

## Overview

Since unemployment insurance was created in 1935, it has expanded into a broad, employer-based program that aims to help to stabilize the overall economy and protect the unemployed from major financial disruptions. Unfortunately, access to the current unemployment insurance system is limited or absent for independent workers, who are the self-employed, part-time, and temporary workers that comprise a third of the workforce.

The unemployment system's failure to adjust for major shifts in the workforce has significantly reduced its ability to reach today's unemployed workers. To understand the challenges facing the system, we will outline the history and purpose of unemployment insurance, explore the ways in which it fails to meet the needs of four major groups of workers within the independent workforce, and offer strategies to revise and expand the system to be more inclusive.

## Purpose of the Unemployment System

Unemployment insurance was created in 1935 to allow employers to lay off workers during economic downturns and re-hire them later when the economy had improved. Since then, the program has evolved into a system designed to mitigate the impact of unemployment on workers and the overall economy.

Unemployment insurance benefits:

- Help stabilize the income of workers who have become unemployed involuntarily, allowing them to continue to meet household expenses without incurring excessive debts or depleting assets significantly.
- Help workers preserve skills by allowing them time to locate appropriate employment, rather than forcing them to take inappropriate, lower-paying work.
- Help stabilize the economy during recessions by allowing consumers to maintain spending during periods of unemployment.

## **The Current Unemployment System: Rules & Regulations**

The unemployment system is funded by payroll taxes levied on employers. The federal government and the states work in partnership to run the system. The states administer their separate programs and set the eligibility requirements, benefit amounts, and employer tax rates. The federal government sets broad guidelines requiring a minimum employer tax rate and certain administrative best practices. Typically, employees who become unemployed through no fault of their own are temporarily eligible to receive a percentage of their previous income in unemployment compensation.

Eligibility rules vary widely among states. Most states require recipients to:

- Have become unemployed involuntarily.
- Have earned a minimum amount in the time preceding the unemployment.
- Be actively seeking full-time work.
- Accept a reasonable offer of work.

## **Limitations of the Current Unemployment System**

Independent workers have only limited access to the current unemployment system. Part-time and temporary workers routinely do not qualify for benefits because they often violate one or more provisions of the eligibility rules. Self-employed workers are barred from access to the system because they are not employees, and many other workers who are illegally misclassified as independent contractors are denied benefits for this reason.

The unemployment system has not kept pace with shifts in the labor force. Already, the system is struggling to meet its goals effectively. Without reform, it will continue to arbitrarily exclude a growing group of workers.

## **Self-Employed Workers' Issues**

Self-employed workers are not eligible for unemployment benefits because the unemployment system is employer-funded and based on the existence of an employer-employee relationship. Unemployment insurance law specifically bars independent contractors from access to the unemployment system, under the reasoning that these workers have control over whether they are working, so they cannot become involuntarily unemployed. Yet, many self-employed workers have a particularly acute need for unemployment protection due to the unstable, gig-to-gig nature of their work.

Like standard employees, the self-employed require temporary income assistance during periods of unemployment to maintain financial stability and allow time to find suitable employment. Moreover, as the percentage of the workforce that is selfemployed continues to grow, restriction of unemployment protection to employees will decrease the system's ability to stabilize the economy during recessions. Adapting the unemployment system to include the self-employed is a challenge that will require innovative solutions, but it is necessary to reform the outdated system to meet the needs of the modern workforce.

## **Strategies to Include Self-Employed Workers**

- Develop guidelines that would allow self-employed workers to buy into the existing unemployment system. A 2006 survey of over 3,000 independent workers, 79% of respondents reported that they would be willing to pay into their state unemployment insurance fund so they could collect benefits when unemployed.
- Develop a separate system of unemployment protection for self-employed workers that would allow them to set aside pre-tax dollars accessible only during periods of unemployment. Such accounts could be similar to Health Savings Accounts, in that unused funds would be accessible upon reaching retirement age.

## **Misclassified Workers' Issues**

Some workers are denied unemployment compensation because they have been illegally misclassified as self-employed independent contractors when, in fact, they meet the legal definition of employees. Such workers, often referred to as 'permalancers' or 'permatemps', work for a single employer on a long-term basis and do much the same work as their co-workers who are on the permanent payroll. Employers save on payroll taxes and employee benefits by refusing to switch permalancers to employee status.

Many misclassified workers can qualify for unemployment benefits if they can prove in court that they were actually employees and not independent contractors. This determination is based on whether the worker can show that they met the legal definition of an employee while they were working for a company – regardless of whether they were paid as an independent contractor. Courts in California and Oregon have recently ruled in the plaintiff's favor in a number of such cases, and the workers' employers were ordered to pay millions of dollars in back unemployment taxes.

## **Strategies to Include Misclassified Workers**

- Encourage states to improved tests that determine whether a worker can legally be considered an independent contractor.
- Streamline the system for filing misclassification claims, thereby decreasing the incentive to misclassify employees to save on payroll taxes and benefits.
- Increase efforts to educate misclassified workers about their rights to unemployment benefits.

## **Temporary Workers' Issues**

Employers' unemployment tax rates are contingent on how many employees file claims for benefits. Due to the inherent high turnover rate in the temporary employment industry, temp agencies are particularly vulnerable to high claims rates. This creates an incentive for temp agencies to refute claims when possible. In addition, confusion often arises when attempting to determine whether an unemployed temp worker has

voluntarily quit work or has been involuntarily separated from work.

### **Strategies to Include Temporary Workers**

- Develop strategies to resolve the conflict of interest that gives temps agencies an incentive to refute unemployment claims.
- Develop specific guidelines to clarify the conditions under which temporary workers are eligible for unemployment insurance. Some advocates have recommended that states repeal laws that require temps to call their agency for a new assignment once their current assignment ends.

### **Part-Time Workers' Issues**

Part-time workers often have trouble qualifying for unemployment benefits because they violate eligibility rules. Nationally, only 12% of unemployed part-time workers receive unemployment benefits.<sup>1</sup>

Many states require recipients to be actively looking for full-time work, regardless of whether their previous employment has been part-time. In other states, those seeking part-time work are required to have a history of part-time work, or to show that they have a legitimate reason, such as caring for a child or attending school, to limit their job search to part-time positions. As of 2004, only nine states had eliminated all restrictive rules for part-time employees. An additional 15 states granted part-time workers limited eligibility.<sup>2</sup>

### **Strategies to Include Part-Time Workers**

- Eliminate rules that limit eligibility to workers seeking full-time employment.
- Eliminate 'good cause' provisions limiting part-time eligibility to workers who can demonstrate a qualifying reason for limiting their job search to part-time work.
- Eliminate rules limiting eligibility for those seeking part-time employment to workers with a history of part-time work.

### **Conclusion**

The number of unemployed workers collecting unemployment benefits is at a record low, having declined from about half of unemployed workers in the 1950s to about a third today.<sup>3</sup> This decline is due in part to changes in the labor force than have not

been met with appropriate adjustments to the unemployment system. Part-time and temporary employment has risen over time, but many of these workers have trouble qualifying for unemployment benefits. Self-employment has also increased, but selfemployed workers are not included in the employer-funded system.

Protection against financial disruption and underemployment should not be arbitrarily withheld from independent workers due to their work arrangements.

Without enactment of reforms to accommodate these groups, the ability of the unemployment system to meet its goals of assisting the unemployed, stabilizing the economy and retaining skills in the workforce will continue to erode.