Preserving State Unemployment Benefit Rights for Individuals Entering Military Service

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MUCH THOUGHT has recently been given to the problems involved in the economic readjustment which individuals now entering service in the armed forces of the United States may have to face when they return to civilian life. Several measures designed to avert these problems or to cushion the shock of the necessary readjustment have been tentatively developed. The Selective Service and Training Act of 1940, under which most of these individuals will enter military service, requires that all employers who employed such individuals before their entry into service should give them equal employment on their return from such service. This reemployment, however, may be impossible in some cases and of short duration in others. In his message to Congress of September 14, 1940, the President recommended enactment of legislation to preserve for those in military service "insurance protection under the Social Security Act, the Railroad Retirement Act, and the Railroad Unemployment Insurance Act, and to facilitate State action under the Federal-State unemployment insurance program."

In accordance with the first part of the President's recommendation, consideration has been given to a Federal system of unemployment compensation allowances, designed to afford unemployment benefits financed directly from Federal funds and paid for a limited period to all persons who cannot obtain employment on their release from service. Such a Federal system would, of course, cover all individuals discharged from service, regardless of their previous occupations or earnings. The principal argument for such a plan is that probably more than 50 percent of those who enter the armed forces under the defense program cannot look to any State unemployment compensation law for protection against the hazards of post-discharge unemployment, because their previous work has been in occupations not covered under such laws or their covered employment has been insufficient to entitle them to benefits under such laws.

Such a plan would probably provide uniform benefits at a flat rate for a fixed number of weeks for all persons who cannot get employment upon their discharge from service. Differential compensation rates would seem unsuited to a Nation-wide system designed to pay benefits in consideration of a patriotic service commonly shared in by all beneficiaries and compensated in general at identical or only slightly differing rates.

State Approach to the Problem

The State approach to the same problem has, justifiably, crystallized along different lines. Here the question is not one, as at the Federal level, of devising special protection in view of a special service rendered, and rendered in equal measure by all beneficiaries. It has, rather, been seen as a problem of ensuring that participation in Federal military service shall not operate to the disadvantage of workers with respect to their rights under a current State system. With this difference in mind, the partial overlapping of proposed State action with possible Federal legislation has been deemed justified. The State approach is conceived as protection of previously earned rights rather than creation of new ones. This concept maintains the basic principle of State unemployment compensation laws, which relates the benefit rights of claimants quantitatively to their previous wage levels and earnings. The objective is to place covered workers, at the conclusion of their period of military service, in the same position, or in one equally favorable, with respect to their rights under the State law as would have existed had there been no interruption of their normal experience by entry into the armed forces. The necessity of special measures to effect this result arises principally, of course, from the fact that all State unemployment compensation laws prescribe only a relatively brief interval between the period of wage-earning experience on which benefit rights are based and the period during which such rights may be enjoyed. The intervention of a period of military service makes it necessary either to lengthen this

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interval or to treat the period of military service as if it had not occurred.

In its simplest terms, therefore, the problem facing the States is the preservation, during the period of military service, of prior wage-earning experience or benefit rights to be used as a basis for benefits in case of unemployment after discharge. Along these lines the subject has been attacked by the States, and by the Bureau of Employment Security in its capacity of rendering technical service on State unemployment compensation problems. Tentative conclusions on methods of carrying out the stated objective have appeared in a report of the Executive Committee of the Interstate Conference of Employment Security Agencies.[1] Somewhat more concrete suggestions are embodied in a memorandum issued in January by the Bureau of Employment Security to all State employment security agencies. Amendments to the unemployment compensation law have been prepared in various States with the express purpose of "freezing wage credits" or "preserving benefit rights" for persons in military service. Several States have already amended their laws in this respect.

Difficulties in "Preserving" Benefit Rights

The solution of the problem is not as simple as it first appears. Covered workers, on their entry into military service, may possess any one or more of several different types of rights under a State unemployment compensation law. These rights may have different aspects under different types of State laws, especially as between laws using individual benefit years and base periods and those providing a uniform benefit year beginning on a fixed calendar date for all claimants.

The simplest situation will concern persons who, under an individual benefit-year law, have had sufficient wage-earning experience at the time of entry into service to qualify for unemployment compensation at that time, but who have made no claim for benefits which would establish a benefit year including that date. Although such individuals have no officially "determined" rights at the time of enlistment or induction, they must be regarded as possessing certain potential or accumulated rights to benefits based on their recent wage-earning experience. It is only equitable that such rights should be made available in the event of unemployment after discharge. It would be relatively simple to establish for such individuals a special base period composed of the same number of preinduction calendar quarters as would normally be included in the base period.

Under this type of State law, however, many other individuals will have a benefit year current at the time of their entry into military service. For these individuals certain rights will have been determined at the beginning of that benefit year. Since in many cases these rights will not have been exhausted, some of them will be outstanding at the time of entry into service. Many of these same individuals will also have had additional wage-earning experience between the end of their preservice base period and the date of their entry into service. This experience would normally be usable as a basis for benefit rights in a succeeding benefit year. Here again it would not be difficult to preserve the benefit rights which had already been determined but not used before induction, by providing simply that they be usable in the year following discharge. Complications arise, however, in any attempt to preserve the potential rights based upon the preinduction wage experience of the period between the end of the preinduction base period and the date of entry into service. These complications are especially difficult in State laws—whether of the individual or the uniform base-period type—which relate the duration of benefits in a benefit year to a specified multiple of the weekly benefit amount. What is then involved is in effect a fractional or interrupted base period. Measures must be devised either to incorporate this fraction with some other fractional post-discharge base period, in order to afford a complete period of the usual length from which benefits in the usual amount may be derived after discharge, or to allow the discharged claimant benefit credits proportionate to the difference between the fractional period and the standard base period.

In States with a uniform benefit year, a current benefit year and base period will exist for all qualified individuals on their entry into service. All such claimants (except those who have exhausted all current rights) may therefore be deemed to possess certain potential rights on entering the service, whether or not they have applied for an official determination of such rights.

[1] "Preserving Unemployment Benefit Rights for Covered Workers Inducted Into Military Service," 1940, 8 pp., mimeographed.

In addition, all such claimants will have had a varying number of calendar quarters of wage experience on which other benefit rights might have been based if the claimants had not been called into the armed forces.

Any plan for preserving the benefit rights or the wage-earning experience of an individual called into service must therefore consider not only rights already determined but also potential rights not previously determined and wage-earning experience accumulated but not usable for benefit purposes before entry into service.

Another important problem is that of returning the discharged individual as rapidly as possible to the benefit system normally in effect. This difficulty will probably be especially troublesome in States with provisions for uniform base periods and benefit years. In these States it will probably be necessary to set up for each discharged claimant a special benefit year beginning with his discharge or shortly thereafter. This special year will be in effect an individual benefit year, which will inevitably overlap the first uniform benefit year occurring after discharge. The problem of dovetailing these special and regular benefit years is similar to the problem of transitional rights encountered when changes are made in the benefit formula.

The treatment of the calendar quarters in which the individual's induction and discharge take place, which are quarters partly of military experience and partly not, also presents troublesome problems with respect to both the base period and the benefit year.

Suggested Plans for State Legislation

Various types of formulas and plans for amendment of State laws have been proposed. Among these proposals are:

(1) Plans which provide in general terms for preservation of rights and payment of benefits based on such rights after military service, in accordance with rules and regulations to be established by the State agency. This proposal, understandable in view of the unusual technical difficulties in legislation on the subject, amounts to little more than postponement of necessary decisions on a troublesome problem. It may also be subject to attack as undue delegation of what seems essentially a legislative obligation to establish benefit rights and to lay down standards for their modification if such modification becomes necessary.

(2) Plans which provide that benefit rights shall be computed without reference to any determined rights the claimant may have had on entry into service but on the basis of his experience in a special base period of the usual length; this special base period would either conclude with his date of entry into service and hence include only preservice experience, or would be composed of the usual first 4 (or 8) of the last 5 (or 9) nonmilitary quarters preceding the first filing of a claim. In the latter case, the base period would in many cases be made up in part of quarters occurring before entry into military service and in part of quarters occurring after discharge—quarters spent in the service being disregarded.

(3) Plans which provide that the claimant shall be deemed to have been engaged in covered employment or to have earned certain hypothetical wages during his period of military service. Under such plans, rights to benefits after termination of service may be founded on the wages deemed to have been earned in such service, or (in some cases) partly on such wages and partly on the actual wage-earning experience preceding service.

These proposals have elements of administrative simplicity and ready understandability which go far to recommend them. Strictly speaking, however, they do not "preserve" rights; rather, they ignore rights already determined and substitute new ones. Proposals of the first two types described may have in some cases the undesirable effect of rendering a claimant, who was eligible for benefits and had unutilized rights to his credit on entry into service, ineligible or entitled to only insignificant benefits upon completion of service. Proposals of the third type may involve a considerable extension of the normal coverage of State unemployment compensation laws, as many individuals never previously covered by a State law would be admitted to benefits on the basis of their hypothetical wages during the period of military service.

Another plan somewhat different from any of those described has been suggested by the Bureau of Employment Security. The plan is designed specifically to ensure three desirable results—complete availability to the claimant, on his discharge, of all benefit rights to which he was entitled on his entry into service and particu-

larly of all rights to which he could have become entitled had he not entered the service, minimum modification of the normal benefit structure, and rapid return of the military claimant to the regular system. Essentially this plan provides for covered workers discharged from military service (1) a special base period composed of the base period effective for the claimant on his entry into service, plus all calendar quarters and fractions thereof intervening between the end of such old base period and the date of entry into service; (2) a special benefit year to begin immediately on discharge; (3) a total amount of benefits, in the special benefit year, equal to the amount to which the claimant would have been entitled, under the normal formula, on the basis of his experience in his normal preinduction base period, plus a proportionate allowance for each of the quarters, or fractional quarters, between the end of the normal base period and the date of his entry into service. From the total thus computed, there would be deducted the amount of any benefits already paid the claimant during the benefit year current at the time of his enlistment or induction.

This plan is adapted for use under State laws providing either uniform or individual duration of benefits. Its application under each of these two types of laws would be, briefly, as follows.

In States with uniform-duration provisions, the duration of benefits in the special benefit year would be greater than that allowed in the usual benefit year in the same proportion as that by which the length of the special base period exceeded the length of the normal base period. For example, supposing a normal base period of 4 quarters and a normal duration of benefits equal to 16 times the weekly benefit amount, a claimant with a special base period of 6 quarters—1½ times as long as the normal base period—would be entitled during his special benefit year to 1½ times the normal duration, or 24 times his weekly benefit amount, minus any benefits previously drawn by him in his benefit year current upon his entry into military service. To avoid complicated calculations and possible inequities, the fractional quarter, which in nearly all cases would occur just before the entry into service, would be deemed a completed quarter.

In States providing individual duration, the post-discharge duration of benefits would be, in general, an amount equal to the usual specified fraction (⅛, ¼, and so on) of the wages paid (or earned) in the special base period, minus any benefits already used in the benefit year current on the individual's entry into service. In most individual-duration States, however, total benefits are subject to a maximum equal to a specified multiple of the weekly benefit amount. The same principle would be applied to this maximum as suggested for determination of duration in uniform-duration States. In other words, discharged individuals with a base period longer than 4 quarters would be entitled to a proportionate allowance of additional benefits for base-period quarters in excess of four.

In other respects, also, the operation of the plan would be affected by differences between individual and uniform benefit-year provisions. In States with individual benefit-year provisions, there will be some individuals for whom no benefit year was in progress when they enlisted or were inducted. For such individuals, who have no already-determined rights to be carried over, it would seem reasonable to provide a base period for use after discharge, composed of the 4 completed calendar quarters, and any intervening fractional quarter, immediately preceding their date of entry into military service. There will be little difficulty in returning these claimants to the normal benefit year and base period after their special benefit year expires. In States providing uniform benefit years, on the other hand, the special post-discharge benefit year will overlap to a greater or lesser extent the first uniform benefit year following the discharge from service. The most feasible procedure would seem to be to allow this overlapping to occur but to provide that the benefits which may be drawn in each of the 2 benefit years shall be calculated separately on the basis of the base periods respectively assigned to each.

Under both types of benefit-year provisions, there will be cases wherein the first normal—second actual—benefit year following discharge will have attached to it a base period including less than the usual 4 completed calendar quarters in which the claimant might have had wage-earning experience, because of the fact that the period of military experience may extend into or over one or more of these quarters. In view of this possibility, it may be deemed equitable to allow the claimant to use, in the second post-discharge

benefit year, any benefit rights which he did not utilize in the first, up to an amount which will entitle him to total benefit payments for that second year equal to the normally allowed maximum.

The individual's weekly benefit amount for his special post-discharge benefit year, and the question whether he had satisfied the qualifying-earnings requirement of the law with respect to that benefit year, could be determined by the normal formula, on the basis of his earnings in his special, preinduction, base period.

Coverage and Effective Period of Legislation

It is generally thought that the proposed State legislation should apply to all covered workers who are required by law to enter on active military duty under defense legislation. This group would include individuals inducted directly into the land or naval forces of the United States for training or service, and, when ordered into the active Federal military service, members of all units of the reserve components of the Army—including the National Guard—and all retired personnel of the Army. It is generally agreed that the proposed legislation should also include those who have voluntarily enlisted for active military service since the imminence of the defense emergency became apparent. The effective date of the Selective Training and Service Act of 1940 was September 16, and of Public Resolution No. 96, August 27, 1940. In order to cover voluntary enlistments made in anticipation of these acts or in recognition of the situation that gave rise to them, it is usually proposed to extend the benefits of the projected State legislation to individuals entering the Federal military service after a date reasonably prior to the effective dates of these two laws, i. e., after some date early in 1940.

In view of the unpredictability of future developments, consideration has been given to the length of time for which a State could advisedly preserve benefit rights. The legislation, it appears, will generally be extended only to individuals discharged before a certain date. The Bureau of Employment Security has recommended that, for all States whose legislatures meet again in 1943, this date might well be placed in, or at the end of, the first calendar quarter of that year. This period would take care of all individuals discharged from service between the effective date of the legislation and the 1943 session of the State legislature and would, in addition, give that session time to consider the advisability of any amendments to the action of the 1941 session. States whose legislatures meet more frequently will presumably desire to cover all discharges within at least a 2-year period.

The proposed legislation will, it appears, also specify a minimum duration of military service as a condition for the special preservation of benefit rights. Obviously, there would ordinarily be no necessity or justification for any special carry-over of benefit rights for military service of only a few weeks. It has been suggested that the proposed legislation should apply only to service for 90 days or more.

The considerations justifying extension of the legislation to members of the reserve components of the Army and Navy when ordered into the active service of the United States are generally deemed not to apply to individuals in the annual training courses and encampments of the National Guard when that organization has not been called into active Federal service. For such individuals the sacrifices involved, length of the training period, availability of participants for the acceptance of suitable work if offered, and other factors, are obviously widely different from those existing under Federal military service.

Question has been raised whether State benefit rights should not also be carried over during the present emergency for civilians entering non-military employment closely connected with the defense program but of a type not ordinarily covered by State unemployment compensation laws—such, for example, as employment in Government arsenals or navy yards. The justifications for modifying or extending State unemployment benefit provisions for covered workers who enter active military service do not seem to apply in equal measure to workers in such other defense-connected operations. An individual who takes employment in a shipyard does so voluntarily and hence is not forcibly deprived of the exercise of his ordinary benefit rights, as is a worker required to enter the military service. Of course, the same argument could be applied to those who entered the armed forces by enlistment rather than by compulsory enrollment. However, even in these cases, greater personal sacrifices, financial and otherwise, are generally involved than are

suffered by those going into nonmilitary defense occupations. For these reasons, extension of the proposed State legislation to persons outside the actual military service has not been generally advocated.

Relation to Experience Rating

There appears to be general agreement that the proposed preserving legislation will not necessitate or make desirable any change in the experience-rating provisions of State laws. Under reserve-account laws, section 1602(c)(1) of the Internal Revenue Code requires that benefits must be paid from the account of the employer who paid the wages on which such benefits are based. Under such laws, therefore, benefits based on the pre-induction experience of a claimant must be charged against the employer with whom such experience was had, even though the benefits are paid for unemployment occurring after an interval of military service.

Under some pooled-fund laws, it is possible that benefits for unemployment following military service might be charged against the general State fund instead of an individual employer's account, without conflict with the provisions for credit allowance contained in the Internal Revenue Code. Even under such laws, however, the charging of benefits paid after a period of military service against the account of the claimant's preinduction employer or employers is generally deemed to be in accord with the theory that a reduced rate of contributions shall be based only on an employer's experience with respect to unemployment or other factors bearing a direct relation to the unemployment risk of his workers. Thus, if benefits based on wage-earning experience are charged against the employers with whom such experience was had, deferred benefits are taken to constitute a part of the risk with respect to the future unemployment of his workers which the employer assumes as an incident of having them in his employ.

It has already been noted that employers are under a recognized obligation to rehire their former workers after periods of military service. Failure to charge an employer's account for benefits paid to a discharged individual formerly in his employ would place a premium on the retention of temporary workers instead of rehiring those returning from military service—a policy contrary to that expressed in the Selective Training and Service Act of 1940.

Provision Against Simultaneous Drawing of Unemployment Benefits From Two Systems

Most State laws already have provisions which prohibit an individual's drawing benefits with respect to the same week of unemployment both from a State and from the Federal Government. Some State laws, however, do not contain such a provision, and it is not certain in the case of some others that the phraseology of the provision will ensure against such double benefits if a Federal system of unemployment compensation should also be put into effect for individuals discharged from military service. It may, therefore, be necessary for some States to amend their present laws to preclude any possibility of double benefits, particularly if the conclusion generally agreed on is embodied in the Federal legislation—namely, that an individual should be required to exhaust all his potential benefits under the Federal system before resorting to State benefits.

Records and Reports With Respect to Individuals Entering Military Service

Among the special administrative problems which will arise in connection with the State legislation now under discussion will be that of obtaining a record of enlistment or induction and of discharge of covered workers. In many respects this problem lends itself to uniform treatment for the States as a whole, instead of piecemeal solution by each particular State. From this angle the problem is being worked out by the Bureau of Employment Security of the Social Security Board.

The Bureau has made arrangements with the Selective Service System and the War Department whereby State agencies, after July 1, 1941, will receive a photostatic copy of the War Department's basic record of each individual entering military service. Since this arrangement apparently cannot be put into operation before July 1, the Bureau has recommended to the States certain other measures for obtaining the necessary information. These measures include special reports by employers to State agencies of all separations of covered workers for military purposes not previously reported, notation by employers on their quarterly wage reports of all workers so leaving employment in the future, and the obtaining by the agency through employment office interviews

of information on individuals unemployed at the time of induction. The Bureau is also continuing negotiations with officials of the Selective Service System and of the War Department to develop further the informational procedures already suggested and to discover others.

Appropriate provisions for State interchange of wage credits and of necessary records and information exist in some State laws but will have to be introduced into others. There will also be the problem of preserving the wage and benefit records of individuals covered by the proposed legislation during their period of service. For segregating and preserving these records, each State agency will presumably develop the procedures best adapted to its existing wage-record process. It may be necessary for State agencies to preserve all wage records for a limited period of time.

Experience Rating in Indiana, 1940*

The present analysis for Indiana, like similar analyses for Nebraska and Wisconsin published in the January and February Bulletins, respectively, summarizes data reported by the State agency and covering 1939 experience on which modification of employer contribution rates in 1940 was based. Similar data are available for South Dakota, where a relatively small group of employers was able to obtain modified rates in 1940, and also for Delaware, where rate modifications will not be effective until January 1942. Copies of releases summarizing information for these two latter States may be obtained, on request, from the Bureau of Employment Security, Research and Statistics Division.

UNDER PROVISIONS of the Indiana law, outlined subsequently, only a small group of employers could qualify for reduced rates of contribution in 1940, the first year for which such rates could be assigned on the basis of an employer's experience rating. Rate reductions for this year therefore affected only 428 employer-reserve accounts, about 4 percent of the total, which was 10,217. It is estimated that the reduced rates caused a decline of considerably less than 1 percent from the amount which would have become payable had all employers paid the 2.7-percent rate. Reductions were made possible largely by a decline in an employer's pay roll in 1939, or by his payment of voluntary contributions, rather than by employment stabilization.

Among the total 10,217 employer accounts in the State, approximately 11 percent were overdrawn as of December 31, 1939—that is, the amount of benefits charged exceeded the contributions made by the employers and credited to their accounts. The mining and construction industries had relatively the largest number of overdrawn accounts, while manufacturing accounted for three-fourths of the total amount overdrawn on that date.

Statutory Provisions

Under the terms of the Indiana statute, each employer's reserve account was credited with five-sixths of his contributions during 1936, 1937, and 1938, and the remaining one-sixth was credited to a State-wide pooled account.[1] Beginning with 1939, the pooled account has been credited with 0.135 percent, or one-twentieth of 2.7 percent, and the remainder of the employer's contributions have been credited to his reserve account. In addition, employers are permitted to make voluntary contributions to their accounts, which are treated as required contributions.

Thus, the reserve account of an employer whose taxable pay roll has remained uniform since 1936 would have been credited with 7 percent

*Prepared in the Research and Statistics Division, Bureau of Employment Security.

[1] In addition to Indiana, the laws of North Carolina, South Dakota, and Vermont are of the combined employer-reserve and pooled-fund type, under which a portion of each employer's contributions is credited to the State-wide pooled account and the remainder is credited to his own reserve account.