

SEASONAL WORKERS AND UNEMPLOYMENT COMPENSATION

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In about half the unemployment compensation laws now in effect in this country there are provisions limiting the benefit rights of seasonal workers or requiring the administrative agency to study the problem of benefit payments to workers in seasonal industries or occupations. The terms of most of these provisions are vague, permitting—in many cases necessitating—considerable administrative discretion in putting them into effect. The rational formulation and evaluation of specific policies must be based on a guiding conception of the character and purpose of an unemployment insurance system and of the reasons for varying the benefit rights of workers in seasonal and in nonseasonal employment.

There is hardly an industry in the United States which does not exhibit some seasonal variation in employment. The magnitude and the pattern of variation differ greatly, however, from industry to industry. If one excludes from consideration the industries with very minor employment fluctuations, the "seasonal industries" may be divided roughly into two groups. At the one extreme are industries which virtually cease production for certain periods of the year—canning or logging in some areas; this first group will be designated as the short-season industries. The second type of seasonal industry is that which operates throughout the year but with definite peak and slack seasons—for example, the garment industry. There are marked differences among industries in the first group as to the length of the seasonal period, and among industries in the second group as to the amplitude and pattern of the fluctuations from peak to slack employment. Nevertheless, the distinction between the two types of seasonal industry is significant and important for unemployment compensation. Whether or not industries of the second type are seasonal according to the definitions now embodied in most of the State unemployment compensation laws is somewhat doubtful. The issue will have to be determined by each State.

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Seasonality of production may affect the individual worker in a variety of ways. It may mean for him variations in daily or weekly hours of work, and consequently in his earnings, without, however, any change in his employment status. Some workers may themselves have steady jobs although employed in seasonal industries. Other workers may find year-round employment by working in several seasonal industries or by filling in periods of irregular employment in a nonseasonal industry with employment in a seasonal industry. Some workers may wish year-round employment but fail to obtain it and find themselves employed only for limited periods of time. To some individuals, seasonal employment for short periods represents a welcome opportunity for supplementation of the family income, but year-round employment is neither sought nor desired. A few workers with high wage rates may earn in seasonal employment an annual income adequate to their needs and may, therefore, not wish other work during the off season.

From the point of view of unemployment insurance, workers in seasonal industries fall into two theoretically distinct groups: those who are in the labor market during part of the year only and during the other part of the year are not actively seeking work; and, second, those who are constantly attached to the labor market. It may be difficult to tell in which group an individual worker belongs, since failure to seek work may be due to past experience of the impossibility of finding work at certain seasons of the year. In practice, the test of inclusion in one or the other group will probably have to be the worker's previous employment record, but the distinction remains important as a guide to policy.

All existing unemployment insurance systems exclude some workers in seasonal industries from benefits by the general coverage and eligibility provisions. In this country, the general exclusion of agricultural labor eliminates from compensation a large amount of seasonal unemployment. The limitation of coverage to employers who operate 20 weeks or more a year excludes many seasonal

activities. Resort hotels in a number of States are finding it possible to avoid coverage by shortening their usual season a single week. Sometimes no change in the customary practice is necessary. The general eligibility requirements of the unemployment compensation laws further exclude from benefits a considerable number of seasonal and irregularly employed workers who accumulate too few weeks of employment ever to qualify for benefits, although the industry in which they are employed may be covered. In addition, a few States exclude from coverage specific occupations which might be regarded as seasonal in nature.

The eligibility provisions of existing unemployment compensation laws, and to a slight extent the coverage provisions, also reflect an intention to exclude from the system the most casual and irregularly employed workers. This exclusion is justified on the ground that the system is not intended and cannot afford to give protection to all unemployed workers. Only the worker who has an expectation of at least a specified minimum of employment in a year is eligible for insurance protection. If total benefits are proportioned to previous earnings, as in most of the State laws, the irregularly employed workers would in any case qualify for such negligible amounts as hardly to justify the administrative expense of payment. With respect to eligibility provisions, the irregularly employed workers in seasonal industries are in the same position as irregularly employed workers in nonseasonal industries.

A number of arguments are advanced for further and specific limitation of the benefit rights of workers in seasonal industries. It is said that: (1) Seasonal unemployment is predictable, and seasonal workers face not the probability but the certainty of some unemployment year after year; therefore, seasonal unemployment is not properly within the scope of a social insurance system. (2) Seasonal workers are already compensated for their periods of unemployment by high hourly wage rates. (3) The drain of benefit payments to seasonal workers will bankrupt State unemployment compensation funds, rendering them insolvent in times of recession and thus depriving steady workers of the benefits due them. (4) Benefit payments to seasonal workers will subsidize seasonal industries and encourage seasonality of operation.

The validity and the practical significance of these arguments should be examined.

Is Seasonal Unemployment Predictable?

Seasonal unemployment can be analyzed from two points of view, that of the industry and that of the individual worker. If the industry alone is considered, it is certain that seasonal unemployment will occur, year after year, in industries of the type which have here been designated as short-season industries. Shortages or surpluses of crops or of orders for the product will cause variations in the number of workers seasonally employed, and thus in the number seasonally unemployed. There will also be variations from year to year in the timing of the season. In some short-season industries one will find a minority of employers who have succeeded in stabilizing employment throughout the year. But on the whole, it can safely be predicted that in such industries production will be carried on only during certain periods of the year.

In the case of industries of the second type, those with year-round production but with busy and slack seasons, the situation is quite different. In the women's garment industry, for instance, production is usually concentrated in the spring and the fall of the year. But the level of production at any particular period of the year and the degree of concentration of production in certain months depend more definitely on general economic conditions and on the existence or lack of orders than on seasonal factors. Moreover, the variation from firm to firm in the timing and magnitude of the peak of production is so great as to make employment in the industry appear irregular rather than seasonal in character if attention is centered on actual employment rather than on statistical averages.

It is significant that for industries other than the short-season industries, a "typical" and regularly recurrent seasonal pattern can be found only where related industries are grouped into major industrial categories. If the grouping is sufficiently broad, irregularities in the employment pattern of the component industries are canceled, and a general pattern of seasonal variation appears. In the entire economy, productive activity tends to be concentrated in the spring and the fall of the year, with a slight dropping off in activity in mid-summer and a sharper decline in midwinter. This movement and gross seasonal movements for major

industrial groups are regularly recurring. But for smaller industry groups and for individual firms in industries of the second type as here defined, while fluctuations in employment in a particular year may be marked, seasonal patterns of unemployment are not so regular; in many cases there are marked changes in the pattern from one year to another. The probable limits of the amplitude and timing of seasonal unemployment in such industries can be determined only in broad terms and subject to a high degree of error.

From the point of view of the individual worker in such industries, seasonal unemployment is even less certain than it is from the point of view of the industry. The millinery worker knows that there is likely to be a lay-off after Easter; he also knows that if an order happens to come in at the right time, the lay-off will be short and may affect few workers. If he is an unusually capable worker, he may feel relatively sure that his period of unemployment, if it occurs at all, will be brief; if he is a marginal, poor worker, he may expect to be unemployed a long time. The great mass of workers will not know whether they will be unemployed for long or short periods, or at all, during the slack season in any particular year. In other words, the *incidence* of seasonal unemployment in industries of this type is unpredictable, and such unemployment may be considered a hazard within the scope of the social insurance program.

For the worker in a short-season industry the situation is a little different. Where a plant maintains a few employees throughout the year, any worker may aspire to be employed the year round; but the great bulk of workers know when they are hired that their employment is of limited duration. For these workers, unemployment during the off season is inevitable *unless* they can find jobs in some other industry. In the latter event, the worker is in effect a year-round worker, part of whose employment is in a seasonal industry. He is attached to the labor market throughout the year and unemployment will come to him, also, unexpectedly and at unpredictable times.

Workers in seasonal industries who do not wish other paid employment during the off season are in a different position. They may be considered an auxiliary part of the labor force; and it would be entirely equitable and consistent with the fundamental purpose of unemployment compen-

sation to exclude them from receipt of benefits during the periods when they are not actively seeking work. Most of the State unemployment compensation laws which provide for special treatment of seasonal workers in effect recognize this distinction by defining such workers as those ordinarily employed in seasonal industries who do not customarily (or ordinarily) have other work (or other employment) in the off season.

Do Seasonal Workers Receive Relatively High Wages?

It is commonly assumed that workers in certain seasonally affected industries, primarily the construction industry, receive sufficiently high hourly rates to compensate them for loss of employment at certain periods of the year. The fact of high hourly wage rates is easy enough to verify. Unfortunately, too little is known about actual annual earnings in specific industries to make possible any informed judgment as to the adequacy of these earnings on an annual basis or as to their comparability with the returns from employment in other industries. And even the hourly wage rates of workers in many seasonal industries are low.

State unemployment compensation laws in this country, by setting a maximum weekly benefit amount and a maximum amount of earnings that will be credited to each worker per quarter, now place a definite limit on the benefit rights of the higher-paid workers. Specific limitations for high-paid seasonal workers would introduce a different purpose into the system and would, moreover, lead to serious administrative difficulties. In the first place, it would be necessary to distinguish the seasonal workers with "adequate" annual incomes from those with "inadequate" annual incomes. The former may be relatively so few in number as not to justify special attention. Secondly, even the high-paid seasonal worker suffers from cyclical, technological, and irregular unemployment, for which he should be compensated.

Will Payment of Benefits to Seasonal Workers Bankrupt State Funds?

An exact answer to this question would involve, first, a method of estimating the amount of compensable unemployment attributable to specific industries in particular States. No satisfactory method of making such an estimate has been de-

vised. Not only is statistical information lacking, but the very concept of the unemployment hazard in individual industries involves serious ambiguities. If a worker who has been employed in a brick factory for 9 months loses his job, immediately finds employment in a garage, and then is laid off 3 weeks later, is his unemployment to be attributed to the brick industry or to the automobile repair service industry? This logical difficulty arises wherever interindustry mobility is an important factor, as it is in many areas of economic life in this country.

Until a State has had some experience with benefit payments, the only data available for analysis of seasonal unemployment will be figures showing the number of workers employed in particular industries in some week of each month or, in rare instances, in each week of the year. Such data do not indicate the amount of unemployment, and certainly not the amount of compensable unemployment, attributable to the industry, since they contain no clue as to the duration of weeks of employment and weeks of partial or total unemployment for individual workers. They do not even indicate the total number of workers attached to the industry, since there is no way of determining how many workers have moved in and out of the industry over the period of a month or a year. If 5,500 workers were employed on July 15 and 5,000 on August 15, it is entirely possible that between the two dates 2,500 were fired and another 2,000 hired. In the second place, employment figures for a particular industry give no indication of the number of workers who find employment in other industries and occupations.

Whatever the difficulties of defining the unemployment hazard of particular industries, once benefit payments begin it is possible to measure the relative drain on the fund caused by benefit payments to workers whose claims result from separation from particular industries. Only after several years, however, will it be possible to estimate what proportion of the benefit payments to workers separated from seasonal industries represents payments for strictly seasonal unemployment. The experience of Wisconsin¹ up to the

¹ The Wisconsin unemployment compensation law provides that partial benefits shall not be paid to workers in fruit and vegetable canning during the active season; otherwise there are no special restrictions on the benefit rights of workers in seasonal industries. Employment in logging operations is not covered by the Wisconsin law.

present indicates no excessive drain from seasonal industries.

Were benefits paid to all eligible workers for a fixed number of weeks, and for as many as 26 weeks a year, there might be reason to fear the effect on the fund of payments to seasonal workers. But with the duration and amount of benefits directly related to past earnings, the possible drain on the fund is much less. Whether this strict limitation of benefits in relation to past earnings is socially desirable may be debated. But as matters stand, State unemployment compensation systems contain an automatic check on benefit payments. It should be noted, moreover, that some seasonal industries may be expected to pay into the fund more than is drawn out in benefits, since contributions are based on total pay rolls, while the great majority of the workers in the industry may prove ineligible for benefits. This is particularly likely to be the case in industries which rely primarily on migratory laborers who work too short a time in any one State to acquire rights to benefits under any State law.

The limitation on benefits that results from existing eligibility and duration provisions is more effective in the case of workers in short-season industries than in the case of workers in industries with slack and busy seasons. Considerable amounts may be paid as unemployment compensation to workers who are laid off in industries of the second type; the important question is, What will be the *relative* drain on the funds from such payments?

One cannot rightly evaluate the danger to State unemployment compensation funds of benefit payments resulting from seasonal unemployment without comparing the probable size of such payments with those properly attributable to non-seasonal unemployment. As has been pointed out above, not all unemployment in either type of seasonal industries is seasonal unemployment. Even during the active season, there is, in many short-season industries, a considerable volume of partial unemployment, which would be compensable under the laws of many States. In industries of the second type, a considerable number of workers are partially unemployed in the busy season as well as in the slack season. A considerable amount of the unemployment in industries of this type can be regarded only as irregular in character, while in both types of seasonal industries

recession or depression brings further unemployment. In the first place, therefore, the possible savings to the fund from specific limitation of benefits for strictly seasonal unemployment will not be so great as might appear from an examination of the volume of unemployment in seasonal industries. In the second place, many industries which cannot be regarded as seasonal under any reasonable definition will, because of labor turnover and irregularity of employment, be responsible for much unemployment, in prosperous years as well as in depression periods.

It would seem, on the basis of present knowledge, that the only States which need fear a serious drain on their funds from payments to seasonal workers are those in which a large proportion of all the industries of the State are seasonal in character, with sufficiently long periods of operation to qualify many workers for benefits and with such a timing of the periods of seasonal activity that there is little opportunity for dovetailing employment. The problem will be most acute in States with limited industrial populations. In such States the present contribution rate may not be adequate to cover the normal risks of unemployment within the State. If immediate limitation of benefits is necessary, this situation would seem to call for the development of some alternative policy for the future.

Will Benefits to Seasonal Workers Subsidize Seasonal Industries?

The individual employer-reserve system and the merit-rating device represent attempts to shift some of the responsibility of compensation for unemployment to particular industries. Whether the objective of increased stabilization will be achieved by these devices is still an open question. However, it cannot be too strongly emphasized that, under systems which incorporate these principles, limitation of benefits for seasonal workers runs counter to the logic of allocating responsibility to specific employers. If contributions are reduced for employers whose accounts are charged with relatively low benefit payments, any specific *limitation* of benefits to seasonal workers represents a measurable subsidy to employers in *seasonal* industries. In excluding from coverage employers who operate at a given level less than a specified number of weeks in the year, the Social Security Act, and nearly all State laws, in effect recognize

that some employers carry on activities of such limited duration that they should not be brought under the system at the present time. Beyond that it is not reasonable to go, so long as the merit-rating provisions stand.

If merit rating is effective at all, it should operate most forcefully in those industries where fluctuations in employment are to some extent under the control of the employer. Since neither cyclical nor secular declines in employment are ordinarily subject to control by individual employers, merit rating would seem likely to be most effective in seasonal and irregular industries. The number of occupations in which seasonal employment is inevitable is much smaller than is ordinarily realized, and the outstanding examples of successful stabilization are all on the part of employers in seasonal industries.

Limitation of benefits for workers in seasonal industries may well result in destabilization of employment if merit-rating provisions are in effect. Employers who ordinarily maintain a stable labor force, at some trouble and expense to themselves, may have an incentive to allow employment as well as production to fluctuate, in order that they may receive a seasonal classification. Moreover, there will be an incentive for employers in industries which have been determined seasonal to concentrate insofar as possible all unemployment in the off season, thus in many cases forcing greater seasonality of operations in related industries.

The majority of the State laws which provide for the limitation of benefit payments to the active season specify that this period shall be the longest period during which "according to the best practice of the industry" it is customary to operate. It has been argued that the intention was to enable the most stable employers in a seasonal industry to qualify for reductions in their contribution rates as easily as employers in nonseasonal industries, while providing an incentive to less stable employers to lengthen their periods of operation. This argument has some merit in the case of a very few short-season industries where periodic shut-downs are really inevitable. But in most seasonal industries, the "best" practice of the industry is year-round operation. And if it be assumed that what is meant by the phrase "best practice" is the practice of the majority of employers, the effect will be to sanction existing

irregularity of operation and to discourage future improvement.

Under a pooled-fund system of unemployment insurance the payment of benefits to seasonal workers could be regarded as a subsidy to the industries in which they were employed only if knowledge that the workers were receiving benefits led the employers to reduce wage rates. The possibility of such a reduction would depend upon the relative bargaining power of workers and employers in particular industries and perhaps upon the application of minimum-wage legislation. Moreover, only in the short-season industries would the relation between employment in the industry and compensable unemployment be sufficiently direct to suggest a general reduction in wage rates. Where the incidence of unemployment is unpredictable, as in industries with busy and slack seasons, it would be impossible to make reductions applying only to those workers who will later receive compensation. Knowledge that workers can draw benefits may lead some employers to dismiss workers whom they would otherwise have tried to carry on their pay rolls. Such action would cause a slight destabilization of employment, but this result would occur as frequently in nonseasonal as in seasonal industries.

Administrative Problems

Any specific limitation of the benefit rights of seasonal workers not only raises fundamental questions of policy but may lead to serious administrative complications.

Several methods of limiting the payments to seasonal workers have been proposed. Eleven of the State laws call for payment of benefits only during the defined period of seasonal operations; in other words, benefits are not payable in the off season. The remaining State laws call either for an equitable adjustment of benefit rights or for limitations proportionate to the contributions received from the seasonal industry. The chief types of adjustment thus far suggested are:

1. Lengthening the waiting period for workers in seasonal industries;
2. Reducing the proportion of earnings of seasonal workers credited for benefit-payment purposes; and
3. Segregating the wage credits (against which benefits may be charged) earned in seasonal and nonseasonal employment, with the former avail-

able for use only during the defined seasonal period and the latter at any time during the year.

The limitation of benefit payments to the defined seasonal period or the segregation of wage credits earned in seasonal and nonseasonal employment would make it necessary for the administrative agency to determine in advance the seasonal period for each seasonal industry and perhaps for special occupational groups within each seasonal industry. Even in the short-season industries the timing of the season varies greatly from year to year because of weather conditions, changes in consumer demand, or the effect of the business cycle. Practices vary greatly from employer to employer. To disentangle these conditions and determine what is the normal season, or even the longest season permitted by the best practice in the industry, will require objectivity and wisdom, as well as adequate data. In the case of industries with year-round employment, but with busy and slack seasons, the difficulty of determining a seasonal period of operation is far greater, if not insuperable. Moreover, in such industries, the saving to the fund from limitation of benefits to definite periods of the year might not be significant.

The device of limiting benefit payments to a defined season is applicable, if at all, only to the short-season industries. Even in those industries, a difference of a week or two in the timing of the seasonal period may wipe out most of the possible saving to the fund by allowing many workers to draw most of the benefits to which their accumulated wage credits would entitle them. Moreover, the specification of a definite seasonal period may lead to real injustice as between workers, since for each worker chance in the timing of his lay-off and in the timing of operations in the particular firm by which he is employed will determine his benefit rights. If an attempt should be made to define an off season during which benefits were not payable in industries of the second type—those with busy and slack seasons—the inequities might be much greater.

A further disadvantage in limiting benefit payments to definite periods of the year is the fact that the seasonal worker, if he receives benefits at all, will receive them at widely separated time intervals. This will cause confusion, if not hardship, to the worker and administrative difficulty to the unemployment compensation agency.

Sovontcon of the State laws define a seasonal worker as one who does not ordinarily have other work (or employment) in the off season. How difficult it will be to administer this provision depends partly on the decision made by the State as to the meaning of other work, and the tests established for employment during the off season. If employment in covered industry only is counted, the individual wage record will give some information, though it will not prove whether the worker "ordinarily" or regularly has other employment. Several of the laws specify that noncovered employment also shall be considered. If a State interprets the provision to mean "substantial" employment in the off season, the necessity for exercise of judgment will arise in each case. Disputed claims are likely to be numerous, no matter what test is applied.

The segregation of wage credits earned in seasonal and in nonseasonal industries would avoid this difficulty of distinguishing between workers, since an individual who had had employment in a covered industry during the off season would automatically be permitted to draw benefits on the basis of the wage credits thus earned. This device, however, would not take account of employment in noncovered industries. So long as there are size-of-firm limitations on coverage, the device may, therefore, be very unfair. Nor would it allow for consideration of the individual's customary employment experience. It would lead to frequent interruptions in the payment of benefits to workers who at any time obtained employment in seasonal industries. From an administrative point of view, this method would necessitate setting up dual wage records and would introduce considerable complexities into the benefit procedures.

The other two suggested methods of limiting benefit rights—lengthening the waiting period and decreasing the proportion of earnings credited—might be put into effect without administrative determination of a fixed seasonal period. The proportionate reduction in credits or increase in waiting period for specific industries would, however, have to be determined on the basis of some measure of the "seasonality" of the industry. The difficulties of arriving at an equitable test of seasonality have already been discussed. In addition, it would be necessary to set up criteria for distinguishing the seasonal workers from the non-

seasonal workers in seasonal industries. One advantage of these two methods is that they both would make it possible for the fund or the employer to carry part of the burden of seasonal unemployment, since wage credits could be reduced, or the waiting period increased, less than would be indicated by the measure of seasonality. These methods are better adapted to limitation of benefits for workers in industries of the second type, those with busy and slack seasons, than is any method based on the determination of a seasonal period. Whether benefits for workers in these industries should be limited by specific regulation is, however, highly questionable. And in practice, the specific decisions made on the basis of these methods would probably prove difficult to justify either to the workers concerned or to the general public.

It should be recognized that any special regulations applying to particular groups of workers are certain to necessitate special types of reporting by employers and special methods of recordkeeping and benefit computation by the agency. Such regulations will, therefore, increase administrative expenses, and this increase should be taken into consideration in any estimate of the probable savings from limitation of benefits.

Conclusion

In the foregoing discussion it has been suggested that there are no conclusive a priori reasons for limiting the benefit rights of any but a very small group of workers in "seasonal" industries under a system designed to pay benefits on an insurance basis during limited periods of unemployment, to workers who are currently attached to the labor market. It has been pointed out that available information is inadequate to indicate what drain on the unemployment compensation funds of particular States will result from benefit payments for seasonal unemployment. The danger of depletion of funds because of payments of benefits to seasonal workers would seem to be serious in only a few States, primarily those with limited coverage and few industries. It is probable that States with diversified industries can justifiably wait until after a year or two of experience with benefit payments before applying special seasonal regulations. If special regulations prove necessary, the resultant administrative adjustments can better be made when the regular benefit-payment

machinery is functioning smoothly than in the first months of benefit operations.

It is important, however, that steps be taken now to assure the accumulation of relevant data on which future policy decisions may be based. Studies now in progress in a number of State unemployment compensation research divisions will add greatly to present knowledge of seasonal employment. But the chief source of new information will be the experience of the benefit-paying States.

If experience should demonstrate that seasonal unemployment is a serious problem for unemployment compensation, analysis of that experience should also point the way to possible methods of handling the problem. In some States a large number of workers in short-season industries, who also have some employment in the off season, may qualify for benefits of such small amounts as hardly to justify the administrative cost of payment. This difficulty might be met either by more stringent eligibility requirements—which would exclude such workers entirely—or by a change in the ratio of benefits to earnings for lower-paid workers, so that everyone who qualified at all would be eligible for a given minimum number of weeks of benefit. If it is found that the chief problem is the threatened insolvency of unemployment compensation funds in a few States where there is a marked concentration of seasonal industries, a national reinsurance system which would effect a partial pooling of risks for the entire country might be the solution. If further study and experience indicate that in some States con-

siderable sums are paid year after year to workers in a few short-season industries operating for 6 or 8 months, and if it appears that the workers in these industries are not really looking for other work during the off season, limitation of benefits to the seasonal period may be decided upon.

It is possible, although it does not now seem probable, that payments of benefits to workers on account of seasonal unemployment will result in a measurably excessive drain on unemployment compensation funds in many States. In such case, the adjustment within the insurance system might take the form either of restricted benefit rights or the use of additional sources of funds, such as employee contributions or Government subsidy. This situation might arise here, as it did in England, if benefits of almost unlimited duration were substituted for provisions of the present State laws relating benefits to previous earnings (or employment). In the absence of such a change, however, a heavy drain on the unemployment compensation funds in many States seems more likely to result from general disorganization of the labor market than from strictly seasonal unemployment. While stabilization of employment is important to the smooth functioning of unemployment insurance, the major policies directed specifically toward this end must probably be developed outside the insurance system itself, although the long-run effect of unemployment compensation in helping to stabilize economic activity through the maintenance of workers' purchasing power should be taken into account.