Services, Inc. 1/87 and Burgess vs. Diversified Employment Services 2/87) However, in the case of Tisdale vs. Medical Personnel Pool, the employer, a temporary agency told the claimant that there was work available for her, but she expressed a disinterest in temporary work of any kind. Thus, the claimant did refuse an offer of work, but the Board remanded the case to determine whether the work would have been suitable and whether the work would have been suitable and whether the claimant had sufficient cause to refuse the work.

3/22/91 Martin vs. Champlin Claimant was hired through an agency for a one-year period. At end of one year period claimant returned to Louisiana to care for son. Referee disqualified claimant because, although the contractual obligation had come to an end, continuing work was available, and thus claimant left voluntarily. However, board declined to find a separation resulting from the expiration of a contractual period to be a voluntary leaving does not require that there be continuing employment available. "In some cases, as in the instant case, the finite period of employment is a material inducement to enter the contract." **Favors claimant**

8/7/91 Brady vs. Administrator Claimant is not available while in transit from one state to another. **Favors employer**

DISQUALIFYING INCOME

7/18/88 Wojcik vs. Administrator Claimant contends that vacation pay should not be considered compensation for the loss of wages and that it is irrational to make eligibility for benefits dependent upon whether the claimant took vacation prior to separation. The board stated that the Supreme Court had clearly ruled that vacation pay is compensation for loss of wages and that its receipt in any given week may render a claimant ineligible for unemployment compensation benefits for that week. Where there is no ascertainable vacation week the practice is to allocate vacation pay to the period immediately following the separation. **Favors claimant**

7/20/90 Petrucci vs. EBL Corp., Inc. Severance pay was allocated against unemployment compensation, while claimant stated that others who worked for company did not have severance pay allocated against their unemployment compensation. However, these employees' severance pay was "quid pro quo" for these employers staying until a certain date, while the claimant was not. **Favors employer**

8/5/87 Green vs. General Dynamics Certification requested on "whether employer-sponsored short-term disability benefits constitute any payment for loss of wages". The nature of the disability payments were assessed by the board. In practice, the Administrator and the Board have treated disability payments as "compensation for lost wages". Board did not see a compelling reason to change that treatment for employer-sponsored short-term disability payments. Therefore, the Board determined these type of payments should be allocable (offset) against unemployment compensation, but only for the amounts paid for by the employer. **Favors employer**

6/22/87 Dietzko vs. State of Connecticut Claimant received a lump sum at time of separation for unused vacation time. Board held that this was not compensation for lost wages, since there was no period at all when the claimant lost wages, and he was not required to take any additional vacation time in order to be eligible for the benefit. The Board held that it has been recognized that in any given year, the employee receives accrued vacation pay instead of taking a vacation, the payments received are considered a non-allocable bonus. The Board held that accrued vacation pay received at termination instead of on an annual basis should be treated the same way. **Favors claimant**

APPENDIX E

| STATE COMPARISONS OF SELECTED UNEMPLOYMENT INSURANCE MEASURES -- 1993 | | | | | | | | | |
|---|--------------------------------|------------------------|---------------------------------|----------------------|----------------------------|-----------------------------|--------------------------------------|------------------------------------|-------------------|
| LOCATION | MAXIMUM BENEFIT w/o DEPENDENTS | AVERAGE WEEKLY BENEFIT | AVERAGE WAGE IN COVERED EMPLOY. | BENEFIT as % of WAGE | % UNEMP RECEIVING BENEFITS | PERCENT EXHAUSTING BENEFITS | EMPLOYER TAX AS % OF TAXABLE PAYROLL | EMPLOYER TAX AS % OF TOTAL PAYROLL | TAXABLE WAGE BASE |
| United States | ----- | 179 | 490 | 37 | 30 | 39 | 2.5% | 0.9% | 7,000 |
| Alabama | 165 | 131 | 419 | 31 | 22 | 21 | 1.6% | 0.6% | 8,000 |
| Alaska | 212 | 172 | 605 | 28 | 52 | 50 | 2.0% | 1.3% | 23,800 |
| Arizona | 185 | 147 | 438 | 34 | 34 | 39 | 1.5% | 0.4% | 7,000 |
| Arkansas | 254 | 157 | 380 | 41 | 35 | 35 | 3.0% | 1.3% | 9,000 |
| California | 230 | 157 | 553 | 28 | 31 | 45 | 3.6% | 0.9% | 7,000 |
| Colorado | 261 | 187 | 475 | 39 | 22 | 42 | 1.4% | 0.6% | 10,000 |
| Connecticut | 317 | 220 | 625 | 35 | 43 | 40 | 3.4% | 0.9% | 9,000 |
| Delaware | 265 | 189 | 506 | 37 | 31 | 27 | 2.6% | 0.8% | 8,500 |
| D. C. | 335 | 219 | 668 | 33 | 50 | 62 | 4.0% | 1.0% | 9,500 |
| Florida | 250 | 165 | 440 | 38 | 30 | 50 | 1.8% | 0.6% | 7,000 |
| Georgia | 185 | 149 | 463 | 32 | 25 | 35 | 1.6% | 0.6% | 8,500 |
| Hawaii | 337 | 249 | 486 | 51 | 45 | 36 | 1.0% | 0.7% | 25,000 |
| Idaho | 235 | 157 | 391 | 40 | 36 | 34 | 1.8% | 1.2% | 20,400 |
| Illinois | 235 | 191 | 533 | 36 | 28 | 42 | 2.5% | 0.8% | 9,000 |
| Indiana | 170 | 142 | 452 | 31 | 24 | 30 | 1.2% | 0.4% | 7,000 |

STATE COMPARISONS OF SELECTED UNEMPLOYMENT INSURANCE MEASURES -- 1993

| LOCATION | MAXIMUM BENEFIT w/o DEPENDENTS | AVERAGE WEEKLY BENEFIT | AVERAGE WAGE IN COVERED EMPLOY. | BENEFIT as % of WAGE | % UNEMP RECEIVING BENEFITS | PERCENT EHHAUSTING BENEFITS | EMPLOYER TAX AS % OF TAXABLE PAYROLL | EMPLOYER TAX AS % OF TOTAL PAYROLL | TAXABLE WAGE BASE |
|----------------|--------------------------------|------------------------|---------------------------------|----------------------|----------------------------|-----------------------------|--------------------------------------|------------------------------------|-------------------|
| Iowa | 211 | 172 | 399 | 43 | 35 | 30 | 1.6% | 0.8% | 13,900 |
| Kansas | 250 | 188 | 417 | 45 | 29 | 36 | 2.4% | 0.9% | 8,000 |
| Kentucky | 229 | 157 | 414 | 38 | 23 | 22 | 2.1% | 0.8% | 8,000 |
| Louisiana | 181 | 119 | 424 | 28 | 23 | 34 | 1.9% | 0.6% | 8,500 |
| Maine | 192 | 160 | 410 | 39 | 23 | 38 | 3.8% | 1.3% | 7,000 |
| Maryland | 223 | 181 | 506 | 36 | 25 | 13 | 2.9% | 1.0% | 8,500 |
| Massachusetts | 325 | 232 | 566 | 41 | 33 | 47 | 3.9% | 1.6% | 10,800 |
| Michigan | 293 | 225 | 526 | 43 | 30 | 29 | 4.1% | 1.4% | 9,500 |
| Minnesota | 305 | 202 | 483 | 42 | 26 | 33 | 1.8% | 0.9% | 15,100 |
| Mississippi | 165 | 126 | 363 | 35 | 27 | 32 | 2.1% | 1.0% | 7,000 |
| Missouri | 175 | 148 | 446 | 33 | 31 | 37 | 2.3% | 0.8% | 8,500 |
| Montana | 217 | 149 | 363 | 41 | 31 | 37 | 1.4% | 0.9% | 15,100 |
| Nebraska | 154 | 135 | 387 | 35 | 29 | 27 | 1.2% | 0.4% | 7,000 |
| Nevada | 230 | 174 | 472 | 37 | 34 | 36 | 1.5% | 0.8% | 15,900 |
| New Hampshire | 196 | 142 | 469 | 30 | 16 | 15 | 2.2% | 0.7% | 8,000 |
| New Jersey | 347 | 231 | 614 | 38 | 36 | 54 | 1.2% | 0.5% | 17,200 |
| New Mexico | 197 | 146 | 392 | 37 | 19 | 37 | 1.5% | 0.7% | 13,100 |
| New York | 300 | 202 | 616 | 33 | 33 | 50 | 4.8% | 1.1% | 7,000 |
| North Carolina | 282 | 172 | 424 | 41 | 24 | 23 | 1.0% | 0.5% | 13,200 |
| North Dakota | 232 | 143 | 357 | 40 | 24 | 37 | 1.4% | 0.8% | 13,000 |
| Ohio | 238 | 183 | 478 | 38 | 25 | 31 | 2.9% | 1.0% | 8,750 |
| Oklahoma | 237 | 164 | 406 | 40 | 20 | 43 | 1.2% | 0.4% | 10,700 |

STATE COMPARISONS OF SELECTED UNEMPLOYMENT INSURANCE MEASURES -- 1993

| LOCATION | MAXIMUM BENEFIT w/o DEPENDENTS | AVERAGE WEEKLY BENEFIT | AVERAGE WAGE IN COVERED EMPLOY. | BENEFIT as % of WAGE | % UNEMP RECEIVING BENEFITS | PERCENT EHHAUSTING BENEFITS | EMPLOYER TAX AS % OF TAXABLE PAYROLL | EMPLOYER TAX AS % OF TOTAL PAYROLL | TAXABLE WAGE BASE |
|----------------|--------------------------------|------------------------|---------------------------------|----------------------|----------------------------|-----------------------------|--------------------------------------|------------------------------------|-------------------|
| Oregon | 285 | 180 | 447 | 40 | 34 | 37 | 2.6% | 1.6% | 19,000 |
| Pennsylvania | 329 | 208 | 490 | 42 | 35 | 37 | 4.8% | 1.5% | 8,000 |
| Puerto Rico | 133 | 89 | 270 | 33 | 30 | 54 | 2.9% | 1.0% | 7,000 |
| Rhode Island | 310 | 209 | 463 | 45 | 41 | 48 | 3.7% | 2.1% | 16,400 |
| South Carolina | 203 | 148 | 407 | 36 | 23 | 29 | 1.8% | 0.6% | 7,000 |
| South Dakota | 168 | 124 | 339 | 37 | 18 | 13 | 0.5% | 0.2% | 7,000 |
| Tennessee | 185 | 132 | 431 | 31 | 30 | 33 | 2.0% | 0.7% | 7,000 |
| Texas | 245 | 184 | 477 | 39 | 21 | 49 | 1.3% | 0.5% | 9,000 |
| Utah | 248 | 178 | 412 | 43 | 25 | 33 | 1.0% | 0.6% | 16,200 |
| Vermont | 209 | 164 | 428 | 38 | 42 | 27 | 2.7% | 1.0% | 8,000 |
| Virginia | 208 | 170 | 463 | 37 | 16 | 33 | 1.2% | 0.4% | 8,000 |
| Washington | 340 | 197 | 486 | 40 | 36 | 35 | 2.3% | 1.4% | 19,900 |
| West Virginia | 280 | 168 | 419 | 40 | 24 | 28 | 3.0% | 1.1% | 8,000 |
| Wisconsin | 243 | 177 | 440 | 40 | 37 | 22 | 2.2% | 1.0% | 10,500 |
| Wyoming | 220 | 163 | 401 | 41 | 18 | 31 | 2.1% | 1.0% | 11,400 |

Source of Data: AFL-CIO Publication -- Unemployment Insurance Under State Laws January 1, 1994