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# Employment Security Amendmentsof 1955

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# EMPLOYMENT SECURITY AMENDMENTS OF 1955

By

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On March 30, 1955, Pennsylvania's Governor George M. Leader signed into laws as Act No. 5 of the 1955 legislative session an "omnibus" bill amending various sections of the State Unemployment Compensation Law.[1] In the interest of a better understanding of this important and rather complex piece of legislation the changes to the benefit, contribution, administrative and penalty provisions are summarized herein. Comparisons are made with the law previous to the amendment where helpful in explaining the new provisions.

*Section 4 (u) — Definition of "Unemployed"*

Under amendments of 1953 it was provided that an employe should be deemed unemployed during any week of less than full-time work if his earnings during the week were less than the sum of his weekly benefit rate plus $6. A further provision was then added to this sub-section that additional payments resulting from this particular amendment should be charged for contribution purposes only on a partial basis. The latter provision, concerning charges, was found to be not in conformity with the Federal Unemployment Tax Act and, consequently, has not been followed, since this would deprive all employers of the right to set off state contributions against the federal unemployment tax. The 1955 amendments, accordingly, deleted this provision.

Under prior law and judicial opinions, claimants who became unemployed by reason of a plant shutdown for vacation, and who did not receive vacation allowances, were, nevertheless, denied compensation if the shutdown was pursuant to a union-management agreement. This was considered neither equitable nor logical. Act No. 5 provides that a payless employe shall not be disqualified merely by reason of the fact that his collective bargaining agent agreed that the plant might be closed for vacation in lieu of scheduling vacations on a staggered basis.

Also, under current decisional law, there has been considerable controversy and confusion as to whether an employe laid off during a plant shutdown for vacation should be denied compensation by reason of the fact he receives payments from an employe or union fund. On this point the amendment provides that employes who receive vacation allowances for a vacation period shall be deemed ineligible, whether such payments are made directly or indirectly by the employer.

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1 PA. STAT. ANN. tit., 43 § 751 (1930).

*Section* 4 (*w*) — *Definition of "Valid Application for Benefits"*

When the Act was amended in 1953 to make eligible an employe during a week of partial employment in which his earnings were less than the sum of his weekly benefit rate plus $6, a corresponding provision was inadvertently omitted from this sub-section dealing with the filing of applications for benefits. The 1955 amendment supplies this omission.

*Section* 4 (*x*) — *Definition of "Wages"*

Under the former law the first $3,000 of wages received by an employe in a calendar year were credited to the specific calendar quarter or quarters in which such wages are paid. Since wages paid to an employe in excess of $3,000 a year are not considered in determining his eligibility for compensation, this provision created many situations wherein an employe who earned $5,000 throughout a year was, nevertheless, credited with wages only during the first six or nine months of that year. Consequently, in a succeeding benefit year, the inability to consider wages earned in the latter part of the previous or "base" year, deprived such claimants of eligible status or substantially reduced their compensation. The 1955 Act corrected this inequity by permitting a realistic allocation of the $3,000 creditable wages throughout the calendar quarters of the year in accordance with one's real earnings.

*Section* 201 — *General Powers and Duties of the Department*

Although it is inferrable from other provisions of the Law that the Secretary of Labor and Industry has the power personally and through properly authorized agents to administer oaths and affirmations, and subpoena witnesses, documents, etc., in any type of proceeding before the Department, there is some question whether this is not limited to benefit appeal proceedings. In order to settle any doubt on this question, particularly in those cases in which efforts are being made to enforce the penal provisions against fraud, these powers are expressly conferred in the new amendments.

*Section* 301 — *Contributions by Employers—Experience Rating*

Under the law, as amended in 1951, the provisions and tables for determining employer contribution rates between a minimum rate of .3% and a maximum of 2.7% proved inadequate for sound financing of the public fund. As a result of the 1951 amendments, in that year alone approximately 55 million dollars were rebated under a retroactive provision enacted in October. Far more serious, however, was the effect of these amendments (described by the Federal Government as, "the most drastic enacted by any State") on collections during the years 1952, 1953 and 1954. During each of these years contributions fell so far below disbursements that by the first quarter of 1955 the Pennsylvania Fund had fallen to some $350 million dollars, less than one and one-half times the amount paid out in the 12 months of 1954. At this point Pennsylvania's Unemployment Insurance Fund, in terms of its taxable payroll and experience with unemployment, was the lowest among all of the states of the nation, save one.

In the enactment of the contribution reductions in 1951, that legislature also provided in Section 301, as the ultimate "safeguard" against insolvency, that all contribution rates should go to 2.7% if the fund fell to less than one and one-half times the amount of the disbursements in any 12 consecutive calendar months. Under that law, therefore, all employers would have been required to pay the maximum 2.7 rate on wages paid, commencing April 1, 1955. (Total collections on 1955 wages at this rate would amount to $193 million.)

The new act first eliminated this clause for an "across-the-board" maximum tax rate. The so-called "peril point" for maximum rates was set at a fund level of $300 million. As a result, graduated contributions under the "Experience Rating System" will remain in effect indefinitely.

The 1955 Act also substitutes a new provision and table of contribution schedules in place of those enacted in 1951. Under the new provisions, rates will vary between a minimum of .5% (when the Fund reaches $450 million) and the maximum of 2.7%. (Actually the .3% minimum stated in the 1951 law was permitted only on the basis of a fund balance of $670 million or more, and was never realized.) For 1955 the minimum rate will be .8%. This rate is being enjoyed by approximately 58,000 of the State's 140,000 rateable employers. The effect of these changes is (a) to provide future adequate financing commensurate with disbursements, and (b) to provide a fair and equitable table of graduated rates based upon the employer's individual "experience with unemployment" as contrasted with the 1951 tables under which, by reason of irregular steps in the graduated table, preferential treatment was accorded certain employers.

A further amendment to Section 301 makes possible the eligibility of new employers for "Experience Rating" on a shorter term basis, in conformity with recent Federal legislation. Under original State Law, (by reason of a former Federal requirement) a new employer starting out in business cannot obtain an "Experience Rate" for a reduced contribution until after approximately four years of employment, regardless of how little unemployment he has experienced in his business. In 1954 the federal requirement was reduced to approximately one and one-half years and it was made optional with the states whether they shall adopt the less stringent test. The 1955 amendment provides for the allowance of reduced rates to new employers after approximately a year and a half, on the same experience measuring standards available to other employers.

*Section* 401 — *Qualifications Required to Secure Compensation*

Until 1953, female employes who were pregnant might remain eligible for compensation so long as they established their ability and availability for work in their usual or similar occupations. In 1953 the legislature laid down a rule denying compensation to all claimants separated for reasons "attributable to pregnancy" and "in any event after the sixth month of pregnancy and until after one month of confinement".

Act No. 5 substitutes for both of these clauses the new provision that a claimant shall be conclusively presumed unavailable for work "after seven and one-half months of pregnancy and until after thirty days of confinement". (As to claimants filing outside this period the usual test of availability for suitable work is applicable.)

*Section* 402 — *Eligibility for Compensation*

For many years the Pennsylvania law has permitted the allowance of compensation to an employe who found it necessary to leave his work for reasons of personal good cause. (In all cases the employe has been required to establish his ability and availability for work at the time he claims compensation.) As amended in 1953, the Act excluded from recognized causes any "marital, filial or domestic circumstances or obligations".

The latest amendment deletes the 1953 exclusions thus broadening the field of recognized causes to include all personal reasons as well as those attributable to the employment. At the same time the act changes the term "good cause" to read, "cause of a necessitous and compelling nature", thus indicating a more intensive requirement in testing the effect of cause in individual cases.

*Section* 404 — *Rate and Amount of Compensation*

Under the former Law an employe's weekly benefit rate was determined as 1/25 of his earnings in that calendar quarter of his "base year" in which his earnings are highest (this formula is expressed in the Benefit Tables at the end of Section 404). Under this provision a small but increasingly substantial number of employes found themselves measured for unemployment compensation in accordance with their short time earnings or when suffering from irregular employment. The amendment provides for such cases an alternative method for determing the weekly benefit rate, on the basis of "fifty percent (50%) of his full time weekly wage". The effect of this provision is to insure that, subject to the maximum weekly allowances, all unemployed workers will be compensated in accordance with the traditional theory of the Act, namely, at 50% of their full-time weekly wage.

Under the old law, the maximum weekly allowance to any employe was $30. This "ceiling" on weekly benefit payments has had the effect of preventing a majority of workers from receiving compensation at the rate of 50% of their weekly earnings. In order to keep pace with increased cost of living which benefits are intended to meet, and to approach a proper ratio between average weekly earnings and compensation rates, the new amendment raised the "ceiling" to $35. It is noteworthy that this is an extension of the former Benefit Table, rather than a substitute. For example, under the old law an employe with high quarter earnings of $738 and base year earnings of $900 could qualify for $30 a week. Under the new law this employe would draw no more than $30 weekly. If, however, he has

high quarter earnings of $863 or more with $1,468 in his base year, he will be able to qualify at the rate of $35.

Duration of full weekly payments in a year varied between 13 weeks and 26 weeks under the old law, depending upon the amount of the employe's "base year" earnings. These limitations had the effect of terminating job insurance to the unemployed in a substantial number of cases. Where workers continue to suffer from long-term unemployment, their families must dip into such savings as they have or turn to public assistance, which is what they have been doing in increasing numbers from the middle of 1954. The Department of Public Assistance reported in the first quarter of this year that such employes were being added to the general assistance rolls at the rate of 16,000 a year.

The Leader Amendment substitutes a uniform potential duration of 30 weeks for any worker who meets the monetary and other tests of eligibility and remains unemployed during thirty weeks in his benefit year. While this extension of insurance will affect only a minority of claimants, it will benefit those who are hardest hit. The extension of uniform duration to all qualified claimants is one of the benefit improvements which was recommended last year to all of the states by President Eisenhower.

In the enactment of extended and uniform duration, the annual earnings requirement was increased beyond the former test, viz., "thirty times the weekly compensation amount". In order that an employe with substantial base year earnings might not be denied compensation altogether because of his inability to meet the higher earnings requirement, provision was made in the new act for paying benefits in such cases at a reduced weekly rate. In other words, such an employe is permitted to "bump back" to the benefit rate on that line of the table on which his base year earnings amount appears. The requirement remains, however, that the employe must, in any event, have base year earnings of not less than thirty times his weekly benefit rate, based upon his high quarter earnings, the same test that appeared in the old law.

Under the former statute a three-way reduction in employment insurance would automatically have gone into effect as of April 1, 1955, because of the low level of the Pennsylvania fund. The maximum weekly benefit rate would have been cut from $30 to $20. The maximum duration of payments would have been reduced from 26 weeks to 20 weeks. The total annual amount payable to an unemployed worker would have been reduced from $780 to $400. As a result, approximately 43,000 compensated workers would have been completely severed from the program and many more thousands would have suffered substantial cuts in their allowances and duration of payments. The 1955 amendment completely eliminated this provision from the law.

*Section* 801 —*False Statements and Representations to Obtain or Increase Compensation*

The penal provision of the law with respect to fraudulent claims against the Unemployment Compensation Fund are both extended and increased in severity under the new law. The amendments also permit the Department of Labor and Industry to impose administrative penalties, in addition to the prosecution of civil remedies for restitution of improperly obtained payments.

*Section* 804 — *Recovery and Recoupment of Compensation*

The new act deleted a provision concerning the claimant's financial worth which was rendered meaningless by a former amendment to the law and which, through an oversight, was not previously removed.

In terms of program solvency and benefit adequacy these amendments probably worked more improvements than any previous employment security bill in Pennsylvania since the original enactment twenty years ago. A good deal more will have to be done, however, if legislative programming is expected to absorb labor's current planning for "Supplemental Unemployment Payments".